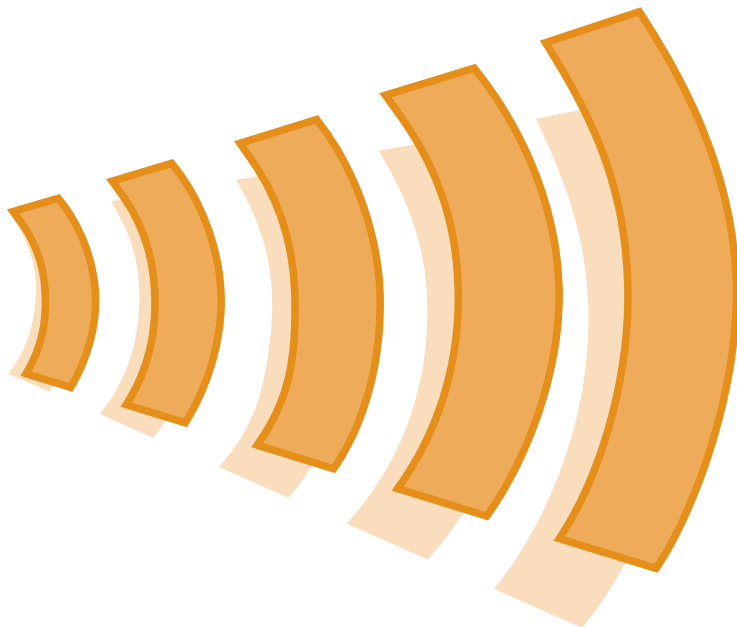


OFFICIAL VOTER INFORMATION GUIDE

CALIFORNIA GENERAL ELECTION

NOVEMBER 2, 2004

MAKE YOUR
VOICE
HEARD



REGISTER
LEARN
VOTE

► **MAKE YOUR VOTE COUNT**

Register as a Permanent Absentee Voter

To receive your ballot in the mail each election, sign up at www.MyVoteCounts.org.

► **MAKE AN INFORMED CHOICE**

Read inside about the statewide issues on the ballot.

► **MAKE YOUR VOICE HEARD**

Vote on Tuesday, November 2, 2004

The polls are open from 7 a.m. to 8 p.m. on Election Day.

CERTIFICATE OF CORRECTNESS

I, Kevin Shelley, Secretary of State of the State of California, do hereby certify that the measures included herein will be submitted to the electors of the State of California at the General Election to be held throughout the State on November 2, 2004, and that this guide has been correctly prepared in accordance with the law.

Witness my hand and the Great Seal of the State in Sacramento, California, this 9th day of August, 2004.

Kevin Shelley

Kevin Shelley
Secretary of State



SECRETARY OF STATE



Dear Fellow Voter,

On November 2, 2004, we will have the right and the privilege to choose our next President of the United States and make many other important decisions about the future of California.

This will be one of the most significant elections in many years. And your vote could make the difference. We all know that many recent elections have been decided by just a handful of votes. Please make sure your voice is heard by voting on or even before November 2nd.

We understand that getting to the polls on Election Day is not always easy. One of the easiest ways to have your voice heard is to **vote by mail!**

This year, you can also become a Permanent Absentee Voter for any reason. That way you will be able to vote by mail automatically in every election. You can apply for an absentee ballot right now by visiting our website at www.MyVoteCounts.org or by contacting your local elections officials.

This year's Voter Information Guide also has a new section devoted to election technologies. This guide explains the voting system that will be used in your county. Please take a moment to learn about the voting system in your area—as it could have changed since the last election. You can also find more information on voting systems at www.MyVoteCounts.org.

This year, make your voice heard. Vote by mail, or vote on November 2nd, but please make sure your vote is cast.

myVote
COUNTS

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VOTER BILL OF RIGHTS

1. You have the right to cast a ballot if you are a valid registered voter.
A valid registered voter means a United States citizen who is a resident in this state, who is at least 18 years of age and not in prison or on parole for conviction of a felony, and who is registered to vote at his or her current residence address.
2. You have the right to cast a provisional ballot if your name is not listed on the voting rolls.
3. You have the right to cast a ballot if you are present and in line at the polling place prior to the close of the polls.
4. You have the right to cast a secret ballot free from intimidation.
5. You have the right to receive a new ballot if, prior to casting your ballot, you believe you made a mistake.
If at any time before you finally cast your ballot, you feel you have made a mistake, you have the right to exchange the spoiled ballot for a new ballot. Absentee voters may also request and receive a new ballot if they return their spoiled ballot to an elections official prior to the closing of the polls on Election Day.
6. You have the right to receive assistance in casting your ballot, if you are unable to vote without assistance.
7. You have the right to return a completed absentee ballot to any precinct in the county.
8. You have the right to election materials in another language, if there are sufficient residents in your precinct to warrant production.
9. You have the right to ask questions about election procedures and observe the elections process.
You have the right to ask questions of the precinct board and election officials regarding election procedures and to receive an answer or be directed to the appropriate official for an answer. However, if persistent questioning disrupts the execution of their duties, the board or election officials may discontinue responding to questions.
10. You have the right to report any illegal or fraudulent activity to a local elections official or to the Secretary of State's Office.

If you believe you have been denied any of these rights, or if you are aware of any election fraud or misconduct, please call the Secretary of State's confidential toll-free

VOTER PROTECTION HOTLINE
1-800-345-VOTE (8683)

Secretary of State | State of California

MAKE YOUR VOICE HEARD

Quick Reference Pullout Guide

*Take it with
you to the
Polls!*

**Election Day
November 2, 2004**

PROP

59

**Public Records, Open Meetings.
Legislative Constitutional Amendment.**

Summary

Amends Constitution to include public's right of access to meetings of government bodies and writings of government officials. Preserves specified constitutional rights; retains existing exclusions for certain meetings and records. Fiscal Impact: Potential minor annual state and local government costs to make additional information available to the public.

What Your Vote Means

Yes

A **YES** vote on this measure means: Californians would have a constitutional right of access to government information. A government entity would have to demonstrate to a somewhat greater extent why information requested by the public should be kept private.

No

A **NO** vote on this measure means: Access to government information would continue to be governed by existing laws.

Arguments

Pro

California's government—all three branches, statewide and local—should be as transparent as possible to the public it asks for funding, power, and trust. But too often officials and judges choose secrecy over disclosure. Proposition 59 would make transparency a constitutional duty owed to the people, to whom officials are accountable.

Con

The press and public must, indeed, have access to the workings of state and local governments to help ensure accountability; however, the question is whether Proposition 59 goes far enough in guaranteeing that critical access.

For Additional Information

For

Terry Francke
Californians Aware
2218 Homewood Way
Carmichael, CA 95608
916-487-7000
terry@calaware.org
www.prop59.org

Against

Gary B. Wesley
Attorney at Law
707 Continental Circle
Mountain View, CA 94040
408-882-5070

BALLOT MEASURE SUMMARY

PROP

60

Election Rights of Political Parties. Legislative Constitutional Amendment.

Summary

Requires general election ballot include candidate receiving most votes among candidates of same party for partisan office in primary election. Fiscal Impact: No fiscal effect.

What Your Vote Means

Yes

A **YES** vote on this measure means: The State Constitution would require that the top vote-getter from each party in a state primary election advance to the general election. (The current statutory elections process has this requirement.)

No

A **NO** vote on this measure means: No provisions would be added to the State Constitution regarding state primary elections.

Arguments

Pro

Proposition 60 guarantees full, free, and open debate in elections. **PROPOSITION 60 PRESERVES VOTER CHOICE** and protects your right to select political party nominees for public office in direct primary elections. Proposition 60 gives you the right to choose from all parties and different points of view in general elections.

Con

Proposition 60 does not go far enough. It leaves the door open to possible future tinkering with our election system.

For Additional Information

For

Yes on 60—Committee to Preserve Voter Choice
1127 11th Street, Suite 950
Sacramento, CA 95814
916-443-5900
www.Yeson60.com

Against

No contact information available.

PROP

60A

Surplus Property. Legislative Constitutional Amendment.

Summary

Sale proceeds of most surplus state property pay off specified bonds. Fiscal Impact: Net savings over the longer term—potentially low tens of millions of dollars—from accelerated repayment of existing bonds.

What Your Vote Means

Yes

A **YES** vote on this measure means: The state would be required to use any revenues from the sale of surplus property to accelerate the repayment of some existing bonds.

No

A **NO** vote on this measure means: The state would not be required to use revenues from the sale of surplus property to accelerate the repayment of some existing bonds.

Arguments

Pro

No contact information available.

Con

Proposition 60A does not go far enough. While it earmarks the proceeds of sale of surplus property to pay off bonds, it doesn't mandate sales.

For Additional Information

For

No contact information available.

Against

No contact information available.

PROP

61

Children's Hospital Projects. Grant Program. Bond Act. Initiative Statute.

Summary

Authorizes \$750 million general obligation bonds for grants to eligible children's hospitals for construction, expansion, remodeling, renovation, furnishing and equipping children's hospitals. Fiscal Impact: State cost of about \$1.5 billion over 30 years to pay off both the principal (\$750 million) and interest (\$756 million) costs of the bonds. Payments of about \$50 million per year.

What Your Vote Means

Yes

A **YES** vote on this measure means: The state could sell \$750 million in general obligation bonds for the construction, expansion, remodeling, renovation, furnishing, equipping, financing, or refinancing of children's hospitals.

No

A **NO** vote on this measure means: The state would not sell the \$750 million in general obligation bonds proposed for these purposes.

Arguments

Pro

Everyday, California's Children's Hospitals save lives. Children with leukemia, cancer, cystic fibrosis, and heart disease. 80% of children with leukemia are making it. 90% are coming through delicate heart surgery. Proposition 61 doesn't raise taxes. It does give the sickest kids in California the best care on earth.

Con

Rebuilding a few children's hospitals will make some building contractors richer; however, it will not, by itself, provide health care for anyone. What we need—in California and across America—is some sort of "single-payer" health care system which cuts out the middlemen and profiteers.

For Additional Information

For

Charity Bracy
California Children's
Hospitals Association
3914 Murphy Canyon Road,
Suite 125
San Diego, CA 92123
858-974-1644
cbracy@ccha.org
www.SaveTheChildrens
Hospitals.com

Against

Gary B. Wesley
Attorney at Law
707 Continental Circle
Mountain View, CA 94040
408-882-5070

PROP

62

Elections. Primaries. Initiative Constitutional Amendment and Statute.

Summary

Requires primary elections where voters may vote for any state or federal candidate regardless of party registration of voter or candidate. The two primary-election candidates receiving most votes for an office, whether they are candidates with "no party" or members of same or different party, would be listed on general election ballot. Exempts presidential nominations. Fiscal Impact: No significant net fiscal effect on state and local governments.

What Your Vote Means

Yes

A **YES** vote on this measure means: All voters would receive the same primary election ballot for most state and federal offices. The top two vote-getting candidates—regardless of political party identification—would be placed on the general election ballot.

No

A **NO** vote on this measure means: Voters would continue to receive primary election ballots based on political party identification. The top vote-getting candidate from each political party would be placed on the general election ballot.

Arguments

Pro

The Voter Choice Primary Initiative allows every voter—including independent voters—to vote for the best candidate for office, regardless of party, in primary elections. It is similar to the method Californians have used for the past century to elect mayors, council members, county supervisors, and district attorneys.

Con

Proposition 62 is based on Louisiana's radical election system. There, it helped KKK leader David Duke run for Governor. It:
• **ELIMINATES VOTER CHOICE** in General Elections
• **UNDERCUTS** opportunities for **WOMEN** and **MINORITY** candidates
• **Makes the Legislature LESS ACCOUNTABLE**
Don't bring Louisiana's dirty politics to California!
Vote NO!

For Additional Information

For

Californians for an Open
Primary
4150 Riverside Drive, Suite 204
Burbank, CA 91505
818-843-1487
info@openprimary.org
www.openprimary.org

Against

Greg Hill
Californians for Election
Accountability
921 11th Street, Suite 400
Sacramento, CA 95814
info@NOon62.com
www.NOon62.com

BALLOT MEASURE SUMMARY

PROP

63

**Mental Health Services Expansion,
Funding. Tax on Personal Incomes Above
\$1 Million. Initiative Statute.**

Summary

Establishes 1% tax on taxable personal income above \$1 million to fund expanded health services for mentally ill children, adults, seniors. Fiscal Impact: Additional state revenues of about \$800 million annually by 2006–07, with comparable annual increases in total state and county expenditures for expansion of mental health programs. Unknown partially offsetting savings to state and local agencies.

What Your Vote Means

Yes

A **YES** vote on this measure means: A surcharge on state personal income taxes would be enacted for taxpayers with annual taxable incomes of more than \$1 million to finance an expansion of county mental health programs.

No

A **NO** vote on this measure means: Funding for county mental health programs would largely be dependent upon actions by the Legislature and Governor.

Arguments

Pro

Proposition 63 expands mental health care for children and adults, using programs proven to be effective. Paid for by 1% tax on taxable personal income *over \$1 million*. Requires strict financial accountability. Supported by nurses, mental health professionals, law enforcement, educators. Let's stop neglecting mental illness. Vote YES on Proposition 63.

Con

Prop. 63 is a false promise. It doesn't treat the mentally ill, but is a *shortsighted substitute* for long-term solutions. Built on a shaky funding scheme, 63 drives away *the very taxpayers it needs*, destroying its own funding source. Don't jeopardize the health of thousands with a feel-good plan.

For Additional Information

For

Rusty Selix
Campaign for Mental Health
1127 11th Street, #925
Sacramento, CA 95814
916-557-1166
info@YESon63.org
www.YESon63.org

Against

Citizens for a Healthy California
400 Capitol Mall, Suite 1560
Sacramento, CA 95814
916-491-1726
www.HealthyCalifornia.org

PROP

64

**Limits on Private Enforcement of
Unfair Business Competition Laws.
Initiative Statute.**

Summary

Allows individual or class action "unfair business" lawsuits only if actual loss suffered; only government officials may enforce these laws on public's behalf. Fiscal Impact: Unknown state fiscal impact depending on whether the measure increases or decreases court workload and the extent to which diverted funds are replaced. Unknown potential costs to local governments, depending on the extent to which diverted funds are replaced.

What Your Vote Means

Yes

A **YES** vote on this measure means: Except for the Attorney General and local public prosecutors, no person could bring a lawsuit for unfair competition unless the person has suffered injury and lost money or property. Also, except for the Attorney General and local public prosecutors, a person pursuing such claims on behalf of others would have to meet the additional requirements of class action lawsuits.

No

A **NO** vote on this measure means: A person could bring a lawsuit under the unfair competition law without having suffered injury or lost money or property. Also, a person could bring such a lawsuit without meeting the additional requirements of class action lawsuits.

Arguments

Pro

Proposition 64 closes a loophole allowing lawyers to file frivolous shakedown lawsuits against small businesses. Proposition 64 stops lawyers from pocketing most of the settlements from these bogus lawsuits. Don't be misled by the trial lawyers' smokescreen: 64 doesn't change any of California's consumer or environmental laws! Yes on 64.

Con

Newspaper headlines warn: "Consumers lose if initiative succeeds." The LA Times reports Proposition 64 "would weaken a state law that allows private groups and government prosecutors to sue businesses for polluting the environment and for engaging in misleading advertising and other unfair business practices . . . the current law would be drastically curtailed."

For Additional Information

For

Yes on 64—Californians to
Stop Shakedown Lawsuits
3001 Douglas Blvd., Suite 225
Roseville, CA 95661
916-766-5595
info@yeson64.org
www.yeson64.org

Against

Consumer Watchdog
1750 Ocean Park Blvd.,
Suite 200
Santa Monica, CA 90405
310-392-0708
NoOnProp64@consumer
watchdog.org
www.NoOnProp64.org

PROP

65

*Pursuant to statute,
Proposition 65 will appear in a
Supplemental Voter Information Guide.*

PROP

66

**Limitations on “Three Strikes” Law.
Sex Crimes. Punishment.
Initiative Statute.**

Summary

Limits “Three Strikes” law to violent and/or serious felonies. Permits limited re-sentencing under new definitions. Increases punishment for specified sex crimes against children. Fiscal Impact: Over the long run, net state savings of up to several hundred million dollars annually, primarily to the prison system; local jail and court-related costs of potentially more than ten million dollars annually.

What Your Vote Means

Yes

A **YES** vote on this measure means: The current “Three Strikes” sentencing law would be amended to require that a second and third strike offense be a serious or violent felony, instead of any felony, in order for the longer sentences required under Three Strikes to apply. The state would be required to resentence “third strikers” whose third strike was nonviolent and nonserious. In addition, prison sentences for specified sex offenses against children would be lengthened.

No

A **NO** vote on this measure means: Current sentencing law would remain in effect, requiring offenders with one or more prior convictions for serious or violent felonies to receive longer sentences for the conviction of any new felony (not just a serious or violent felony). In addition, prison sentences for certain sex offenses against children would remain unchanged.

Arguments

Pro

PROPOSITION 66 RESTORES THREE STRIKES TO ITS ORIGINAL INTENT—ensuring criminals currently serving time for violent offenses are kept in prison, SAVING TAXPAYERS BILLIONS OF DOLLARS currently wasted imprisoning shoplifters and other nonviolent, petty offenders for life. PROPOSITION 66 PROTECTS CHILDREN WITH TOUGHER 1-STRIKE SENTENCES FOR CHILD MOLESTERS. YES ON PROPOSITION 66.

Con

Proposition 66 is opposed by Governor Schwarzenegger, the Attorney General, all 58 District Attorneys, the state’s leading law enforcement, taxpayer, and child protection groups. Costs millions and threatens public safety by creating a legal loophole that could release an estimated 26,000 convicted felons—including rapists, child molesters, and murderers. www.Keep3Strikes.org

For Additional Information

For

Jim Benson
Citizens Against Violent
Crime
1625 E. 17th Street, #105
Santa Ana, CA 92705
1-866-3STRIKES
cavcjim@sbcglobal.net
www.voteyeson66.org

Against

Californians United for
Public Safety
campaign3@Keep3Strikes.org
www.noProp66.org

BALLOT MEASURE SUMMARY

PROP

67

Emergency Medical Services. Funding. Telephone Surcharge. Initiative Constitutional Amendment and Statute.

Summary

Increases telephone surcharge and allocates other funds for emergency room physicians, hospital emergency rooms, community clinics, emergency personnel training/equipment, and 911 telephone system. Fiscal Impact: Increased state revenues of about \$500 million annually to reimburse physicians and hospitals for uncompensated emergency medical services and other specified purposes. Continues \$32 million in state funding for physicians and clinics for uncompensated medical care.

What Your Vote Means

Yes

A **YES** vote on this measure means: The state would impose a 3 percent emergency telephone surcharge, in addition to the existing surcharge, on bills for telephone services for calls made within the state. These revenues would be used to provide additional funds to reimburse physicians and hospitals for uncompensated emergency and trauma care and to fund other specified programs.

No

A **NO** vote on this measure means: The emergency telephone number surcharge would continue to be limited to 0.75 percent on bills for telephone services for calls made within the state. Additional funding to reimburse physicians and hospitals for uncompensated emergency and trauma care, or for other specified programs, would continue to depend largely upon action by the Legislature and Governor.

Arguments

Pro

FIREFIGHTERS, PARAMEDICS, DOCTORS, AND NURSES SAY: PROP. 67 will make sure emergency medical care is available when you and your family need it most. Emergency rooms are closing. Others are severely overcrowded. Paramedics, emergency room doctors, and nurses are overwhelmed. **SAVE EMERGENCY CARE. SAVE LIVES. YES ON PROP. 67.**

Con

Prop. 67 is a \$540 million phone tax—a tax on talking. There's no cap on cell phone or business phone taxes. More than 1 million seniors will be affected. 90% of the money goes to large health care corporations and special interests—with no mandatory audits or financial controls.

For Additional Information

For

Coalition to Preserve Emergency Care, sponsored by firefighters, paramedics, doctors, nurses, and healthcare providers
—Yes on 67
191 Ridgeway Avenue
Oakland, CA 94611
650-306-0495
info@saveemergencycare.org
www.saveemergencycare.org

Against

No on 67—Californians to Stop the Phone Tax
916-930-0688
www.stopthephonetax.com

PROP

68

Non-Tribal Commercial Gambling Expansion. Tribal Gaming Compact Amendments. Revenues, Tax Exemptions. Initiative Constitutional Amendment and Statute.

Summary

Authorizes tribal compact amendments. Unless tribes accept, authorizes casino gaming for sixteen non-tribal establishments. Percentage of gaming revenues fund government services. Fiscal Impact: Increased gambling revenues—potentially over \$1 billion annually—primarily to local governments for additional specified services. Depending on outcome of tribal negotiations, potential loss of state revenues totaling hundreds of millions of dollars annually.

What Your Vote Means

Yes

A **YES** vote on this measure means: Slot machines would be authorized at 16 specific racetracks and card rooms, unless all Indian tribes with existing tribal-state gambling compacts agree to certain terms within 90 days. Under either scenario, local governments throughout the state would receive new gambling revenues, to be used primarily for additional child protective, police, and firefighting services.

No

A **NO** vote on this measure means: Slot machines would not be authorized at racetracks and card rooms. Indian tribes would continue to be subject to current tribal-state gambling compacts. Local governments would not receive new gambling revenues.

Arguments

Pro

Proposition 68 means California's immensely profitable Indian Casinos should pay their fair share to support local services. Indian Casinos choose to make a 25% contribution and live by the same regulations that affect us all or the state will authorize limited competition with an even bigger return to communities.

Con

Beware: Their "fair share" claim is a scam. 68 lets its **FUNDERS—RACETRACKS and CARD CLUBS—operate LAS VEGAS-SIZED CASINOS throughout California—NEAR FREEWAYS and 200 SCHOOLS. MORE TRAFFIC. MORE CRIME. ANOTHER BROKEN PROMISE TO INDIANS.** Governor Schwarzenegger, firefighters, sheriffs, police, tribes, taxpayers, labor, educators say: "NO on 68!"

For Additional Information

For

Sheriff Lee Baca and Sheriff Lou Blanas
A Fair Share for California
1717 I Street
Sacramento, CA 95814
916-551-2538
info@fairshareforcalifornia.org
www.fairshareforcalifornia.org

Against

No on 68: Californians Against the Deceptive Gambling Proposition
11300 W. Olympic Blvd., Suite 840
Los Angeles, CA 90064
800-420-8202
info@stop68.com
www.Stop68.com

PROP

69

DNA Samples. Collection. Database. Funding. Initiative Statute.

Summary

Requires collection of DNA samples from all felons, and from others arrested for or charged with specified crimes, and submission to state DNA database. Provides for funding. Fiscal Impact: Net state cost to process DNA samples of potentially nearly \$20 million annually when costs are fully realized. Local costs likely more than fully offset by revenues, with the additional revenues available for other DNA-related activities.

What Your Vote Means

Yes

A **YES** vote on this measure means: The state would expand the collection of DNA samples to include all convicted felons, and some convicted nonfelons, as well as individuals arrested for certain offenses. Criminal penalties would increase to fund the expansion of DNA collection.

No

A **NO** vote on this measure means: DNA samples would continue to be required only from persons convicted of serious felony offenses. Criminal penalties would not increase.

Arguments

Pro

Requiring convicted felons and arrestees for rape/murder to submit DNA, Proposition 69 helps solve crime, prevents false imprisonment, and stops serial rapists/killers. 69 brings California law enforcement up to par with 34 states. Governor Schwarzenegger, Attorney General Lockyer, law enforcement, defense attorneys, and victims' groups say vote yes!

Con

Proposition 69 will not make you safer, but could trap your DNA in a criminal database. 69 treats thousands of Californians that are never charged with a crime just like the guilty. 69 risks your most sensitive, private information—your DNA. Protect your privacy. No on 69! See www.protectmyDNA.com

For Additional Information

For

Beth Pendexter
Californians for the DNA
Fingerprint—Yes on 69
925 L Street, Suite 1275
Sacramento, CA 95814
916-448-5802
info@dnayes.org
www.dnayes.org

Against

Beth Givens
3100 5th Avenue, Suite B
San Diego, CA 92103
415-621-1192
info@protectmyDNA.com
www.protectmyDNA.com

PROP

70

Tribal Gaming Compacts. Exclusive Gaming Rights. Contributions to State. Initiative Constitutional Amendment and Statute.

Summary

Upon tribe's request, Governor must execute 99-year compact. Tribes contribute percentage of net gaming income to state funds, in exchange for expanded, exclusive tribal casino gaming. Fiscal Impact: Unknown effect on payments to the state from Indian tribes. The potential increase or decrease in these payments could be in the tens of millions to over a hundred million dollars annually.

What Your Vote Means

Yes

A **YES** vote on this measure means: Tribes entering a new or amended tribal-state gambling compact would make payments to the state based on their gambling income. These compacts would last 99 years and place no limits on the types or number of casino games.

No

A **NO** vote on this measure means: Tribes would continue to be subject to existing tribal-state gambling compacts, which require various types of payments to the state. Existing compacts will last up to 26 more years and place some limits on the types and number of casino games.

Arguments

Pro

Proposition 70 will provide billions of dollars to the State and will restrict tribal gambling to Indian reservations. Both the taxpayers and Indians win: Tribes pay the same amount as every other business pays in state income taxes; in return, they can operate their casinos. That's only fair!

Con

PROPOSITION 70 IS A BAD DEAL FOR CALIFORNIA. Governor Schwarzenegger's negotiated agreements with Indian gaming tribes guarantee they pay their fair share and respect California laws. *Proposition 70 effectively destroys these agreements.* Join Governor Schwarzenegger, law enforcement, labor, environmental groups, and seniors in voting *NO on Proposition 70.*

For Additional Information

For

Gene Raper
Citizens for a Fair Share of
Indian Gaming Revenues
P.O. Box 1863
Sacramento, CA 95812
760-778-7413
raper@indianfairshare.com
www.indianfairshare.com

Against

No on Propositions 68 and
70—Governor
Schwarzenegger's
Committee for Fair Share
Gaming Agreements
1415 L Street, Suite 1245
Sacramento, CA 95814
916-440-1505
info@no68and70.org
www.no68and70.org

BALLOT MEASURE SUMMARY

PROP

71

Stem Cell Research. Funding. Bonds. Initiative Constitutional Amendment and Statute.

Summary

This measure establishes “California Institute for Regenerative Medicine” to regulate and fund stem cell research, constitutional right to conduct such research, and oversight committee. Prohibits funding of human reproductive cloning research. Fiscal Impact: State cost of about \$6 billion over 30 years to pay off both the principal (\$3 billion) and interest (\$3 billion) on the bonds. State payments averaging about \$200 million per year.

What Your Vote Means

Yes

A **YES** vote on this measure means: The state would establish a new state medical research institute and authorize the issuance of \$3 billion in state general obligation bonds to provide funding for stem cell research and research facilities in California.

No

A **NO** vote on this measure means: Funding for stem cell research in California would depend upon actions by the Legislature and Governor and other entities which provide research funding.

Arguments

Pro

71 authorizes stem cell research to find new CURES FOR CANCER, HEART DISEASE, DIABETES, and many other diseases, SAVE MILLIONS OF LIVES, and CUT HEALTH CARE COSTS BY BILLIONS. And, 71 prohibits cloning to create babies. Join non-profit disease organizations, Nobel Prize scientists, doctors, and nurses: Vote YES on 71.

Con

Adds \$3 billion of bond debt to California’s massive debt load. Money would fund huge, new bureaucracy to promote human embryo cloning. Few controls, no real accountability for how money is spent. Exempts new bureaucracy from aspects of “open meeting” laws. Opposed by women’s groups, leading doctors, and medical ethicists.

For Additional Information

For

YES on 71: Coalition for Stem Cell Research and Cures
11271 Ventura Blvd.
Studio City, CA 91604
800-931-CURE (2873)
info@YESon71.com
www.YESon71.com

Against

Doctors, Patients, and Taxpayers for Fiscal Responsibility
P.O. Box 2402
Covina, CA 91722
www.NoOn71.com

PROP

72

Health Care Coverage Requirements. Referendum.

Summary

A “Yes” vote approves, and a “No” vote rejects legislation requiring health care coverage for employees, as specified, working for large and medium employers. Fiscal Impact: Significant expenditures fully offset, mainly by employer fees, for a state program primarily to purchase private health insurance coverage. Significant county health program savings. Significant public employer health coverage costs. Significant net state revenue losses. Overall unknown net state and local savings or costs.

What Your Vote Means

Yes

A **YES** vote on this measure means: Certain employers would be required to provide health coverage for their employees and in some cases dependents through either (1) paying a fee to a new state program primarily to purchase private health insurance coverage or (2) arranging directly with health insurance providers for health care coverage. The state would also establish a new program to assist lower-income employees to pay their share of health care premiums.

No

A **NO** vote on this measure means: The state would continue to allow employers to choose whether to provide health insurance for their employees and dependents. The state would not establish a new program to provide assistance to low-income employees in paying premiums for health care coverage at their workplace.

Arguments

Pro

Prop. 72 keeps private health coverage within reach of working families. It requires large and mid-sized companies to pay for private coverage, caps employee share of premiums, and sets coverage standards. Doctors, nurses, and consumers agree: With premiums rising and employees losing health insurance, Prop. 72 provides needed protection.

Con

Proposition 72 creates a government-run healthcare scheme funded by an estimated \$7 billion in new taxes on employers and workers by 2007. You could get forced from your existing plan into the government system and lose access to your doctors and hospitals. Educators, charities, taxpayers, doctors say “NO on 72.”

For Additional Information

For

Anthony Wright
Health Access
1127 11th Street
Sacramento, CA 95814
916-442-2308
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Against

Californians Against Government Run Healthcare
1201 K Street, Suite 1100
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CANDIDATE STATEMENT INFORMATION

United States Presidential Candidates and United States Senate Candidates

For information about the candidates running for the offices of United States President and United States Senate, please visit the Secretary of State's website at www.MyVoteCounts.org.

AUDIO VERSION OF THE VOTER INFORMATION GUIDE

The Secretary of State's office produces a cassette-recorded version of the Voter Information Guide for the visually impaired in the following languages: English, Spanish, Chinese, Vietnamese, Tagalog, Japanese, and Korean.

Cassettes can be obtained by calling your local public library or by calling 1-800-345-VOTE.

WHAT IS CAL-ACCESS?

California Automated Lobbying and Campaign Contribution & Expenditure Search System

Cal-Access is your window into the universe of campaign finance and lobbying at the California state government level.

Who contributes and how much do they give to the campaigns of candidates for statewide offices and the State Legislature?

Who finances campaigns for and against state ballot propositions?

Who pays for all those political ads on radio and television and for those political flyers crammed into your mailbox at election time?

Who pays to lobby state government on issues that affect all Californians?

Cal-Access provides the answers. Click on Campaign Finance or Lobbying Activity and follow the money trail. A new option allows you to search across filings and produce summary reports. Click on Advanced Reports to use the new searchable database features. Tips on how to use the system are at your fingertips.

The information is derived from electronically filed reports submitted by candidates, political action committees, political parties, ballot measure committees, major donors, lobbyists, lobbying firms, and lobbyist employers. Campaign organizations with receipts or expenditures of \$50,000 or more and lobbying entities with payments of \$5,000 or more are required to file electronically. For more information, visit

<http://cal-access.ss.ca.gov/>.

SAFE AT HOME

Victims of domestic violence and stalking, and reproductive health care providers (employees—doctors, nurses, therapists, support staff, volunteers, and patients), don't have to be afraid to vote! If you qualify to enroll in the SAFE AT HOME Confidential Address Program, your voter registration information can be kept strictly confidential from campaigns, pollsters, the media, and other parties.

By completing a confidential voter registration affidavit at the time of enrollment, for the first time, or by re-registering at the Registrar of Voters/County Clerks offices, SAFE AT HOME participants automatically receive "absent voter status" so they can vote by mail. Absent voter privileges are revoked once the participant's four-year term expires or is cancelled.

The SAFE AT HOME Confidential Address Program provides a no-cost mail forwarding service for victims of domestic violence and stalking, and reproductive health care providers (employees—doctors, nurses, therapists, support staff, volunteers, and patients) designed to keep their addresses confidential—and their assailant from finding them.

For more information, please call toll free 1-877-322-5227 or visit www.ss.ca.gov/safeathome.

PUBLIC RECORDS, OPEN MEETINGS.
LEGISLATIVE CONSTITUTIONAL AMENDMENT.

OFFICIAL TITLE AND SUMMARY

Prepared by the Attorney General

**Public Records, Open Meetings.
Legislative Constitutional Amendment.**

Measure amends Constitution to:

- Provide right of public access to meetings of government bodies and writings of government officials.
- Provide that statutes and rules furthering public access shall be broadly construed, or narrowly construed if limiting access.
- Require future statutes and rules limiting access to contain findings justifying necessity of those limitations.
- Preserve constitutional rights including rights of privacy, due process, equal protection; expressly preserves existing constitutional and statutory limitations restricting access to certain meetings and records of government bodies and officials, including law enforcement and prosecution records.

Exempts Legislature's records and meetings.

**Summary of Legislative Analyst's Estimate of Net State and Local Government
Fiscal Impact:**

- Potential minor annual state and local government costs to make additional information available to the public.

Final Votes Cast by the Legislature on SCA 1 (Proposition 59)

Assembly:	Ayes 78	Noes 0
Senate:	Ayes 34	Noes 0

ANALYSIS BY THE LEGISLATIVE ANALYST

BACKGROUND

The State Constitution generally does not address the public's access to government information. California, however, has a number of state statutes that provide for the public's access to government information, including documents and meetings.

Access to Government Documents. There are two basic laws that provide for the public's access to government documents:

- **The California Public Records Act** establishes the right of every person to inspect and obtain copies of state and local government documents. The act requires state and local agencies to establish written guidelines for public access to documents and to post these guidelines at their offices.

- **The Legislative Open Records Act** provides that the public may inspect legislative records. The act also requires legislative committees to maintain documents related to the history of legislation.

Access to Government Meetings. There are several laws that provide for the public's access to government meetings:

- **The Ralph M. Brown Act** governs meetings of legislative bodies of local agencies. The act requires local legislative bodies to provide public notice of agenda items and to hold meetings in an open forum.
- **The Bagley-Keene Open Meeting Act** requires that meetings of state bodies be conducted openly and that documents related to a subject of discussion at a public meeting be made available for inspection.

ANALYSIS BY THE LEGISLATIVE ANALYST (CONT.)

- *The Grunsky-Burton Open Meeting Act* requires that meetings of the Legislature be open to the public and that all persons be allowed to attend the meetings.

Some Information Exempt From Disclosure. While these laws provide for public access to a significant amount of information, they also allow some information to be kept private. Many of the exclusions are provided in the interest of protecting the privacy of members of the public. For instance, medical testing records are exempt from disclosure. Other exemptions are provided for legal and confidential matters. For instance, governments are allowed to hold closed meetings when considering personnel matters or conferring with legal counsel.

PROPOSAL

This measure adds to the State Constitution the requirement that meetings of public bodies and writings of public officials and agencies be open to public scrutiny. The measure also requires that statutes or other types of governmental decisions, including those already in effect, be broadly interpreted to further the people's right to access government information. The measure, however, still exempts some information from disclosure, such

as law enforcement records. Under the measure, future governmental actions that limit the right of access would have to demonstrate the need for that restriction.

The measure does not directly require any specific information to be made available to the public. It does, however, create a constitutional right for the public to access government information. As a result, a government entity would have to demonstrate to a somewhat greater extent than under current law why information requested by the public should be kept private. Over time, this change could result in additional government documents being available to the public.

FISCAL EFFECT

Government entities incur some costs in complying with the public's request for documents. Entities can charge individuals requesting this information a fee for the cost of photocopying documents. These fees, however, do not cover all costs, such as staff time to retrieve the documents. By potentially increasing the amount of government information required to be made public, the measure could result in some minor annual costs to state and local governments.

PUBLIC RECORDS, OPEN MEETINGS. LEGISLATIVE CONSTITUTIONAL AMENDMENT.

ARGUMENT in Favor of Proposition 59

Proposition 59 is about open and responsible government. A government that can hide what it does will never be accountable to the public it is supposed to serve. We need to know what the government is doing and how decisions are made in order to make the government work for us.

Everyone needs access to information from the government. Why was a building permit granted, or denied? Who is the Governor considering for appointment to a vacancy on the County Board of Supervisors? Why was the superintendent of the school district fired, and who is being considered as a replacement? Who did the City Council talk to before awarding a no-bid contract?

People all across the State ask these questions—and dozens of others—every day. And what they find out is that answers are hard to get.

California has laws that are supposed to help you get answers. But over the years they have been eroded by special interest legislation, by courts putting the burden on the public to justify disclosure, and by government officials who want to avoid scrutiny and keep secrets. Proposition 59 will help reverse that trend.

What will Proposition 59 do? It will create a new civil right: a constitutional right to know what the government is doing, why it is doing it, and how. It will ensure that public agencies, officials, and courts broadly apply laws that promote public knowledge. It will compel them to narrowly apply laws that limit openness in government—including discretionary privileges and exemptions that are routinely invoked even when there is no need for secrecy. It will create a high hurdle for

restrictions on your right to information, requiring a clear demonstration of the need for any new limitation. It will permit the courts to limit or eliminate laws that don't clear that hurdle. It will allow the public to see and understand the deliberative process through which decisions are made. It will put the burden on the government to show there is a real and legitimate need for secrecy before it denies you information.

At the same time, Proposition 59 ensures that private information about ordinary citizens will remain just that—private. It specifically says that your constitutional right to privacy won't be affected.

You have the right to decide how open your government should be. That's why Proposition 59 was unanimously passed by the Legislature and it is the reason widely diverse organizations support the Sunshine Amendment, including the American Federation of State, County and Municipal Employees and the League of California Cities.

As James Madison, a founding father and America's fourth President, said: "Knowledge will forever govern ignorance, and a people who mean to be their own governors must arm themselves with the power which knowledge gives." Tell the government that it's ordinary citizens—not bureaucrats—who ought to decide what we need to know. Vote yes on Proposition 59.

MIKE MACHADO, *State Senator*

JACQUELINE JACOBBERGER, *President*
League of Women Voters of California

PETER SCHEER, *Executive Director*
California First Amendment Coalition

REBUTTAL to Argument in Favor of Proposition 59

As an attorney who has attempted for many years to use California laws to identify and weed out waste and corruption in local government, I am quite sympathetic to Proposition 59.

It is important, however, for voters to know what Proposition 59 would NOT do.

As written (by the State Legislature), Proposition 59 would continue to exempt from disclosure government records deemed "private" by the courts and would not apply at all to the "*confidentiality of proceedings and records of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses* . . .".

Voters should also consider that insofar as electing some top persons in government (i.e., having a representative democracy) is key to making career government bureaucrats more accountable, elections (especially for

State Assembly, State Senate, and Congress) have been undermined by:

- (1) the dependence on private, special interest campaign money (sometimes called "legalized bribes"); and
- (2) the self-serving creation (every 10 years) of gerrymandered legislative districts that protect incumbents from competition.

Moreover, anyone who blindly trusts a computer program to count votes (without any "paper trail" for potential verification) is foolish.

Sadly, we are a long way from having true representative democracy in California—and across America.

Government is getting bigger and becoming more wasteful, insular, and abusive. Proposition 59 would not do much to reverse that alarming trend.

GARY B. WESLEY, *Attorney at Law*

PUBLIC RECORDS, OPEN MEETINGS. LEGISLATIVE CONSTITUTIONAL AMENDMENT.

PROP

59

ARGUMENT Against Proposition 59

This measure does not go far enough in guaranteeing the people access to information and documents possessed by state and local government agencies.

In fact, this measure only provides for a general “*right of access to information concerning the conduct of the people’s business*” and that laws in California “*shall be broadly construed if it furthers the people’s right of access, and narrowly construed if it limits the right of access.*”

Laws are construed (i.e., interpreted) by officials charged with following them—and by courts when asked. The rule of interpretation contained in this measure would probably have a very limited effect.

Indeed, this measure explicitly states that it does not supersede or modify any “*right to privacy guaranteed by Section 1*” of Article I of the California Constitution.

While a right to privacy—especially against government intrusion—is critical in today’s society—government employee groups are using the state constitution’s “right to privacy” to hide the amount of money, benefits, and perks they receive at public expense!

Proposition 59 may be better than nothing, but it does not go far enough. The question is whether to vote “yes” and hope for more or vote “no” and demand more.

GARY B. WESLEY, *Attorney at Law*

REBUTTAL to Argument Against Proposition 59

Mr. Wesley’s skepticism of open government laws is understandable. Several years ago, when he sued his city council under the open meeting law alleging it had illegally used a closed session to discuss a topic not mentioned on the agenda, the court would not let him question the council members about what they had discussed behind closed doors.

The court concluded that because the law did not expressly authorize such questioning and because it contained other provisions protecting closed session discussions, government officials could not be asked about what they discussed even to obtain evidence for trial, and even if there was no other way of proving a violation of the law.

In other words, he lost because the court applied the general rule of access narrowly, and the exception allowing secrecy broadly—precisely what Proposition 59 would reverse.

As for privacy, the constitution has never been interpreted to protect the abuse of official authority or the wasting of public resources by anyone, and Proposition 59 will not create a screen for anyone to use in hiding fraud, waste, or other serious misconduct.

On the contrary, Proposition 59 will add independent force to the state’s laws requiring government transparency. It will create a window on how all public bodies and officials conduct the public’s business, for well or ill, while sparing the dignity and reputations of ordinary people, public employees, and even high officials who have done nothing to merit public censure or concern.

MIKE MACHADO, *State Senator*

THOMAS W. NEWTON, *General Counsel*
California Newspaper Publishers Association

JOHN RUSSO, *City Attorney*
City of Oakland

PROPOSITION

60

**ELECTION RIGHTS OF POLITICAL PARTIES.
LEGISLATIVE CONSTITUTIONAL AMENDMENT.**

OFFICIAL TITLE AND SUMMARY

Prepared by the Attorney General

**Election Rights of Political Parties.
Legislative Constitutional Amendment.**

- Provides the right for political party participating in a primary election for partisan office to also participate in the general election for that office.
- Candidate receiving most votes from among that party's candidates in primary election for state partisan office cannot be denied placement on general election ballot.

**Summary of Legislative Analyst's Estimate of Net State and Local Government
Fiscal Impact:**

- No fiscal effect.

Final Votes Cast by the Legislature on SCA 18 (Proposition 60)

Assembly:	Ayes 55	Noes 21
Senate:	Ayes 28	Noes 3

ANALYSIS BY THE LEGISLATIVE ANALYST

BACKGROUND

California generally holds two statewide elections to elect a candidate to public office—a primary election (in March) and a general election (in November). Some public offices (such as the Governor and members of the Legislature) are partisan, which means that a candidate represents a political party in an election. For partisan offices, the primary election determines each political party’s nominee for the office. The candidate receiving the most votes among a party’s candidates is that party’s nominee for the general election. In the general election, voters then choose among all of the parties’ nominees, as well as any independent candidates, to elect a candidate to office.

PROPOSAL

Participation in the General Election. This measure places into the State Constitution a requirement that all parties that participate in a primary election be able to advance their top vote-getting candidate to the general election. This requirement is met by the current process for elections as described above.

Related Provisions in Proposition 62.

Proposition 62 on this ballot also contains provisions affecting which primary candidates advance to the general election ballot. That measure would require that only the top two vote-getters in the primary—regardless of party identification—advance to the general election. As a result, under Proposition 62, each party would not be guaranteed to have a candidate on the general election ballot. The State Constitution provides that if the provisions of two approved propositions are in conflict, only the provisions of the measure with the higher number of yes votes at the statewide election take effect.

FISCAL EFFECTS

Under current law, all parties that participate in a primary can have their top vote-getting candidate advance to the general election. This measure, therefore, would not require any changes to election procedures. As a result, the measure’s election provisions would have no fiscal effect on state and local governments.

ELECTION RIGHTS OF POLITICAL PARTIES. LEGISLATIVE CONSTITUTIONAL AMENDMENT.

ARGUMENT in Favor of Proposition 60

Proposition 60 protects your right to choice in elections.

FULL, FREE, AND OPEN DEBATE IS IMPORTANT IN A DEMOCRACY. WE HAVE NOTHING TO FEAR FROM HEARING DIFFERENT POINTS OF VIEW.

That's why a century ago, ordinary citizens of California fought for their right to select political party nominees for office in direct primary elections. Proposition 60 protects that important right.

PROPOSITION 60 PROTECTS VOTER CHOICE by guaranteeing that every political party has the right to nominate candidates for partisan office in a primary election and compete in a general election. We need that choice and accountability.

PROPOSITION 60 PROVIDES A DIRECT ALTERNATIVE TO PROPOSITION 62, the radical scheme to eliminate our direct primary elections.

- Proposition 62 would impose the election system from the State of Louisiana (the only state to have such a system). In Louisiana, voters' choice in a recent runoff election was a former Grand Wizard of the Ku Klux Klan and a governor who later went to prison.
- Under Proposition 62, only the two top vote getters in the first round of voting would proceed to the general election. Proposition 62, effectively excludes California's five minor parties and independents from the general election. In many districts, your only choices would be two members of the same party.
- If Proposition 62's special interest scheme had been in place in 2002, six million California votes would not have been counted, and 50 different general election races would have

been limited to candidates from the same party.

- Proposition 62 is sponsored by insurance companies, financial institutions and failed wealthy politicians who spent \$2 million to put their power grab scheme on the ballot.
- Proposition 62 would depress voter turnout, elevate the importance of money and fame, increase opportunities for extremist candidates, and decrease opportunities for minority officeholders.
- Under Proposition 62, California's diversified Legislature with many African Americans, Latinos, Asians, and female legislators will suffer and politics will return to being dominated by rich white males.
- Proposition 62 could allow the two wealthiest candidates to buy victory in the first round of voting and end up on the November ballot, making campaign finance reform meaningless.

In dramatic contrast, *PROPOSITION 60 WILL PRESERVE YOUR RIGHT TO CHOICE IN ELECTIONS.*

Vote YES on Proposition 60 to *PROTECT YOUR RIGHT TO CHOICE IN ELECTIONS.*

Vote YES on Proposition 60 to *GUARANTEE YOUR RIGHT TO HEAR ALL POINTS OF VIEW.*

DAN STANFORD, *Former Chairman
California Fair Political Practices Commission*

BARBARA O'CONNOR, Ph.D., *Director
Institute for the Study of Politics & Media
California State University, Sacramento*

GEORGE N. ZENOVICH, *Associate Justice, Retired
5th District Court of Appeal*

REBUTTAL to Argument in Favor of Proposition 60

Politics has been called "the art of the possible." In a letter to President Kennedy, John Kenneth Galbraith once said: "Politics is not the art of the possible. It consists of choosing between the disastrous and the unpalatable." Even if, as proponents of Proposition 60 argue, the election scheme contained in Proposition 62 is disastrous, Proposition 60, which purports to save us from Proposition 62, is nonetheless unpalatable.

Proposition 60 only deals with general elections. The measure is silent on how primary elections will be conducted, leaving the door open for potential voting mischief that can adversely impact the right of parties to select their nominees. If the supporters of Proposition 60 truly

wish to protect "full, free, and open debate" they should have included permanent constitutional protection defining the direct primary. Californians deserve the stability of a system that prohibits the members of one party from meddling in the primaries of another.

In seeking to compromise, the backers of Proposition 60 stopped short of what needs to be done.

That may be practicing the art of the possible, but it is no less "unpalatable" and deserves a no vote.

SENATOR BILL MORROW

ASSEMBLYMEMBER SARAH REYES

ELECTION RIGHTS OF POLITICAL PARTIES. LEGISLATIVE CONSTITUTIONAL AMENDMENT.

PROP

60

ARGUMENT Against Proposition 60

In his speech on the Conciliation of America, Edmund Burke said, “All government, indeed, every human benefit and enjoyment, every virtue and every prudent act, is founded on compromise and barter.”

The authors of Proposition 60 have compromised too much. They had the chance to permanently protect California’s primary system, but stopped short of the goal line.

Proposition 60 does allow parties that have candidates in primary elections to have a candidate in general elections. That’s some protection from radical schemes—but not enough.

Proposition 60 doesn’t spell out what kind of primary elections California will have.

That leaves the door open for future tinkering with the primary system and still allows the special interest backers of so-called “open primary” or “blanket primary” schemes to come in over and over again with new attempts to try and make changes that would harm our system.

Enough is enough. No political party should be forced to allow members of other parties to choose their nominees.

Proposition 60 could have amended the

California Constitution to permanently prevent primary schemes from being imposed in the future. It doesn’t.

As Californians, we want to see elections constitutionally protected from changes and from the opportunity for mischief.

A think tank in Washington State, where they have also wrestled with primary election issues, recently noted a survey taken in California when our primary was temporarily changed a few years back. It said 37% of the state’s Republicans planned to help determine the Democrat nominee for Governor and 20% of Democrats planned to vote in the Republican primary for Senate.

Proposition 60 could have permanently amended the California Constitution to prevent the opportunity for mischief. It doesn’t.

Proposition 60 is only half a response.

Proposition 60 does no harm, but voters deserve more. Voters deserve *permanent* protection for our primary system.

STATE SENATOR BILL MORROW

STATE ASSEMBLYMEMBER SARAH REYES

REBUTTAL to Argument Against Proposition 60

You know full, free, and open debate is important in a democracy. We have nothing to fear from hearing different points of view. Proposition 60 protects your right to choice in elections.

Proposition 60 protects your right to choose political parties’ candidates for public office.

Proposition 60 is simple, straightforward, and easily understood. That is in sharp contrast to Proposition 62, which would impose Louisiana’s radical election system where voters’ choice in a recent runoff election was a former Grand Wizard of the Ku Klux Klan and a corrupt governor who later went to prison.

- Proposition 62’s proponents are very wealthy politicians intent on forcing their Louisiana scheme on Californians because they know they, and others like them, will personally benefit. The two most wealthy candidates will be able to buy victory in the first round of voting,

making campaign finance reform meaningless.

- Proposition 62 would create a two-stage general election in which only the two top vote getters in a first round of voting would be allowed to participate in a runoff election—even if they belong to the same party! By keeping candidates out of general elections, it would reduce voter choice in the only vote in which a candidate could actually win office.

Proposition 60 preserves voter choice.

Vote Yes on Proposition 60!

BARBARA O’CONNOR, Ph.D., *Director*
Institute for the Study of Politics & Media
California State University, Sacramento

MICHAEL S. CARONA, *Sheriff*
Orange County

HENRY L. “HANK” LACAYO, *State President*
Congress of California Seniors

PROPOSITION
60A

**SURPLUS PROPERTY.
LEGISLATIVE CONSTITUTIONAL AMENDMENT.**

OFFICIAL TITLE AND SUMMARY

Prepared by the Attorney General

**Surplus Property.
Legislative Constitutional Amendment.**

- Dedicates proceeds from sale of surplus state property purchased with General Fund monies to payment of principal, interest on Economic Recovery Bonds approved in March 2004. When those bonds are repaid, surplus property sales proceeds directed to Special Fund For Economic Uncertainties.

Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:

- Net savings over the longer term—potentially low tens of millions of dollars—from accelerated repayment of existing bonds.

Final Votes Cast by the Legislature on SCA 18 (Proposition 60A)

Assembly:	Ayes 55	Noes 21
Senate:	Ayes 28	Noes 3

ANALYSIS BY THE LEGISLATIVE ANALYST

BACKGROUND

Surplus State Property. Current state statutes generally require a state agency to review annually its real property holdings (land and facilities) and determine what, if any, is in excess of its foreseeable needs. These properties are commonly referred to as “surplus state properties.” They include both unused properties and those which are underutilized by an agency. Certain state-owned properties are excluded from being designated as surplus property, including any land designated for use for highway purposes.

Once real property has been identified as surplus, the state attempts to sell the property, or dispose of it in some other manner, such as by giving it to a local government. When surplus property is sold, the sales revenues are deposited into the account that originally paid for the acquisition of the property. In most instances, sales revenues are deposited in the state’s General Fund and are available for expenditure on any state program.

Proposition 57 Bonds. In March of this year, voters approved Proposition 57, which authorizes the issuance of up to \$15 billion in bonds to finance past budget deficits. The debt service (principal and interest payments) on these bonds is to be repaid over a 9- to 14-year period from designated General Fund revenues. (For more information on state bonds, please refer to the section of the ballot pamphlet entitled “An Overview of State Bond Debt.”)

PROPOSAL

This measure requires that proceeds from the sale of surplus state property that

occur on or after the passage of this measure be used to pay the principal and interest on Proposition 57 bonds. Once these bonds are fully repaid, proceeds from surplus property sales would be deposited in the General Fund.

The measure does not apply to properties acquired with specified transportation funds or other special fund monies. In other words, the measure only applies to those properties that were purchased with General Fund revenue or bonds secured by the General Fund.

FISCAL EFFECTS

Proceeds from the sale of surplus state property, which fluctuate significantly from year to year, are not a major source of General Fund revenue. For example, surplus property sales have averaged roughly \$30 million a year over the past decade. (By comparison, total General Fund revenues in 2003–04 were roughly \$75 billion.) By dedicating these surplus property proceeds to the debt service on Proposition 57 bonds, this measure would accelerate the bonds’ repayment probably by a few months. In effect, the state would pay out more for debt service on these bonds in the short term and less in the longer term. (This is similar to what happens when individuals make additional payments on top of their regular car or home loan payments.) While this measure would not change the amount of bond principal, it would reduce the amount of interest payments over the life of the repayment period. We estimate that these interest savings—expressed in today’s dollars—could be in the low tens of millions of dollars.

ARGUMENT in Favor of Proposition 60A

PROPOSITION 60A gives voters the chance to reduce the cost of the bonds they overwhelmingly approved in March as part of Governor Schwarzenegger’s plan to help ease the state’s budget crisis.

Unfortunately, those bonds carry a high price in the form of interest payments. There is a solution. Experts estimate California has more than \$1,000,000,000 worth of surplus property. By requiring that proceeds from the sale of all such surplus property be used to help pay off the bonds early, *PROPOSITION 60A COULD DRAMATICALLY LOWER COSTS TO TAXPAYERS.*

Vote YES on Proposition 60A to *SAVE MONEY.*

DAN STANFORD, *Former Chairman
California Fair Political Practices
Commission*

BARBARA O’CONNOR, Ph.D., *Director
Institute for the Study of Politics & Media
California State University, Sacramento*

GEORGE N. ZENOVICH, *Associate Justice
Retired, 5th District Court of Appeal*

REBUTTAL to Argument in Favor of Proposition 60A

Nowhere in the support arguments for Proposition 60A do you see mention of what Proposition 60A does to actually force the sale of surplus property in California. That’s because Proposition 60A doesn’t force the sale of surplus property—it only directs that the money raised IF surplus property is sold be used to pay off bond debt.

In seeking to compromise, the backers of Proposition 60A stopped short of what needs to be done.

That may be practicing the art of the possible, but it is no less “unpalatable” and deserves a no vote.

SENATOR BILL MORROW
ASSEMBLYMEMBER SARAH REYES

**SURPLUS PROPERTY.
LEGISLATIVE CONSTITUTIONAL AMENDMENT.**

PROP
60A

ARGUMENT Against Proposition 60A

In his speech on the Conciliation of America, Edmund Burke said, “All government, indeed, every human benefit and enjoyment, every virtue and every prudent act, is founded on compromise and barter.”

Proposition 60A falls short of the mark.

It does make sense to sell surplus state property when we’re in the middle of a budget crisis, but Proposition 60A only says that *if* surplus properties are sold then the proceeds can only be spent to pay off the deficit reduction bonds voters approved last March.

It doesn’t actually force the sale of the hundreds of millions of dollars worth of surplus property the state owns.

As California’s financial troubles have grown, taxpayer groups started putting legis-

lators’ feet to the fire to get rid of surplus property the state owns—including a Bay Area massage parlor, part of a golf course, strip malls, and fashionable properties in Sausalito and even Tahiti!

Proposition 60A is only half a response.

It’s good the big spenders can’t get their hands on the proceeds, but there needs to be more of a stick to get the bureaucrats off the dime to actually sell properties.

Proposition 60A does no harm, but voters deserve more. Voters deserve to see “for sale” signs popping up on the state’s surplus property.

STATE SENATOR BILL MORROW

STATE ASSEMBLYMEMBER SARAH REYES

REBUTTAL to Argument Against Proposition 60A

Proposition 60A helps to lower costs to taxpayers by requiring that proceeds from the sale of all surplus state property be used to pay off Governor Schwarzenegger’s deficit reduction bonds early.

Vote Yes on Proposition 60A!

BARBARA O’CONNOR, Ph.D., *Director
Institute for the Study of Politics & Media
California State University, Sacramento*

MICHAEL S. CARONA, *Sheriff
Orange County*

HENRY L. “HANK” LACAYO, *State President
Congress of California Seniors*

PROPOSITION

61

**CHILDREN'S HOSPITAL PROJECTS.
GRANT PROGRAM.
BOND ACT. INITIATIVE STATUTE.**

OFFICIAL TITLE AND SUMMARY

Prepared by the Attorney General

**Children's Hospital Projects. Grant Program.
Bond Act. Initiative Statute.**

- Authorizes \$750,000,000 in general obligation bonds, to be repaid from state's General Fund, for grants to eligible children's hospitals for construction, expansion, remodeling, renovation, furnishing and equipping children's hospitals.
- 20% of bonds are for grants to specified University of California general acute care hospitals; 80% of bonds are for grants to general acute care hospitals that focus on children with illnesses such as leukemia, heart defects, sickle cell anemia and cystic fibrosis, provide comprehensive services to a high volume of children eligible for government programs, and that meet other stated requirements.

**Summary of Legislative Analyst's Estimate of Net State and Local Government
Fiscal Impact:**

- State cost of about \$1.5 billion over 30 years to pay off both the principal (\$750 million) and the interest (\$756 million) costs of the bonds. Payments of about \$50 million per year.

ANALYSIS BY THE LEGISLATIVE ANALYST

BACKGROUND

Children's hospitals focus their efforts on the health care needs of children by providing diagnostic, therapeutic, and rehabilitative services to injured, disabled, and sick infants and children. Many children receiving services in these hospitals are from low-income families and have significant health care needs.

PROPOSAL

This measure authorizes the state to sell \$750 million in general obligation bonds for capital improvement projects at children's hospitals. The measure specifically identifies the five University of California children's hospitals as eligible bond-fund recipients. There are other children's hospitals likely to meet the eligibility criteria specified in the measure, which include providing at least 160 licensed beds for infants and children. Figure 1 lists these children's hospitals.

For more information regarding general obligation bonds, please refer to the section of the ballot pamphlet entitled "An Overview of State Bond Debt."

The money raised from the bond sales could be used for the construction, expansion, remodeling, renovation, furnishing, equipping, financing, or refinancing of children's hospitals in the state. Eighty percent of the monies would be available to nonprofit children's hospitals and the remaining 20 percent would be available to University of California children's hospitals. The monies provided could not exceed the total cost of a project, and funded projects would have to be completed "within a reasonable period of time."

Children's hospitals would have to apply in writing for funds. The California Health Facilities Financing Authority (CHFFA), an existing state agency, would be required to develop the grant application. It must process submitted applications and award grants within 60 days. The CHFFA's decision to award a grant would be based on several factors, including whether the grant would contribute toward the expansion or improvement of

FIGURE 1

CHILDREN'S HOSPITALS ELIGIBLE FOR PROPOSITION 61 BOND FUNDS

Specifically Identified as Eligible

Mattel Children's Hospital at University of California, Los Angeles
University Children's Hospital at University of California, Irvine
University of California, Davis Children's Hospital
University of California, San Diego Hospital Children's Hospital
University of California, San Francisco Children's Hospital

Likely to be Eligible

Children's Hospital and Health Center San Diego
Children's Hospital Los Angeles
Children's Hospital and Research Center at Oakland
Children's Hospital of Orange County
Loma Linda University Children's Hospital
Lucile Salter Packard Children's Hospital at Stanford
Miller's Children's Hospital, Long Beach
Children's Hospital Central California

health care access for children who are eligible for governmental health insurance programs, or who are indigent, underserved, or uninsured; whether the grant would contribute toward the improvement of child health care or pediatric patient outcomes; and whether the applicant hospital would promote pediatric teaching or research programs.

FISCAL EFFECTS

The cost of these bonds to the state would depend on the interest rates obtained when they were sold and the time period over which this debt would be repaid. If the \$750 million in bonds authorized by this measure were sold at an interest rate of 5.25 percent and repaid over 30 years, the cost to the state General Fund would be about \$1.5 billion to pay off both the principal (\$750 million) and the interest (\$756 million). The average payment for principal and interest would be about \$50 million per year. Administrative costs would be limited to CHFFA's actual costs or 1 percent of the bond funds, whichever is less. We estimate these costs will be minor.

CHILDREN'S HOSPITAL PROJECTS. GRANT PROGRAM. BOND ACT. INITIATIVE STATUTE.

ARGUMENT in Favor of Proposition 61

California Children's Hospitals treat children with the most serious and deadly diseases like LEUKEMIA, CANCER, HEART DEFECTS, SICKLE CELL ANEMIA, DIABETES, AND CYSTIC FIBROSIS.

Over 1 million times last year, children facing life-threatening illness or injury were cared for at regional Children's Hospitals without regard to a family's income or ability to pay. Children are referred to these pediatric centers of excellence for treatment by other hospitals in California.

Children's Hospitals save hundreds of children's lives every day. Many children are cured. Others have their young lives extended for many years. And all have the quality of their lives improved.

We know. Our children have all been cared for at a California Children's Hospital.

Proposition 61, the CHILDREN'S HOSPITAL BOND, will help make room in these wonderful hospitals to treat the children who need care.

PROPOSITION 61 DOES NOT RAISE TAXES. The bonds will be repaid from the existing State budget.

PROPOSITION 61 FUNDS WILL ALLOW CHILDREN'S HOSPITALS TO INCREASE BED CAPACITY TO ENSURE THAT SICK AND INJURED CHILDREN HAVE ACCESS TO A REGIONAL FACILITY where they can receive the kind of care that our children got. Children's Hospitals' emergency rooms are critically overcrowded and need enough capacity to handle the seriously ill and injured children sent to them.

Regional Children's Hospitals provide specialized care to children throughout California. For example:

- 87% of the inpatient care for children who need heart surgery;
- 95% of all surgery for children who need organ transplants;

- More than 64% of the inpatient care for children with cancer.

The nation's premier pediatric research centers are in Children's Hospitals, making them the source of medical discoveries and advancements that benefit all children. *Today, almost 90% of children born with heart defects can be cured or helped considerably by surgery. The survival rate of children with leukemia is now greater than 80 percent.*

PROPOSITION 61 WILL ALLOW CHILDREN'S HOSPITALS TO PURCHASE THE LATEST MEDICAL TECHNOLOGIES and special equipment for sick babies born prematurely, seriously underweight, or with defective organs. These nonprofit hospitals need our help!

Children with Heart Disease or Cystic Fibrosis or Cancer have to be admitted over and over to a Children's Hospital to stabilize and treat their life-threatening and debilitating illnesses. Children's Hospitals have the specialists to improve the quality of those kids' lives, helping them to stay at home and stay in school. **THE MOST SERIOUSLY ILL AND INJURED CHILDREN ARE BEING SAVED EVERY DAY AT A CHILDREN'S HOSPITAL!**

The doctors, nurses, and staff at Children's Hospitals are unlike any other people you will ever meet. Their lives are dedicated to a mission. *And that mission is to treat children with the most serious and deadly diseases like Leukemia, Cancer, Heart Defects, Sickle Cell Anemia, Diabetes, and Cystic Fibrosis.*

Please join our families and millions of others whose children need California's Children's Hospitals. **PLEASE VOTE YES ON PROPOSITION 61.**

TRENT DILFER, *Parent*

ERIKA FIGUEROA, *Parent*

DAVID LIU, *Parent*

REBUTTAL to Argument in Favor of Proposition 61

Rebuilding hospitals can make some select contractors rich—but it does not guarantee health care for anyone.

The principal problem in California—and across America—is that we have an estimated 44 million legal residents (including children) who have no health insurance and tens of millions more who have inadequate coverage.

Persons without adequate health insurance delay seeking care (until they end up in expensive emergency rooms) and government-operated hospitals, as well as the many so-called “nonprofit” corporations that run most hospitals, seek to charge the uninsured up to 3 times the rates negotiated by public and private insurers.

The current health care system in California and in our country is littered with middlemen and profiteers who steal limited resources from actual care.

Put differently, the current system is wasteful and unfair. We need a “single-payer” health care system in which every legal resident receives basic health coverage.

In a political system ludicrously dependent upon private campaign contributions, entrenched special interests are able to give money to our elected officials so that *their* special interests are preserved or enhanced.

If we continue to have a national government beholden to the rich, the California Legislature should establish or offer voters a statewide “single-payer” system in which persons can have more or less insurance—but every legal resident has some insurance.

Closing our eyes to the real problems will NOT make California or America safer or better.

GARY B. WESLEY, *Attorney at Law*

CHILDREN’S HOSPITAL PROJECTS. GRANT PROGRAM. BOND ACT. INITIATIVE STATUTE.

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ARGUMENT Against Proposition 61

California voters have already approved billions of dollars in bond sales and have mortgaged the future.

The Legislature can always come up with yet another “motherhood and apple pie” project that would be nice.

However, *raising the money* (at this time of deficits and

high debt) *by more borrowing is not responsible.*

Not only the principal but also decades of interest would have to be repaid.

GARY B. WESLEY, *Attorney at Law*

REBUTTAL to Argument Against Proposition 61

We’ve never heard of this attorney who opposes Proposition 61. Have you?

He says that Proposition 61 will hurt California’s future. He’s wrong.

PROPOSITION 61 WILL GIVE THOUSANDS AND THOUSANDS OF SICK KIDS A CHANCE TO HAVE A FUTURE—beat their illnesses and live long and happy lives.

Many mothers of critically ill children worked hard to collect the signatures to put the Children’s Hospital Bond on your ballot because California’s Children’s Hospitals save lives every single day!

Children with leukemia, cancer, sickle cell anemia, cystic fibrosis, and heart disease. Children who are severely injured in car wrecks and house fires.

Thanks to the miraculous work, the finest pediatric research, and the loving care kids get at California’s

Children’s Hospitals, survival rates are improving dramatically.

Today, 80% of children with leukemia are making it and 90% survive delicate heart surgery.

This attorney tries to make a joke out of Proposition 61 by calling it a “motherhood issue.”

It is a “motherhood issue.” And **AS MOTHERS AND FATHERS OF VERY SICK KIDS WE ARE FIGHTING FOR THEIR LIVES.**

Please vote YES on Proposition 61, the Children’s Hospital Bond.

JENNIFER HUMMER, *Parent*

DAVID LIU, *Parent*

DEBBIE CERVANTES, *Parent*

ELECTIONS. PRIMARIES. INITIATIVE CONSTITUTIONAL AMENDMENT AND STATUTE.

OFFICIAL TITLE AND SUMMARY

Prepared by the Attorney General

Elections. Primaries.

Initiative Constitutional Amendment and Statute.

- Requires primary elections where all voters may vote for any state or federal candidate regardless of how a voter or candidate is registered.
- Exempts presidential nominations and elections of party central committees.
- Only the two primary-election candidates receiving most votes for an office, whether they are candidates with “no party” or members of same or different party, would be listed on general election ballot.
- In special primary election, candidate receiving majority vote is elected.
- Requires political party’s consent for identification of candidates’ party registration on ballot and in other official election publications.

Summary of Legislative Analyst’s Estimate of Net State and Local Government

Fiscal Impact:

- No significant net fiscal effect on state and local governments.

ANALYSIS BY THE LEGISLATIVE ANALYST

BACKGROUND

California generally holds two statewide elections to elect a candidate to public office—a primary election (in March) and a general election (in November). Some public offices (such as the Governor and members of the Legislature) are partisan, which means that a candidate represents a political party in an election. For partisan offices, the primary election determines each political party’s nominee for the office. The candidate receiving the most votes among a party’s candidates is that party’s nominee for the general election. In the general election, voters then choose among all of the parties’ nominees, as well as any independent candidates, to elect a candidate to office. Other offices (such as the Superintendent of Public Instruction and local officials) are nonpartisan, which means that a candidate does not represent a political party. For these nonpartisan offices, the primary election generally reduces the field of candidates by advancing the top two vote-getters to the general election.

For every primary election, each county prepares a ballot and related materials for each political party. Those voters affiliated with political parties receive their party’s ballot. Voters with no party affiliation generally receive ballots related only to nonpartisan offices and propositions. This system is known as a “closed” primary since voters of one party cannot vote for candidates of any other party. (In California, parties may allow voters with no party affiliation to receive their party’s ballot. Three parties chose to allow this for the March 2004 election.) Figure 1 compares this type of primary system with several other systems, including the one proposed by this measure.

In March 1996, California voters approved Proposition 198, which created a “blanket” primary system. Proposition 198 allowed all voters, regardless of party affiliation, to vote for any candidate in a primary election. As with the existing system, the candidate from each party receiving the most votes in the primary appeared on the general election ballot. This system was used for primaries in 1998 and 2000. The United States Supreme Court, however, ruled in June 2000 that this system was unconstitutional and could no longer be used. As a result, the state returned to using party-specific ballots for primaries in 2002.

PROPOSAL

Changes to Primary System. This measure amends both the State Constitution and state statutes to make changes to primary elections. For most state and federal elected offices, this measure allows voters—including those not affiliated with a political party—to vote for any candidate regardless of the candidate’s political party. The measure applies to the election of state constitutional officers, members of the Legislature, and members of Congress. The measure, however, does not apply to the election of the U.S. President or political party committees. If approved, the new system would be used beginning with the March 2006 primary.

Under the measure, each county would prepare for use by all voters a single, primary ballot covering most offices. (There would, however, be a separate party-specific ballot for U.S. President and political party committees.) Candidates affiliated with parties and independent candidates would appear on the primary ballot. In each primary, only the top two vote-receiving candidates—regardless of party identification—would

ELECTIONS. PRIMARIES. INITIATIVE CONSTITUTIONAL AMENDMENT AND STATUTE.

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ANALYSIS BY THE LEGISLATIVE ANALYST (CONT.)

FIGURE 1

TYPES OF PRIMARY ELECTIONS

Closed	Limited Open	Blanket	Modified Blanket
Use in California			
Prior to 1998 and since 2002	—	1998 and 2000, under Proposition 198	Would be implemented beginning in 2006 under Proposition 62.
Description			
Voters only receive their party's ballot. ^a Each party's top vote-getter advances to the general election.	Voters choose which party's ballot to receive. Like the closed primary, a voter can only vote for candidates from a single party. Each party's top vote-getter advances to the general election.	All voters receive the same ballot. A voter can choose candidates from different parties for different offices. Each party's top vote-getter advances to the general election.	Primaries are not party-based. All voters receive the same ballot. Like the blanket primary, voters can choose candidates from different parties for different offices. However, unlike the blanket primary, only the top two vote-getters advance to the general election—regardless of party affiliation.

^a In California, parties may allow voters with no party affiliation to receive their party's ballot.

be placed on the general election ballot. These two candidates would be the candidates on the general election ballot. (A write-in candidate could increase the number of general election candidates.)

Comparison to Proposition 198. As under Proposition 198, the measure would not require a voter to select candidates from the same party for all offices. Instead, a voter could choose candidates from different political parties for different offices. Unlike Proposition 198, however, this measure would not guarantee that each party has a candidate on the general election ballot. Only the top two vote-getters would advance to the general election. It would be possible for both general election candidates to have the same party affiliation.

Related Provisions in Proposition 60. Proposition 60 on this ballot also contains provisions affecting which primary candidates advance to the general election ballot. That measure would require each party's top vote-getter in the primary to appear on the general election ballot (as is the case currently). The State Constitution provides that if the provisions of two approved propositions are in conflict, only the provisions of the measure with the higher number of yes votes at the statewide election take effect.

Other Provisions. Proposition 62 also makes a number of other changes to the state's election procedures, including easing the requirements for political parties and candidates to participate in primary elections. For instance, in order to participate in a primary under current law, candidates must collect a certain number of

signatures from registered voters affiliated with their own party. Under this measure, candidates could collect these signatures from any registered voters, regardless of party affiliation.

FISCAL EFFECT

This measure would change some of the administrative procedures associated with holding elections. In some cases, these changes could increase state and county election costs. For instance, this measure would tend to increase the number of candidates on primary election ballots due to eased participation requirements and the inclusion of independent candidates. Consequently, the state and counties may experience increased printing and mailing costs for the preparation of primary election ballots and informational materials.

In other cases, the measure could reduce election costs. For example, by eliminating in some instances the need to prepare different ballots for each political party, counties could realize some savings. For general election ballots, the measure would reduce the number of candidates (by limiting candidates to the top two vote-getters from the primary). As a result, the state and counties may experience reductions in general election costs from the reduced number of candidates.

These costs and savings would be relatively minor and would tend to offset each other. As a result, we estimate that the measure would result in no significant net fiscal effect on state and local governments.

ELECTIONS. PRIMARIES. INITIATIVE CONSTITUTIONAL AMENDMENT AND STATUTE.

ARGUMENT in Favor of Proposition 62

THE VOTER CHOICE PRIMARY GIVES *YOU* THE POWER—NOT THE PARTY BOSSES AND POLITICIANS

Proposition 62, The Voter Choice Primary Initiative, allows every voter—including independent voters—to vote for the best candidate for office, regardless of party, in primary elections.

The Voter Choice Primary is similar to the method Californians have used for the past century to elect mayors, city council members, county supervisors, and district attorneys.

Proposition 62 puts power—and choice—back in *your* hands and takes it away from the party bosses and political insiders who've stacked the system in their favor—at our expense.

THE VOTER CHOICE PRIMARY ACT IS BADLY NEEDED REFORM

It will:

- open up California's elections process
- expand voter choices
- increase voter participation
- create more competition in elections
- make more accountable our state's elected officials, so they are responsive to *all* voters—not just the special interests and those at the ideological extremes

CALIFORNIA VOTERS SUPPORT PRIMARY ELECTION REFORM

California voters passed primary election reform in 1996 with almost 60% of the vote over the opposition of the party bosses. The 1998 and 2000 elections were run under these reforms and voter participation increased. But the party bosses used the courts to block these reforms they couldn't defeat at the ballot box. Proposition 62 is written in a manner that addresses the concerns of the courts and restores the will of the people of California.

RESTORE COMPETITION—OPEN UP THE CURRENT PRIMARY SYSTEM THAT'S STACKED AGAINST THE VOTERS

Politicians of both major parties cut a backroom deal to protect incumbents. They created mainly "safe" legislative districts where party registration heavily favors one party or the other. The winner of the majority party's primary election is virtually guaranteed victory in the almost meaningless general election. Meanwhile, voters in other political parties have no real voice in the selection of their representatives in Sacramento and Washington.

The politicians and party bosses like the current system because they can control it.

That's why we're stuck with an unpopular State Legislature that's out of touch with the will of California voters.

HOW WOULD IT WORK?

In primary elections, every voter would receive a ballot listing the name of all candidates and in most cases their party registration. Voters, including independents, can pick the candidate of their choice for each office, regardless of the candidate's party registration. The top two vote-getters, regardless of party, would face each other in the November general election. (Presidential nominating and party central committee elections would be unaffected by the Voter Choice Primary.)

PROPOSITION 62 IS OPPOSED BY THE PARTY BOSSES

The party bosses are running a cynical scare campaign to hang on to their power by confusing voters about the Voter Choice Primary. Don't let them get away with it.

When it comes to elections, you—the voter—should be the boss.

STEVE WESTLY, *California State Controller*

RICHARD J. RIORDAN, *California Secretary for Education*

BECKY MORGAN, *Former State Senator*

REBUTTAL to Argument in Favor of Proposition 62

Don't be fooled!

Prop. 62 is NOT the same as what voters passed in 1996. Under the previous blanket primary, a nominee from each political party appeared on the November ballot. Voters had REAL CHOICE!

Under Prop. 62, only TWO candidates will appear on the November ballot—and they can be FROM THE SAME POLITICAL PARTY!

Prop. 62 is so flawed that only one other state—Louisiana—uses such a system. There, it helped KKK leader David Duke make the runoff for Governor—with only 32% of the vote! Washington state recently rejected this system. So should California.

The proponents behind Prop. 62 talk about "expanding voter choices"—BUT 62 does the OPPOSITE, restricting voters to only TWO CHOICES in November and forcing smaller parties' candidates off the ballot.

They talk about "creating more competition"—BUT 62 creates LESS competition in November's election.

They talk about "increasing voter participation"—BUT don't tell you that Louisiana has one of the lowest voter turnouts because voters have such limited choice.

Here's what Prop. 62 really does:

- Eliminates voter choice in General Elections
 - Boosts extremist candidates
 - Suppresses voter turnout, making Legislators LESS ACCOUNTABLE
 - Repeals current law prohibiting a candidate from running for more than one office at the same time
- Don't be fooled! Groups as diverse as Common Cause, Howard Jarvis Taxpayers Association, and California Federation of Teachers strongly OPPOSE 62.

KRIS GREENLEE, *Vice-Chair*

California Common Cause

HONORABLE MIMI WALTERS, *Founding Member*

California Women's Leadership Association

GEORGE RUNNER, *Co-Chair*

Citizens and Law Enforcement Against Election Fraud

ELECTIONS. PRIMARIES. INITIATIVE CONSTITUTIONAL AMENDMENT AND STATUTE.

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ARGUMENT Against Proposition 62

Proposition 62 is NOT reform. It RESTRICTS VOTER CHOICE, makes the Legislature LESS ACCOUNTABLE and greatly damages California democracy. Vote NO on 62.

The special interests behind Prop. 62 want California to join Louisiana as the only state in the nation with a bizarre system based on Louisiana law that SEVERELY RESTRICTS voter choice in November elections.

There's a reason NO OTHER STATE has such a system—it's deeply flawed and undemocratic!

It helped Ku Klux Klan Leader David Duke run for Governor and has resulted in Louisiana having one of the LOWEST VOTER TURNOUTS in the nation. We shouldn't pattern California on Louisiana's bad laws.

Here's how Prop. 62 would undermine your vote:

In primary elections, all candidates would appear in a long list on the same ballot. Only the top two vote-getters, regardless of political party, would be allowed on the November ballot. In many races, YOUR ONLY CHOICE WILL BE TWO CANDIDATES FROM THE SAME PARTY.

If Prop. 62 had been in effect since 2000, over 350 candidates would have been barred from the November ballot. Those candidates received over 8.2 million votes—votes that would be BANNED by Prop. 62.

Democrats could be forced to vote for a Republican in many races, or not vote at all. Likewise, Republicans could be forced to vote for Democrats. That's not choice and it's not democracy.

Other smaller parties—Greens, Libertarians, American Independent, Peace & Freedom, and Natural Law—would all effectively be FORCED OFF THE NOVEMBER BALLOT.

WE NEED CHOICES AND ACCOUNTABILITY. INSTEAD, PROP. 62 INTRODUCES LOUISIANA'S DEEPLY FLAWED SYSTEM THAT ELIMINATES CHOICE AND MAKES THE LEGISLATURE LESS ACCOUNTABLE.

Currently, we have a diverse Legislature with a representative number of Latino, Asian, and African Americans serving, as well as a good mix of men and women.

Under Prop. 62, that DIVERSITY COULD BE UNDERMINED. The Legislature could be dominated by VERY WEALTHY SPECIAL INTERESTS.

Who is paying for 62? A small group of millionaires who have LOST at the ballot box and now want to change the rules to manipulate primary elections and limit YOUR choice in General Elections, giving themselves a better chance to win.

Don't let them get away with stealing your choice and your vote.

Conservative, moderate, and liberal public interest organizations are working together to urge you to vote NO on 62.

COMMON CAUSE, THE HOWARD JARVIS TAXPAYERS ASSOCIATION, THE LATINO COALITION, THE LEAGUE OF CONSERVATION VOTERS, AND THE CENTER FOR VOTING AND DEMOCRACY all say NO to 62. The Congress of California Seniors and California Federation of Teachers also say NO.

ALL SEVEN POLITICAL PARTIES, WHO RARELY AGREE ON ANYTHING, URGE YOU TO VOTE NO ON 62.

Prop. 62 would:

- Eliminate voter choice in General Elections
- Force Green, Libertarian, and other political parties off the November ballot
- Make it harder for women and minorities to win elections
- Make the Legislature less accountable

Protect your VOTE and our DEMOCRACY—vote NO on 62.

MARY BERGAN, *President*

California Federation of Teachers

MARIO RODRIGUEZ, *Chairman*

The Latino Coalition

JON COUPAL, *President*

Howard Jarvis Taxpayers Association

REBUTTAL to Argument Against Proposition 62

Everything you've just read in the opponents' arguments against Prop. 62 are misleading scare tactics.

They claim they're protecting your right to vote. FACT: THEY'RE TRYING TO DENY YOU THE RIGHT TO VOTE FOR ANY CANDIDATE YOU CHOOSE, REGARDLESS OF PARTY.

They claim Proposition 62 is a scary new thing. FACT: CALIFORNIA VOTERS OVERWHELMINGLY PASSED ELECTION REFORM IN 1996, WINNING 60% OF THE VOTE AND CARRYING ALL 58 COUNTIES.

They claim the Voter Choice Primary has something to do with Louisiana. FACT: IT'S MODELED AFTER THE WAY CALIFORNIANS HAVE ELECTED OUR LOCAL OFFICIALS FOR ALMOST 100 YEARS.

They claim the Voter Choice Primary will reduce diversity. FACT: THE PRIMARY SYSTEM USED IN 1998 AND 2000 INCREASED WOMEN AND MINORITY LEGISLATORS.

They claim this is about David Duke. FACT: A former KKK Grand Wizard and John Birch Society members have been nominated THROUGH CLOSED PRIMARIES here in California. Proposition 62 guards AGAINST extremism.

That's why the deceitful efforts against Prop. 62 led

by the party bosses, legislative leaders, and special interests have been described as:

- a "smelly stunt" (*Los Angeles Times*, 6/28/04)
- "sneaky—legislative maneuvering" and "an unvarnished effort to undermine" the Voter Choice Open Primary initiative (*San Jose Mercury News*, 6/25/04)
- "a remarkable display of audacity...using a full array of fairness-flouting tactics" (*San Francisco Chronicle*, 6/23/04)

Had enough?!

VISIT WWW.OPENPRIMARY.ORG FOR THE FACTS.

JOIN SENATOR JOHN MCCAIN IN SUPPORTING PROP. 62. Take power away from the party bosses! VOTE YES on 62!

LEON PANETTA, *Former White House Chief of Staff to President Clinton*

JULIE PUENTES, *Executive Vice-President Orange County Business Council*

HARRIET HOFFMAN, *State Coordinator Committee for an Independent Voice*

MENTAL HEALTH SERVICES EXPANSION, FUNDING. TAX ON PERSONAL INCOMES ABOVE \$1 MILLION. INITIATIVE STATUTE.

OFFICIAL TITLE AND SUMMARY

Prepared by the Attorney General

Mental Health Services Expansion, Funding. Tax on Personal Incomes Above \$1 Million. Initiative Statute.

- Provides funds to counties to expand services and develop innovative programs and integrated service plans for mentally ill children, adults and seniors.
- Requires state to develop mental health service programs including prevention, early intervention, education and training programs.
- Creates commission to approve certain county mental health programs and expenditures.
- Imposes additional 1% tax on taxpayers' taxable personal income above \$1 million to provide dedicated funding for expansion of mental health services and programs.
- Prohibits state from decreasing funding levels for mental health services below current levels.

Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:

- Additional state revenues of about \$275 million in 2004–05 (partial year), \$750 million in 2005–06, \$800 million in 2006–07, and probably increasing amounts annually thereafter, with comparable annual increases in expenditures by the state and counties for the expansion of mental health programs.
- Unknown state and local savings from expanded county mental health services that partly offset the cost of this measure, potentially amounting to as much as the low hundreds of millions of dollars annually.

ANALYSIS BY THE LEGISLATIVE ANALYST

BACKGROUND

County Mental Health Services. Counties are the primary providers of mental health care in California communities for persons who lack private coverage for such care. Both children and adults are eligible to receive such assistance. Counties provide a range of psychiatric, counseling, hospitalization, and other treatment services to patients. In addition, some counties arrange other types of assistance such as housing, substance abuse treatment, and employment services to help their clients. A number of counties have established so-called “systems of care” to coordinate the provision of both medical and nonmedical services for persons with mental health problems.

County mental health services are paid for with a mix of state, local, and federal funds. As part of a prior transfer of mental health program responsibilities from the state to counties, some state revenues are automatically set aside for the support of county mental health programs and thus are not provided through the annual state budget act. Other state support for county mental health programs is provided through the annual state budget act and thus is subject to change by actions of the Legislature and Governor.

State Personal Income Tax System. California's personal income tax was established in 1935 and is the state's single largest revenue source.

ANALYSIS BY THE LEGISLATIVE ANALYST (CONT.)

It is expected to generate an estimated \$39 billion in revenues for the support of state government in 2004–05. The tax is levied on both residents and nonresidents, with the latter paying taxes on income derived only from California sources. Tax rates range from 1 percent to 9.3 percent, depending on a taxpayer's income level.

PROPOSAL

This proposition establishes a state personal income tax surcharge of 1 percent on taxpayers with annual taxable incomes of more than \$1 million. Funds resulting from the surcharge would be used to expand county mental health programs.

New Revenues Generated Under the Measure. This measure establishes a surcharge of 1 percent on the portion of a taxpayer's taxable income that exceeded \$1 million. The surcharge would be levied on all such tax filers beginning January 1, 2005. We estimate that 25,000 to 30,000 taxpayers would be subject to paying the surcharge.

Under this measure, beginning in 2004–05, the State Controller would transfer specified amounts of state funding on a monthly basis into a new state fund named the Mental Health Services Fund. The amounts transferred would be based on an estimate of the revenues to be received from the surcharge. The amounts deposited into the fund would be adjusted later to reflect the revenues actually received from the tax surcharge.

How This Funding Would Be Spent. Beginning in 2004–05, revenues deposited in the Mental Health Services Fund would be used to create new county mental health programs and to expand some existing programs. These funds would not be provided through the annual state budget act and thus amounts would not be subject to change by actions of the Legislature and Governor. Specifically, the funds could be used for the following activities:

- ***Children's System of Care.*** Expansion of existing county system of care services for children who lack other public or private health coverage to pay for mental health treatment.
- ***Adult System of Care.*** Expansion of existing county system of care services for adults with serious mental disorders or who are at serious risk of such disorders if they do not receive treatment.
- ***Prevention and Early Intervention.*** New county prevention and early intervention programs to get persons showing early signs of a mental illness into treatment quickly before their illness becomes more severe.
- ***"Wraparound" Services for Families.*** A new program to provide state assistance to counties, where feasible, to establish wrap-around services, which provide various types of medical and social services for families (for example, family counseling) where the children are at risk of being placed in foster care.
- ***"Innovation" Programs.*** New county programs to experiment with ways to improve access to mental health services, including for underserved groups, to improve program quality, or to promote interagency collaboration in the delivery of services to clients.
- ***Mental Health Workforce: Education and Training.*** Stipends, loan forgiveness, scholarship programs, and other new efforts to (1) address existing shortages of mental health staffing in county programs and (2) help provide the additional staffing that would be needed to carry out the program expansions proposed in this measure.
- ***Capital Facilities and Technology.*** A new program to allocate funding to counties for technology improvements and capital facilities needed to provide mental health services.

ANALYSIS BY THE LEGISLATIVE ANALYST (CONT.)

This measure specifies the portion of funds that would be devoted to particular activities. In 2004–05, most of the funding would be provided for expanding the mental health care workforce and for capital facility and technology improvements. In subsequent years, most funding would be used for new prevention and early intervention programs and various expansions of the existing types of services provided by counties directly to mental health clients.

Oversight and Administration. Under the terms of the proposition, each county would draft and submit for state review and approval a three-year plan for the delivery of mental health services within its jurisdiction. Counties would also be required to prepare annual updates and expenditure plans for the provision of mental health services.

The Department of Mental Health, in coordination with certain other state agencies, would have the lead state role in implementing most of the programs specified in the measure and allocating the funds through contracts with counties. In addition, a new Mental Health Services Oversight and Accountability Commission would be established to review county plans for mental health services and to approve expenditures for certain programs. The existing Mental Health Planning Council would continue to review the performance of the adult and children’s system of care programs. The Franchise Tax Board would be the lead state agency

responsible for administration of the tax provisions of this proposition.

The measure permits up to 5 percent of the funding transferred into the Mental Health Services Fund to be used to offset state costs for implementation of the measure. Up to an additional 5 percent could be used annually for county planning and other administrative activities to implement this measure.

Other Fiscal Provisions. The proposition specifies that the revenues generated from the tax surcharge must be used to expand mental health services and could not be used for other purposes. In addition, the state and counties would be prohibited from redirecting funds now used for mental health services to other purposes. The state would specifically be barred from reducing General Fund support, entitlements to services, and formula distributions of funds now dedicated for mental health services below the levels provided in 2003–04.

The state would also be prohibited from changing mental health programs to increase the share of their cost borne by a county or to increase the financial risk to a county for the provision of such services unless the state provided adequate funding to fully compensate for the additional costs or financial risk.

FISCAL EFFECTS

Revenue and Expenditure Increases. The tax surcharge would generate new state revenues of approximately \$275 million in 2004–05,

ANALYSIS BY THE LEGISLATIVE ANALYST (CONT.)

\$750 million in 2005–06, \$800 million in 2006–07, and probably increasing amounts annually thereafter. (The impact in 2004–05 is a partial-year effect generated by increased taxpayer withholding, with the first full-year impact occurring in 2005–06.) The state and counties would incur additional expenditures for mental health programs basically mirroring the additional revenues generated by the surcharge.

Reduction in Support Prohibited. As noted earlier, this measure contains provisions that prohibit the state from reducing financial support for mental health programs below the 2003–04 level and that restrict certain other changes in mental health programs. Such restrictions could prevent the Legislature and Governor from taking certain actions in the future to reduce state expenditures for mental health services. As a result, state spending in the future could be higher than it otherwise would have been.

State and County Administrative Costs. This measure would result in significant increased state and local administrative expenditures related to the proposed expansion of county mental health services. These costs could amount to several millions of dollars annually for the state, with comparable additional costs incurred by county mental health systems on a statewide basis. These administrative costs would be largely if not completely offset by the additional revenues generated under this measure.

The state administrative costs associated with the tax provisions of this measure would be minor.

Additional Federal Funds. The expansion of county mental health services provided under this proposition—particularly the provisions expanding services for adults who are mentally ill—could result in the receipt of additional federal funds for community mental health services under the Medi-Cal Program. The amount of additional federal funds is unknown and would depend upon how the state and counties implement this proposal, but could potentially exceed \$100 million annually on a statewide basis.

Partially Offsetting Savings. State and national studies have indicated that mental health programs similar to some of those expanded by this measure generate significant savings to state and local governments that partly offset their additional cost. Studies of such programs in California to date suggest that much of the savings would probably accrue to local government. The expansion of county mental health services as proposed in this measure would probably result in savings on state prison and county jail operations, medical care, homeless shelters, and social services programs. The extent of these potential savings to the state and local agencies is unknown, but could amount to as much as the low hundreds of millions of dollars annually on a statewide basis.

MENTAL HEALTH SERVICES EXPANSION, FUNDING. TAX ON PERSONAL INCOMES ABOVE \$1 MILLION. INITIATIVE STATUTE.

ARGUMENT in Favor of Proposition 63

Almost 40 years ago, California emptied its mental hospitals, promising to fully fund community mental health services. That promise is still unfulfilled.

Hundreds of thousands of children and adults in California suffer from severe mental illnesses and cannot get the treatment they need. These children fail in school. Adults end up on the streets or in jail.

Proposition 63:

- Provides comprehensive mental health care for children, adults, and seniors.
- Helps individuals and families without insurance, or whose insurance doesn't pay for needed services.
- Includes mental health treatment, general medical care, housing, job training, and prescription drugs.
- *Is paid for by a 1% tax on income over \$1 million per year—people earning less than \$1 million per year won't pay anything extra.*
- Supports innovative programs that are proven to work.
- Requires annual oversight and accountability procedures to ensure funds are properly spent.

Proposition 63 also provides prevention services to help children, adults, and seniors get care *before* a mental illness becomes disabling.

The nonpartisan California Legislative Analyst concludes that Proposition 63 could save taxpayers hundreds of millions of dollars annually by reducing expenses for medical care, homeless shelters, and law enforcement.

CALIFORNIA'S DOCTORS AND NURSES SUPPORT PROPOSITION 63 BECAUSE TREATMENT WORKS

Mental illness does not have to be disabling. With proper care, children can return to a normal life and enjoy success in school. Adults and seniors can regain their dignity and find productive work.

Mental illness often goes untreated because people lack access to care. State funding covers only a fraction of those needing help. Families whose loved ones begin treatment often find their insurance inadequate.

Proposition 63 provides effective treatment for all of those being denied care. It gives medical professionals the tools to save lives.

POLICE CHIEFS SUPPORT PROPOSITION 63 BECAUSE IT WILL MAKE CALIFORNIA SAFER

Twenty percent of a police officer's time is spent dealing with people with mental illnesses. One in three people who are homeless are on the streets only because of untreated mental illness.

Our prisons and jails are full of thousands of people with mental illnesses who would not be there if they had been offered treatment. We should provide care *before* people end up on the streets, or behind bars. Then our police officers can focus on criminals, instead of people who are ill and need help.

CALIFORNIA'S TEACHERS SUPPORT PROPOSITION 63 BECAUSE IT WILL HELP CHILDREN SUCCEED IN SCHOOL AND IN LIFE

It's heartbreaking to watch children fall into mental illness. They struggle in school, unable to focus on learning. Left untreated, many withdraw from teachers, friends, and family. Finding it difficult to "fit in" at school, many drop out. *All of these consequences are preventable.*

Proposition 63 provides for early intervention and badly needed services. It will help children avoid mental illness, or cope with its effects, and get back on track to learning.

MANY OF US KNOW SOMEONE WHO HAS SUFFERED FROM A SEVERE MENTAL ILLNESS. IT IS TIME TO STOP THE SUFFERING.

PLEASE VOTE YES ON PROPOSITION 63.

For more: www.CampaignForMentalHealth.org

DEBORAH BURGER, *President*
California Nurses Association

CHIEF CAM SANCHEZ, *President*
California Police Chiefs Association

BARBARA KERR, *President*
California Teachers Association

REBUTTAL to Argument in Favor of Proposition 63

We must get the mentally ill off the streets and get them the treatment they need. For too long, those who suffer have been left without hope and without help.

We agree!

However, we are not swayed by those who would use nice words to pass a shortsighted measure that is *guaranteed* to cause long-term failure. The problems the mentally ill face require a REAL PLAN for the future; *not* promises of funding tied to dangerously volatile income sources, which can vanish in a heartbeat.

We all remember the economic bubble that burst in California a few years ago. Budget surpluses abounded, but *suddenly without warning*, the high incomes and windfalls disappeared—and *took important tax dollars along with them!* Overnight, looming deficits and program cuts appeared. This measure follows the *same risky path*, pinning itself to those very incomes. Such folly is unreliable and irresponsible.

TAXPAYER-FUNDED INTERESTS pushing this new bureaucracy claim that similar programs have "demonstrated their effectiveness" in terms of "providing services," but that is *not the same thing as reducing mental illness or manifestations of it*. Nor does *any* evidence show that state and local costs have declined as a result.

We need to do something about mental illness, and reject *fake solutions* like Proposition 63 that only postpone serious fixes for later. This *sleight-of-hand substitute* is a feel-good proposal that doesn't plan for the future and doesn't make sense. Our children and families require better.

We urge you to vote NO on 63.

THE HONORABLE TIM LESLIE, *Assemblyman*
California State Legislature

DAVID YOW, *Member*
Citizens for a Healthy California

MENTAL HEALTH SERVICES EXPANSION, FUNDING. TAX ON PERSONAL INCOMES ABOVE \$1 MILLION. INITIATIVE STATUTE.

PROP

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ARGUMENT Against Proposition 63

Proposition 63 is a *flawed attempt* to fix a serious problem. Californians are compassionate, and that's why we care about making sure that government is both responsible AND effective. This tax initiative, however, is neither. It promises wonderful things, but the *benefit is much smaller* and the *price tag much larger* than proponents are telling you.

This new law forces the Legislature to continue funding existing mental health programs at their current levels, *regardless of effectiveness or efficiency*. While United States Department of Justice investigations have found severe abuses within California's Department of Mental Health, proponents suggest we expand that system rather than first resolving the problems it already faces.

As if that weren't bad enough, Proposition 63 pins the hopes and needs of thousands of Californians upon a **NARROWLY DRAWN SEGMENT OF A FEW TAXPAYERS' INCOMES**. That is not wise, and it is not safe. Of course, most people aren't millionaires, but when those required to pay this tax end up leaving the state—the way they have been in increasing numbers since the Gray Davis days—they will take their tax dollars with them. *The very same tax dollars this program needs to survive*. That leaves the rest of us stuck trying to pay the tab, and helplessly watching other important services get cut to make up the difference.

On paper, this plan promises a lot. Helping the mentally ill sounds good. However, the measure itself is

fatally flawed, because its funding structure is too narrowly drawn and *highly vulnerable to even slight economic changes*. So, you see, the failure to provide a long-term solution for mental health needs in our state will only create even *bigger problems* that need to be solved . . . and leave us with the original challenges, as well.

It is compassionate to help, but this plan is the *wrong way to do it*. It is time for real reform—not irresponsible measures like this one that merely substitute one broken bureaucracy for another. All Californians deserve a government that plans for the future, not one that threatens it with a nightmarish, risky scheme that will leave us with larger problems than ever before.

Join many Californians from all walks of life, including community leaders, state legislators, health care advocates, elected city officials, and others who care about the people in our communities in voting NO on this *well-intended but short-sighted* initiative. In the long run, this backward plan will only hurt those it's meant to help.

DR. WILLIAM ALLEN, *Professor*
UCLA Department of Economics

THE HONORABLE RAY HAYNES, *Assemblyman*
California State Legislature

LEW UHLER, *President*
National Tax Limitation Committee

REBUTTAL to Argument Against Proposition 63

PROPOSITION 63 HELPS EVERYONE IN CALIFORNIA.

Treating mental illness doesn't just mean helping individuals.

It means better schools and businesses, and safer communities.

Successful treatment keeps adults healthy, employed, and self-sufficient. It helps children stay and succeed in school. Police can focus on crime, instead of untreated mental illness.

PROPOSITION 63 EXPANDS A PROGRAM THAT WORKS.

After decades of neglecting mental illness, California began an experimental, community-based mental health program five years ago. It helps teenagers and adults get the care they need from one place. Special community teams offer treatment, medicines, housing, job training, and other assistance.

The program has been studied extensively. (See www.AB34.org.) The results show that three times more people found employment than had worked previously. Those enrolled had a 66% reduction in hospital days, and an 81% reduction in jail days.

A panel of nationally recognized experts calls this program a model for the nation.

Right now, the program is small, reaching *fewer than 10%* of those who could benefit. Thousands are turned away.

Proposition 63 makes this new model program available to the thousands now turned away.

PROPOSITION 63 REQUIRES STRICT ACCOUNTABILITY.

Under Proposition 63:

- Funding goes only to these proven, new programs.
- Bureaucrats can't redirect the funding.
- An oversight panel of independent, unpaid members supervises expenditures.
- To ensure accountability, they can cut off programs that aren't effective.

Proposition 63 only taxes individuals on their taxable, personal income over \$1 million. The tax is just 1%. It's even deductible from federal taxes.

Please vote YES on Proposition 63.

CARLA NIÑO, *President*
California State PTA

ARETA CROWELL, *President*
Mental Health Association in California

DR. DANA WARE, *President*
California Academy of Family Physicians

LIMITS ON PRIVATE ENFORCEMENT OF UNFAIR BUSINESS COMPETITION LAWS. INITIATIVE STATUTE.

OFFICIAL TITLE AND SUMMARY

Prepared by the Attorney General

Limits on Private Enforcement of Unfair Business Competition Laws. Initiative Statute.

- Limits individual's right to sue by allowing private enforcement of unfair business competition laws only if that individual was actually injured by, and suffered financial/property loss because of, an unfair business practice.
- Requires private representative claims to comply with procedural requirements applicable to class action lawsuits.
- Authorizes only the California Attorney General or local government prosecutors to sue on behalf of general public to enforce unfair business competition laws.
- Limits use of monetary penalties recovered by Attorney General or local government prosecutors to enforcement of consumer protection laws.

Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:

- Unknown state costs or savings depending on whether the measure significantly increases or decreases court workload related to unfair competition lawsuits and the extent to which funds diverted by this measure are replaced.
- Unknown potential costs to local governments depending on the extent to which funds diverted by this measure are replaced.

ANALYSIS BY THE LEGISLATIVE ANALYST

BACKGROUND

California's unfair competition law prohibits any person from engaging in any unlawful or fraudulent business act. This law may be enforced in court by the Attorney General, local public prosecutors, or a person acting in the interest of itself, its members, or the public. Examples of this type of lawsuit include cases involving deceptive or misleading advertising or violations of state law intended to protect the public well-being, such as health and safety requirements.

Currently, a person initiating a lawsuit under the unfair competition law is not required to show that he/she suffered injury or lost money or property. Also, the Attorney General and local public prosecutors can bring an unfair competition lawsuit without demonstrating an injury or the loss of money or property of a claimant.

Currently, persons initiating unfair competition lawsuits do not have to meet the requirements for class action lawsuits. Requirements for a class action lawsuit include (1) certification by the court

of a group of individuals as a class of persons with a common interest, (2) demonstration that there is a benefit to the parties of the lawsuit and the court from having a single case, and (3) notification of all potential members of the class.

In cases brought by the Attorney General or local public prosecutors, violators of the unfair competition law may be required to pay civil penalties up to \$2,500 per violation. Currently, state and local governments may use the revenue from such civil penalties for general purposes.

PROPOSAL

This measure makes the following changes to the current unfair competition law:

- ***Restricts Who Can Bring Unfair Competition Lawsuits.*** This measure prohibits any person, other than the Attorney General and local public prosecutors, from bringing a lawsuit for unfair competition unless the person has suffered injury and lost money or property.

ANALYSIS BY THE LEGISLATIVE ANALYST (CONT.)

- ***Requires Lawsuits Brought on Behalf of Others to Be Class Actions.*** This measure requires that unfair competition lawsuits initiated by any person, other than the Attorney General and local public prosecutors, on behalf of others, meet the additional requirements of class action lawsuits.
- ***Restricts the Use of Civil Penalty Revenues.*** This measure requires that civil penalty revenues received by state and local governments from the violation of unfair competition law be used only by the Attorney General and local public prosecutors for the enforcement of consumer protection laws.

FISCAL EFFECTS

State Government

Trial Courts. This measure would have an unknown fiscal impact on state support for local trial courts. This effect would depend primarily on whether the measure increases or decreases the overall level of court workload dedicated to unfair competition cases. If the level of court workload significantly decreases because of the proposed restrictions on unfair competition lawsuits, there could be state savings. Alternatively, this measure could increase court workload, and therefore state costs, to the extent there is an increase in class action lawsuits and their related requirements. The number of cases that would be affected by this measure and the corresponding state costs or savings for support of local trial courts is unknown.

Revenues. This measure requires that certain state civil penalty revenue be diverted from general state purposes to the Attorney General for enforcement of consumer protection laws. To the extent that this diverted revenue is replaced by the General Fund, there would be a state cost. However, there is no provision in the measure requiring such replacement.

Local Government

The measure requires that local government civil penalty revenue be diverted from general local purposes to local public prosecutors for enforcement of consumer protection laws. To the extent that this diverted revenue is replaced by local general fund monies, there would be a cost to local government. However, there is no provision in the measure requiring the replacement of diverted revenues.

Other Effects on State and Local Government Costs

The measure could result in other less direct, unknown fiscal effects on the state and localities. For example, this measure could result in increased workload and costs to the Attorney General and local public prosecutors to the extent that they pursue certain unfair competition cases that other persons are precluded from bringing under this measure. These costs would be offset to some unknown extent by civil penalty revenue earmarked by the measure for the enforcement of consumer protection laws.

Also, to the extent the measure reduces business costs associated with unfair competition lawsuits, it may improve firms' profitability and eventually encourage additional economic activity, thereby increasing state and local revenues. Alternatively, there could be increased state and local government costs. This could occur to the extent that future lawsuits that would have been brought under current law by a person on behalf of others involving, for example, violations of health and safety requirements, are not brought by the Attorney General or a public prosecutor. In this instance, to the extent that violations of health and safety requirements are not corrected, government could potentially incur increased costs in health-related programs.

LIMITS ON PRIVATE ENFORCEMENT OF UNFAIR BUSINESS COMPETITION LAWS. INITIATIVE STATUTE.

ARGUMENT in Favor of Proposition 64

PROTECT SMALL BUSINESSES FROM FRIVOLOUS LAWSUITS—CLOSE THE SHAKEDOWN LOOPHOLE

There's a LOOPHOLE IN CALIFORNIA LAW that allows private lawyers to file frivolous lawsuits against small businesses even though they have no client or evidence that anyone was damaged or misled. Shakedown lawyers "appoint" themselves to act like the Attorney General and file lawsuits on behalf of the people of the State of California, demanding thousands of dollars from small businesses that can't afford to fight in court.

Here's the little secret these lawyers don't want you to know:

MOST OF THE TIME, THE LAWYERS OR THEIR FRONT GROUPS KEEP ALL THE MONEY!

No other state allows this. It's time California voters stopped it. For years, Sacramento politicians, flush with special interest trial lawyer money, have protected the lawyers at the expense of California consumers, taxpayers, and small businesses.

Yes on Proposition 64 will stop thousands of frivolous shakedown lawsuits like these:

- Hundreds of travel agents have been shaken down for not including their license number on their website.
- Local homebuilders have been sued for using 'APR' in advertisements instead of spelling out 'Annual Percentage Rate.'

HERE'S WHAT ACTUALLY HAPPENED TO ONE SMALL BUSINESS VICTIM:

"My family came to this country to pursue the American Dream. We work hard to make sure our customers like the job we do. One day I got a letter from a law firm demanding \$2,500. The letter didn't claim we broke the law, just that we might have and if we wanted to stop the lawsuit, we needed to send them \$2,500. I called a lawyer who said it would cost even more to fight, so we sent money even though we'd done nothing wrong. It's just not right."

Humberto Galvez, Santa Ana

Here's why "YES" on Proposition 64 makes sense:

- Stops these shakedown lawsuits.
- Protects your right to file a lawsuit if you've been damaged.
- Allows only the Attorney General, district attorneys, and other public officials to file lawsuits on behalf of the People of the State of California to enforce California's unfair competition law.
- Settlement money goes to the public, not the pockets of unscrupulous trial lawyers.

"Public Prosecutors have a long, distinguished history of protecting consumers and honest businesses. Proposition 64 will give those officials the resources they need to increase enforcement of consumer protection laws by designating penalties from their lawsuits to supplement additional enforcement efforts, above their normal budgets."

Michael D. Bradbury, Former President
California District Attorneys Association

Vote Yes on Proposition 64: Help California's Economy Recover

"Frivolous shakedown lawsuits cost consumers and businesses millions of dollars each year. They make businesses want to move to other states where lawyers don't have a legal extortion loophole. When businesses leave, taxpayers who remain pick up the burden. Proposition 64 closes this loophole and helps improve California's business climate and overall economic health."

Larry McCarthy, President
California Taxpayers Association

Vote Yes on Proposition 64. Close the frivolous shakedown lawsuit loophole.

RAY DURAZO, Chairman
Latin Business Association

MARTYN HOPPER, State Director
National Federation of Independent Business

MARYANN MALONEY
Citizens Against Lawsuit Abuse

REBUTTAL to Argument in Favor of Proposition 64

Small business???

The Associated Press reported:

"Here are some of the companies that have made donations to the campaign to pass Proposition 64 and some of the lawsuits that have been filed against them under California's unfair competition law:

- Blue Cross of California. Donation: \$250,000. Unfair competition suits have accused the health care company of . . . discriminating against non-company emergency room doctors and underpaying hospitals.
- Bank of America. Donation: \$100,000. A jury found the bank misrepresented to customers that it had the right to take Social Security and disability funds from their accounts to pay overdraft charges and other fees.
- Microsoft. Donation: \$100,000. Suit . . . accuses the computer giant of failing to alert customers to security flaws that allow hackers to break into its computer systems by gaining some personal information.
- Kaiser Foundation Health Plan. Donation: \$100,000. One suit accused the health care provider of false

advertising for claiming that only doctors, not administrators, made decisions about care . . .

—State Farm. Donation: \$100,000. A group of victims of the 1994 Northridge earthquake accused the company of reducing their quake coverage without adequate notice. State Farm reportedly was forced to pay \$100 million to policyholders."

Quoting the Attorney General's senior consumer attorney in the Department of Justice, the *Los Angeles Times* reports: "The initiative 'goes unbelievably far,' . . . 'Throwing the baby out with the bathwater is not the best thing' . . . the (current) law has been used successfully to protect the public from polluters, unscrupulous financing schemes and religious discrimination."

ELIZABETH M. IMHOLZ, Director
Consumers Union, West Coast Office
SUSAN SMARTT, Executive Director
California League of Conservation Voters
DEBORAH BURGER, RN, President
California Nurses Association

LIMITS ON PRIVATE ENFORCEMENT OF UNFAIR BUSINESS COMPETITION LAWS. INITIATIVE STATUTE.

PROP

64

ARGUMENT Against Proposition 64

Proposition 64 LIMITS THE RIGHTS OF CALIFORNIANS TO ENFORCE ENVIRONMENTAL, PUBLIC HEALTH, PRIVACY, AND CONSUMER PROTECTION LAWS.

The Attorney General's Official Title for the Proposition 64 petition read: "LIMITATIONS on Enforcement of Unfair Business Competition Laws."

Across California headlines warn the public about this special interest initiative. San Francisco Chronicle: "*Measure would limit public interest suits*"; Ventura County Star: "*Consumers lose if initiative succeeds*"; Orange County Register: "*Consumer lawsuits targeted*"; San Francisco Examiner: "*Bank of America's shakedown: Unfair-competition law under fire from businesses.*"

Look who is supporting Proposition 64. Consider why they want to limit California's 71-year-old Unfair Business Competition law.

Chemical companies support Proposition 64. They want to stop environmental organizations from enforcing laws against polluting streams, rivers, lakes, and our coast.

Oil companies support Proposition 64. They want to stop community organizations from suing them for polluting drinking water supplies with cancer-causing MTBE.

Credit card companies support Proposition 64. They want to stop consumer groups from enforcing privacy laws protecting our financial information.

IF A CORPORATION PROFITS FROM INTENTIONALLY POLLUTING OUR AIR AND WATER, OR INVADING OUR PRIVACY, WE SHOULD BE ABLE TO STOP IT.

The Los Angeles Times reports: "*The measure would weaken a state law that allows private groups and government prosecutors to sue businesses for polluting the environment and for engaging in misleading advertising and other unfair business practices . . . If voters approve the measure, the current law would be drastically curtailed.*"

Tobacco companies support Proposition 64. They want to block health organizations from enforcing the laws against selling tobacco to children.

Banks support Proposition 64. They want to stop elderly and disabled people who sued them for confiscating Social Security funds.

Insurance companies and HMOs support Proposition 64. They don't want to be held accountable for fraudulent marketing or denying medically necessary treatment to patients.

Energy companies support Proposition 64. They ripped off California during the "energy crisis" and want to block ratepayers from attacking energy company fraud.

Since 1933, the Unfair Business Competition Laws have protected Californians from pollution, invasions of privacy, and consumer fraud. Here are examples of cases successfully brought under this law:

- Supermarkets had to stop changing the expiration date on old meat and reselling it.
- HMOs had to stop misrepresenting their services to patients.
- Bottled water companies had to stop selling water that hadn't been tested for dangerous levels of bacteria, arsenic, and other chemicals.

The Los Angeles Times editorialized: "*(Proposition 64) would make it very difficult for citizens, businesses, and consumer groups to file justified lawsuits.*"

Proposition 64 is strongly opposed by:

- AARP
- California Nurses Association
- California League of Conservation Voters
- Consumers Union
- Sierra Club California
- Congress of California Seniors
- Center for Environmental Health
- California Advocates for Nursing Home Reform
- Foundation for Taxpayer and Consumer Rights

Please join us in voting NO on Proposition 64. Don't let them limit your right to enforce the laws that protect us all.

ELIZABETH M. IMHOLZ, *Director*

Consumers Union, West Coast Office

SUSAN SMARTT, *Executive Director*

California League of Conservation Voters

DEBORAH BURGER, RN, *President*

California Nurses Association

REBUTTAL to Argument Against Proposition 64

The argument against Proposition 64 is a trial lawyer smokescreen. Read the official title and the law yourself.

- *Nowhere is Environment, Public Health, or Privacy mentioned!*
- *California has dozens of strong laws to protect the environment, public health, and privacy, including Proposition 65, passed by voters in 1986, the California Environmental Quality Act and the California Financial Information Privacy Act.*
- *Proposition 64 doesn't change any of these laws.*
- *Proposition 64 would permit ALL the suits cited by its opponents.*

"... the trial attorneys who benefit from the current system are going bonkers, and misrepresenting what (Prop. 64) will do. They claim that (Prop. 64) ... will somehow undermine the state's environmental laws. That's patently untrue."

Orange County Register

Here's what 64 really does:

- *Stops Abusive Shakedown Lawsuits*
- *Stops fee-seeking trial lawyers from exploiting a loophole in California law—A LOOPHOLE NO OTHER STATE HAS—that lets them "appoint" themselves Attorney General and file lawsuits on behalf of the People of the State of California.*

- *Stops trial lawyers from pocketing FEE AND SETTLEMENT MONEY that belongs to the public.*
- *Protects your right to file suit if you've been harmed.*
- *Permits only real public officials like the Attorney General or District Attorneys to file lawsuits on behalf of the People of the State of California.*

Join 700+ groups, small businesses, and shakedown victims, including:

California Taxpayers Association

California Black Chamber of Commerce

California Mexican American Chamber of Commerce

Vote YES on 64—www.yeson64.org

JOHN KEHOE, *Founding Director*

Senior Action Network

ALLAN ZAREMBERG, *President*

California Chamber of Commerce

CHRISTOPHER M. GEORGE, *Chairman of the Board of Governors*

Small Business Action Committee

PROPOSITION

65

*Pursuant to statute, Proposition 65 will appear
in a Supplemental Voter Information Guide.*

*Pursuant to statute, Proposition 65 will appear
in a Supplemental Voter Information Guide.*

LIMITATIONS ON “THREE STRIKES” LAW. SEX CRIMES. PUNISHMENT. INITIATIVE STATUTE.

OFFICIAL TITLE AND SUMMARY

Prepared by the Attorney General

Limitations on “Three Strikes” Law. Sex Crimes. Punishment. Initiative Statute.

- Amends “Three Strikes” law to require increased sentences only when current conviction is for specified violent and/or serious felony.
- Redefines violent and serious felonies. Only prior convictions for specified violent and/or serious felonies, brought and tried separately, would qualify for second and third “strike” sentence increases.
- Allows conditional re-sentencing of persons with sentences increased under “Three Strikes” law if previous sentencing offenses, resulting in the currently charged felony/felonies, would no longer qualify as violent and/or serious felonies.
- Increases punishment for specified sex crimes against children.

Summary of Legislative Analyst’s Estimate of Net State and Local Government Fiscal Impact:

- Net state savings of potentially several tens of millions of dollars initially, increasing to several hundred million dollars annually, primarily to the prison system.
- Increased county costs of potentially more than ten million dollars annually for jail and court-related costs.

ANALYSIS BY THE LEGISLATIVE ANALYST

BACKGROUND

There are three kinds of crimes: felonies, misdemeanors, and infractions. A felony is the most serious type of crime. About 18 percent of persons convicted of a felony are sent to state prison. The rest are supervised on probation in the community, sentenced to county jail, or both.

Existing law classifies some felonies as “violent” or “serious,” or both. Of the inmates sentenced to prison in 2003, approximately 30 percent were convicted for crimes defined as serious or violent. Examples of felonies currently defined as violent include murder, robbery, and rape and other sex offenses. Felonies defined as serious include the same offenses defined as violent felonies, but also include other offenses such as burglary of a residence and assault with intent to commit robbery. There are other felonies that are not classified as violent or serious, such as grand theft and possession of a controlled substance.

As of April 2004, there were about 163,000 inmates in California prisons, as well as some state-contracted facilities. The costs to operate the state prison system in 2004–05 are estimated to be approximately \$5.7 billion.

Three Strikes. Proposition 184 (commonly referred to as the “Three Strikes and You’re Out” law) was adopted by the voters in 1994. It imposed longer prison sentences for certain repeat offenders. Specifically, it requires that a person who is convicted of a felony and who has been previously convicted of one or more violent or serious felonies, be sentenced to state prison as follows:

- **Second Strike Offense.** If the person has *one previous* serious or violent felony conviction, the sentence for *any new*

felony conviction (not just a serious or violent felony) is *twice* the term otherwise required under law for the new conviction. Offenders sentenced by the courts under this provision are often referred to as “second strikers.” As of March 2004, about 35,000 inmates were second strikers.

- **Third Strike Offense.** If the person has *two or more previous* serious or violent felony convictions, the sentence for *any new* felony conviction (not just a serious or violent felony) is life imprisonment with the minimum term being 25 years. Offenders convicted under this provision are frequently referred to as “third strikers.” As of March 2004, about 7,000 inmates were third strikers.

Sex Offenses. California law sets penalties for a variety of sex offenses, including sex offenses committed against children. Current law requires a prison sentence of 3, 6, or 8 years (depending on the circumstances of the crime) for anyone convicted of sexual penetration or oral copulation with a minor who is under the age of 14 and more than 10 years younger than the offender.

PROPOSAL

This measure amends the Three Strikes law and also amends the law relating to sex crimes against children. These changes are described below.

Three Strikes Law

New Crime Must Be Violent or Serious. This measure requires that an offender would be subject to a longer sentence under the Three Strikes law only if the conviction for the new crime is for a violent or serious felony, instead of any felony as provided under current law.

ANALYSIS BY THE LEGISLATIVE ANALYST (CONT.)

Narrows Felonies Considered Violent or Serious. This measure reduces the number of felony offenses considered serious or violent. Figure 1 lists for illustration purposes selected felonies that would no longer be considered serious or violent. These changes are not limited to convictions under the Three Strikes law and, therefore, would also affect some other aspects of sentencing, such as the amount of credits inmates can earn towards a reduced sentence.

FIGURE 1

SELECTED FELONIES NO LONGER CONSIDERED VIOLENT OR SERIOUS OFFENSES UNDER PROPOSITION 66

- | | |
|--|---|
| • Attempted burglary | • Burglary of an unoccupied residence |
| • Conspiracy (multiple people planning) to commit assault | • Interfering with a trial witness without the use of force or threats and not in the furtherance of a conspiracy |
| • Nonresidential arson resulting in no significant injuries | • Participation in felonies committed by a criminal street gang |
| • Threats to commit criminal acts that would result in significant personal injury | • Unintentional infliction of significant personal injury while committing a felony offense |

Requires Strikes to Be Tried Separately. Under current law, a defendant can receive multiple strikes in a single trial. For example, a defendant in a burglary case can be convicted of two separate burglary offenses in the same trial and get two strikes. This measure requires that eligible offenses be brought and tried in separate trials in order for each of them to be counted as a strike. This provision could result in counties holding separate trials in cases where local law enforcement officials want to obtain longer sentences under the Three Strikes law.

Resentencing of Offenders. This measure requires the state to resentence offenders currently serving an indeterminate life sentence under the Three Strikes law if their third strike resulted from a conviction for a nonviolent and nonserious felony offense, as defined by this proposition. Resentencing must occur no later than 180 days after this measure takes effect. The resentencing requirement will result in reduced prison sentences for some inmates and release from prison for others.

Sex Offenders of Children Under 14 Years of Age

This measure increases a prison sentence to 6, 8, or 12 years for the first conviction for sexual penetration or oral copulation with a minor who is under the age of 14 and more than 10 years younger than the offender. However, if the victim is under the age of 10, the district attorney has the discretion to seek imprisonment of 25 years to life. This measure requires that a second conviction for these offenses shall result in a sentence

of 25 years to life. It also requires the state to provide counseling services for these offenders while they are in prison and for at least one year following release from prison.

FISCAL EFFECTS

Three Strikes Law

State Prison Savings. The prison population would be lower because of the proposition’s provisions that (1) limit new Three Strikes qualifying convictions to serious or violent felonies, (2) require resentencing of some third strikers, and (3) reduce the number of crimes that are considered serious or violent. The combined effect of these changes would be prison operations savings of potentially several tens of millions of dollars in the first couple of years, growing to as much as several hundred millions of dollars in ongoing savings when the full impact of the measure is realized in about a decade. The lower prison population resulting from this measure would potentially result in capital outlay savings in the long term associated with prison construction and renovations that would otherwise have been needed.

State Parole Supervision Costs. This measure would accelerate the release of some state prisoners to parole due to the shorter prison sentences served by those inmates. The cost associated with this increase in the parole caseload is unknown, but could be about ten million dollars annually when the full impact of the measure is realized.

Costs for Court-Related Activities and County Jails. This measure would result in additional state and local costs for the courts and county jails. Three factors primarily account for the increased costs. First, the resentencing provision would increase court caseloads, and local jails would likely house inmates during the proceedings. Second, it is likely that some offenders released from prison because of this measure will be subsequently prosecuted and convicted for new crimes. Third, some offenders who would be sentenced to state prison under current law will be sentenced to jail, instead of prison, under this measure for crimes newly defined as nonserious and non-violent. We estimate these additional costs could be as much as a few tens of millions of dollars annually when the full impact of the measure is realized. These costs would be split between state and local governments.

Other Impacts on State and Local Governments. There could be other costs to the extent that offenders released from prison because of this measure require other government services, or commit additional crimes that result in victim-related government costs, such as government-paid health care for persons without insurance. Alternatively, there could be offsetting revenue to the extent that offenders released from prison become taxpaying citizens. The extent and magnitude of these impacts is unknown.

Sex Offenders of Children

The annual cost of incarcerating and providing counseling services to the sex offenders affected by this measure would likely grow from a couple hundred thousand dollars to as much as a couple of million dollars on an ongoing basis.

LIMITATIONS ON “THREE STRIKES” LAW. SEX CRIMES. PUNISHMENT. INITIATIVE STATUTE.

ARGUMENT in Favor of Proposition 66

Ten years ago, voters were asked to pass tougher sentences for repeat violent criminals. We approved the Three Strikes law because that’s what we were told it would do.

We weren’t told that Three Strikes would also lock up nonviolent, petty offenders for life.

VOTING YES ON PROPOSITION 66 WILL RESTORE THREE STRIKES TO ITS PROMISE AND THE ORIGINAL INTENT OF VOTERS.

Voting **YES ON PROPOSITION 66** will:

- Not result in the release of criminals currently serving time for murder, rape, kidnapping, child molestation, and other truly violent and serious crimes.
- Apply commonsense sentences to nonviolent, petty offenders.
- Save taxpayers hundreds of millions of dollars every year that are wasted on keeping videotape, bread or T-shirt thieves and bad check writers in prison for life.
- Protect our children by stopping child molesters with a “1 Strike” sentence.

Proponents of the 1994 law claimed that, “Three Strikes keeps career criminals, who rape women, molest innocent children and commit murder, behind bars where they belong.”

But, according to the California Department of Corrections, almost 65% of those serving second and third strike sentences were convicted of nonviolent, petty offenses such as writing a bad check, stealing a videotape, loaf of bread or pack of T-shirts.

CALIFORNIANS INTENDED THAT THE THREE STRIKES LAW TARGET MURDERERS, RAPISTS, AND KIDNAPPERS, NOT VIDEOTAPE AND T-SHIRT THIEVES. PROPOSITION 66 WILL RESTORE THREE STRIKES TO WHAT VOTERS INTENDED.

After ten years, Three Strikes has stuck California taxpayers with a \$6 billion bill to punish videotape and T-shirt thieves, and other nonviolent petty offenders.

Voting yes on Proposition 66 will save taxpayers billions of dollars over the next decade by doing what makes sense—ensuring that only truly dangerous or violent repeat crim-

inals, such as murderers and kidnappers, spend the rest of their lives in prison.

Don’t be fooled by what opponents say. No one serving time for rape, murder, kidnapping, or child molestation will be released by passage of Proposition 66.

PROPOSITION 66 IS NOT ABOUT GETTING SOFT ON CRIME, IT’S ABOUT GETTING SMART ON CRIME.

Read what others are saying:

- *Orange County Register*: “The measure . . . will end the unreasonable practice under current law of sending those convicted of petty offenses to life in prison at great cost to taxpayers.”
- *The Sacramento Bee*: “California needs to modify its three-strikes law, the harshest in the nation.”
- *San Jose Mercury News*: “The law is wasting tens of millions of tax dollars . . . and wasting lives.”
- *Fresno Bee*: “Californians have a legitimate interest in protecting themselves by putting away for life . . . violent habitual criminals. But the ‘Three Strikes’ law should not be netting nonviolent, three-time shoplifters for 25-years-to-life sentences.”
- *San Francisco Chronicle*: “. . . studies by criminal-justice experts show the law to be unduly costly . . . and failing in its primary mission to curb crime.”

VOTING YES ON PROPOSITION 66 WILL RESTORE THREE STRIKES TO THE ORIGINAL INTENT OF THE VOTERS, SAVE TAXPAYERS BILLIONS OF DOLLARS, AND PROVIDE EVEN STRONGER PROTECTION FOR OUR CHILDREN FROM PREDATORY CHILD MOLESTERS.

VOTE YES ON PROPOSITION 66.

www.yesonproposition66.com

RED HODGES, President

Violence Research Foundation

REV. RICK SCHLOSSER, Executive Director

California Church Impact

RONALD HAMPTON, Executive Director

National Black Police Association

REBUTTAL to Argument in Favor of Proposition 66

A wealthy businessman whose adult son is in prison for killing two people and seriously injuring another spent \$1.57 million to put Proposition 66 on the ballot. If it passes, his son will be released early. So could some 26,000 other convicted criminals, according to the California District Attorneys Association—which is why the Governor, the Attorney General and every District Attorney in California oppose it.

Proponents of Proposition 66 want you to believe California prisons are filled with petty criminals serving life sentences for writing bad checks and stealing T-shirts. In fact, the average California inmate is convicted of five felonies before ever being sent to state prison. These are hardcore criminals who’ve worked hard to be in prison.

Judges and district attorneys already have the discretion not to prosecute petty crimes as “strike” offenses. In those rare cases where petty criminals have received disproportionate sentences, the courts have shortened them.

Proposition 66 won’t keep murderers, rapists, child molesters, and other violent criminals in prison. It

releases thousands of inmates with long records of serious and violent crime—including murder, rape, and child molesting.

Nor will Proposition 66 protect children. It puts some of California’s most notorious child molesters back on the street.

Proposition 66 won’t save tax money. It will cost taxpayers millions to return thousands of inmates to county jails for re-sentencing and release, and billions more to deal with the cost of higher crime and violence.

Even if you believe “3 Strikes” should be modified, Proposition 66 isn’t the answer.

CAM SANCHEZ, President

California Police Chiefs Association

JON COUPAL, President

Howard Jarvis Taxpayers Association

SHEILA ANDERSON, President

Prevent Child Abuse California

ARGUMENT Against Proposition 66

Don't be fooled. Proposition 66 won't protect children or save tax money. It creates a new legal loophole for convicted criminals that will cost taxpayers millions of dollars and flood our streets with thousands of dangerous felons, including rapists, child molesters, and murderers. That's why Proposition 66 is strongly opposed by every major public safety, taxpayer, and child protection group in California, including:

- California Police Chiefs Association
- California District Attorneys Association
- Prevent Child Abuse California
- National Tax Limitation Committee
- California Sexual Assault Investigators Association
- California State Sheriffs' Association
- Mothers Against Gang Violence
- Marc Klaas, Klaas Kids Foundation

The California District Attorneys Association estimates Proposition 66 will release as many as 26,000 convicted felons from California prisons and return them to the counties for re-sentencing, where cash-strapped jails are already overflowing. These are not petty criminals and low-level drug offenders who steal pizzas and videotapes. These are dangerous hardcore criminals with long histories of serious and violent crimes. Most will have their sentences dramatically reduced if Proposition 66 is approved, including:

- Edward Rollins, a career criminal with a thirty-year history of serious and violent crime that includes burglary, assault with a deadly weapon, battery of a police officer, robbery, battery with serious bodily injury, receiving stolen property, possession of a sawed-off shotgun, sexual assault and multiple parole violations. Under Proposition 66 he could be eligible to apply for release.
- Kenneth Parnell, the notorious child molester who kidnapped and sexually assaulted young

Steven Staynor for seven years, and who recently was convicted of trying to buy a 4-year-old boy for \$500. Instead of serving 25 years to life for his crimes against children, Proposition 66 will set him free within weeks.

- Steven Matthews, a member of the Aryan Brotherhood with a violent criminal history that includes robbery, kidnapping, murder, and the rape of his mother. Instead of serving 25 years to life, Proposition 66 will put him back on the street in early 2005.

If Proposition 66 passes, arson, residential burglary, attempted burglary, criminal threats, felony gang crimes, and felonies like drunk driving in which innocent people are seriously hurt or killed will no longer be considered “strikes.” Likewise, juvenile sex offenders will no longer receive a strike for seriously injuring an elderly or disabled person during an assault with intent to commit rape.

California's crime rate has decreased by twice the national average since voters approved “Three Strikes” in 1994, according to FBI statistics. We've had two million fewer victims, taxpayers have saved an estimated \$28.5 billion and dangerous career criminals have been taken off the street. Instead of “fine-tuning” this important public safety law, Proposition 66 destroys it.

According to Wayne Quint, Jr., President of the California Coalition of Law Enforcement Associations: “Crime will go up and innocent people will be hurt or killed if Proposition 66 passes. This is a very dangerous initiative.”

We agree.

Don't give violent criminals another loophole to get out of prison. Vote NO on Proposition 66.

ARNOLD SCHWARZENEGGER, *Governor of California*

BILL LOCKYER, *Attorney General of California*

HARRIET SALARNO, *Chair*

Crime Victims United of California

REBUTTAL to Argument Against Proposition 66

DON'T BE FOOLED BY OPPONENTS' DECEPTIVE SCARE TACTICS.

- **PROPOSITION 66 WON'T RELEASE A SINGLE “Striker,”** let alone thousands, serving time for rape, murder, or child molestation.
- **PROPOSITION 66 DOES NOT STOP ANYONE CONVICTED OF A CRIME FROM BEING FULLY PUNISHED FOR THEIR CRIME**—whether juvenile or adult, arsonist, murderer, or drunk driver, including examples cited by opponents.
- **PROPOSITION 66 DOESN'T “DESTROY” THREE STRIKES.** It does exactly what voters originally intended—punish repeat violent criminals with life sentences.

Our opponents hope you'll be fooled. Here's the truth about Proposition 66:

- **PROPOSITION 66 RESTORES VOTERS' INTENT** of keeping violent criminals off our streets.
- **PROPOSITION 66 PROTECTS CHILDREN** by providing a tougher 1-Strike sentence for child molesters.
- **PROPOSITION 66 STOPS BILLIONS OF TAX DOLLARS FROM BEING WASTED** imprisoning shoplifters and other nonviolent petty offenders for life.
- Proposition 66 will allow three to four thousand non-violent petty offenders to apply for retrial, but *will not*

release a single violent striker.

- Criminals opponents cite have served sentences for violent crimes BUT are now incarcerated for nonviolent offenses.

California is the only state with a Three Strikes law that can send someone to prison for life for stealing a loaf of bread. *Proposition 66 will make sure the time fits the crime.*

Major newspapers across California haven't been fooled by deceptive scare tactics and have repeatedly called for Three Strikes to match voters' intent.

RESTORE THREE STRIKES TO ITS PROMISE, TOUGHEN LAWS AGAINST CHILD MOLESTERS, SAVE TAXPAYERS BILLIONS.

VOTE YES ON PROPOSITION 66—*Three Strikes as voters meant it to be in the first place.*

MARK LENO, *Chairman*

California State Assembly Committee on Public Safety

RAMONA RIPSTON, *Executive Director*

A.C.L.U. of Southern California

JOE KLAAS, *Chairman*

Citizens Against Violent Crime

PROPOSITION

67

**EMERGENCY MEDICAL SERVICES. FUNDING.
TELEPHONE SURCHARGE. INITIATIVE
CONSTITUTIONAL AMENDMENT AND STATUTE.**

OFFICIAL TITLE AND SUMMARY

Prepared by the Attorney General

**Emergency Medical Services.
Funding. Telephone Surcharge.
Initiative Constitutional Amendment and Statute.**

- Provides funding to physicians for uncompensated emergency care, hospitals for emergency services, community clinics for uncompensated care, emergency personnel training/equipment, and emergency telephone system improvements.
- Funded by addition of 3% to existing surcharge rate on telephone use within California, portions of tobacco taxes, and criminal and traffic penalties.
- Limits surcharge collected by residential telephone service providers to 50 cents per month. Monthly cap does not apply to cell phones or business lines.
- Excludes funding from government appropriations limitations, and telephone surcharge from Proposition 98's school spending requirements.

**Summary of Legislative Analyst's Estimate of Net State and Local Government
Fiscal Impact:**

- Increased state revenues of about \$500 million annually from an increased surcharge on telephone bills that would be used (1) to reimburse physicians and hospitals for uncompensated emergency medical care and (2) for other specified purposes. This amount would probably grow in future years.
- Continued funding of about \$32 million annually in Proposition 99 tobacco tax funds to reimburse physicians and community clinics for uncompensated medical services.

ANALYSIS BY THE LEGISLATIVE ANALYST

BACKGROUND

Emergency Telephone Number Surcharge

Currently, telephone service customers in California pay a monthly surcharge that supports the state's 911 emergency telephone number system. Under current law, the surcharge rate can be set up to 0.75 percent of a customer's monthly bill for telephone services for calls made within the state. The surcharge applies to each separate telephone bill a customer may receive. The state has currently set the surcharge rate at 0.72 percent.

Revenues from the surcharge are deposited into the State Emergency Telephone Number Account (911 Account), which is available for expenditure upon appropriation by the Legislature. The revenues are used to reimburse government agencies and telephone companies for equipment and related costs associated with California's 911 emergency telephone number system. Due to an increase in the number of cellular phone

accounts, the 911 Account has maintained a reserve that has ranged from \$15 million to \$80 million in recent years. The revenue received from the surcharge in 2002–03 was \$139 million. The Department of General Services and the Board of Equalization are responsible for administering the 911 Account.

Proposition 99

The Tobacco Tax and Health Protection Act (Proposition 99, enacted by the voters in 1988) assessed a \$0.25 per pack tax on cigarette products that is allocated for specified purposes. In 2004–05, the state is projected to receive approximately \$334 million in Proposition 99 revenues. Because the number of tobacco users is declining, this funding source has and will likely continue to decrease. Currently, the state utilizes Proposition 99 funding for a number of health-related purposes, including tobacco education and prevention efforts, tobacco-related disease research,

ANALYSIS BY THE LEGISLATIVE ANALYST (CONT.)

environmental protection and recreational resource programs, and health care services for low-income uninsured persons.

Uncompensated Emergency Medical Care

Under state and federal law, any person seeking emergency medical care must be provided that care regardless of his or her ability to pay. As a result, hospitals and physicians who provide emergency and trauma care are often not fully compensated for the care they provide. The amount spent today by physicians and hospitals on uncompensated emergency medical care is not known. Physicians and hospitals reported that, in 2000–01, their cost for this care was approximately \$540 million. However, this estimate may be low because physicians and hospitals may have underreported the cost of the care that they provided.

Some of the cost of this uncompensated care is partly paid from various state and county government sources. For example, the state currently budgets about \$32 million in Proposition 99 funds to help pay for uncompensated medical care provided by physicians and community clinics.

Also, under existing law, each county is allowed to establish a Maddy Emergency Medical Services Fund (Maddy Fund) made up of specified revenues from criminal fines and penalties. Counties may use up to 10 percent of these revenues for the cost of administering the fund. After these costs have been deducted, 58 percent of the remaining funds are to be used to reimburse physicians for uncompensated emergency and trauma care, 25 percent to reimburse hospitals for such care, and 17 percent for other emergency medical services such as regional poison control centers.

Even with these funds, hospitals and physicians generally are not compensated for all of the emergency and trauma care that they provide.

PROPOSAL

New State Revenues

This measure increases funding for the reimbursement of physicians and hospitals for uncompensated emergency medical care and other purposes. It does this by imposing an additional 3 percent emergency telephone surcharge, in addition to the existing surcharge, on bills for

telephone services for calls made within the state. Long-distance services for calls to areas outside of California would not be affected by this measure. The surcharge paid by residential customers would generally be limited to 50 cents per month for each telephone bill they receive. The surcharge would not be imposed on low-income residential customers eligible for lifeline telephone services. However, the 50 cents per month limit would not apply for cellular telephone services or for commercial telephone lines. Revenues from the increased surcharge would be deposited into a new 911 Emergency and Trauma Care Fund established by the measure. Certain state agencies specified in the measure would be able to expend the funds without appropriation by the Legislature.

Existing State and Local Funds

In addition to providing the new revenues, this measure would affect the distribution of certain existing state and local funds for uncompensated medical care.

First, the proposition requires each county to establish a Maddy Fund and transfers a portion of fund revenues to the state for the reimbursement of each county's emergency physicians. While the purpose of these funds would remain the same, this measure would generally shift the administration of the money from counties to the state. However, under this measure, a county could apply for and obtain permission from the state to administer certain accounts in its Maddy Fund.

In addition, this measure requires that the state continue to spend about \$32 million per year in Proposition 99 funds to reimburse physicians and community clinics for uncompensated medical care.

How the Funding Would Be Spent

New State Revenues. Most of the additional revenues generated by this measure would be used to reimburse physicians and hospitals for uncompensated emergency and trauma care. The remaining portion of the funding would be used to improve the state's emergency phone number system, to help train and equip "first responders" (such as firefighters and paramedics) for emergencies, and to support community clinics. Below

ANALYSIS BY THE LEGISLATIVE ANALYST (CONT.)

is a more detailed description of the funding distribution, the purpose of those funds, and how they would be administered. (The percentage of new funds distributed for each purpose is noted in parentheses.)

- *The 911 Account* funding (0.75 percent of the new revenues) would be used to make technological and service improvements to the basic emergency telephone number system. Under the measure, the Department of General Services would distribute the funds to state or local agencies.
- *Emergency and Trauma First Responders Account* funding (3.75 percent) would be allocated to the California Firefighter Joint Apprenticeship Training Program for training and related equipment for firefighters, paramedics, and other first responders. The Office of the State Fire Marshal would administer this funding.
- *Community Clinics Urgent Care Account* funding (5 percent) would be allocated to nonprofit clinics providing urgent care services to the uninsured. The Office of Statewide Health Planning and Development would administer this funding.
- *The Emergency and Trauma Physician Uninsured Account* funding (30.5 percent) would be used to reimburse claims filed by physicians who are not employed by hospitals and who provide uncompensated emergency services to patients. The Department of Health Services (DHS) would administer these funds.
- *The Emergency and Trauma Hospital Services Account* funding (60 percent) would reimburse hospitals for the cost of uncompensated emergency and trauma care. The funding would be administered by DHS.

Existing State and Local Funds. Additionally, the measure would establish the Emergency and Trauma Physician Unpaid Claims Account and would shift 58 percent of penalty assessments now being collected by county Maddy Funds to this new state-administered account. These funds would be used to reimburse physicians for uncompensated emergency medical care.

Both the Emergency and Trauma Physician Unpaid Claims Account and the Emergency and Trauma Physician Uninsured Account would be administered by DHS, but a county could apply for and obtain permission to administer the funds allocated from these accounts within its jurisdiction. The Emergency and Trauma Physician Services Commission, consisting of ten emergency medical professionals, would be created in DHS to provide advice on all aspects of these accounts as well as to review and approve relevant forms, guidelines, regulations, and county applications to administer funds from these accounts.

FISCAL EFFECTS

New State Revenues and Expenditures. Based upon the expected number of telephone customers and accounting for the cap on residential charges, we estimate that the measure would raise about \$500 million in additional annual revenues from the increased surcharge. This amount would probably grow in future years with increases in telephone users and the number of calls made within the state. State expenditures would grow in keeping with these new revenues. Figure 1 shows how the new funds would be distributed assuming increased revenues of \$500 million annually.

FIGURE 1	
PROPOSITION 67 ESTIMATED DISTRIBUTION OF NEW REVENUE FROM SURCHARGE INCREASE	
(In Millions)	
Account	Estimated Revenue
911 Account	\$4
Emergency and Trauma First Responders Account	19
Community Clinics Urgent Care Account	25
Emergency and Trauma Physician Uninsured Account	153
Emergency and Trauma Hospital Services Account	300
TOTAL ^a	\$500
^a Total may not sum to \$500 million due to rounding.	

Impact on Existing State and Local Funds. Based on the most recent data available, we estimate that this proposition would transfer about \$32 million

ANALYSIS BY THE LEGISLATIVE ANALYST (CONT.)

each year to the state from the county Maddy Funds to reimburse physicians for uncompensated emergency care.

The measure also requires that about \$32 million per year in Proposition 99 funds continue to be provided to reimburse physicians and community clinics for uncompensated medical care. While this would provide fixed ongoing revenues for these purposes, it would also mean that future funding for other programs which now rely on Proposition 99 revenues, would have to be

reduced or alternative sources of funding found as tobacco tax revenues decline.

State and Local Administrative Costs. This measure would result in increased onetime and ongoing state administrative expenditures of several million dollars. Generally, these costs would be paid by the additional revenues generated under this measure.

The measure would also result in minor administrative expenditures at the local level, that would be paid for by the revenues deposited into those accounts.

EMERGENCY MEDICAL SERVICES. FUNDING. TELEPHONE SURCHARGE. INITIATIVE CONSTITUTIONAL AMENDMENT AND STATUTE.

ARGUMENT in Favor of Proposition 67

Firefighters, paramedics, doctors, and nurses agree that passage of Prop. 67 is essential to maintain emergency medical care in California.

Every day thousands of Californians are victims of heart attacks, strokes, car accidents, and other medical emergencies. For many, rapid response emergency treatment by a paramedic, doctor, or nurse is the difference between life and death.

YES on Prop. 67 will make sure that rapid response emergency medical care is available when you and your family need it most.

The Problem:

We are facing a crisis in emergency care. According to government reports, there are 64 fewer hospital emergency rooms and trauma centers available for patients in California than there were just a decade ago. Experts predict that many more emergency rooms and trauma centers will close. Children, families, and seniors will lose access to doctors, nurses, critical medical equipment, medicines, and essential emergency care.

If an emergency room closes near your home, place of work, or along the routes you drive, the time it takes for an ambulance to get you to a doctor could double, triple, or worse. In an emergency, every second is critical.

Emergency rooms throughout California are severely overcrowded. Patients face long lines and wait times. Firefighters, paramedics, doctors, and nurses are overwhelmed and lack the resources to provide quality lifesaving care that every patient deserves.

The Solution:

A YES vote on Prop. 67 will provide needed funds to help:

- Keep hospital emergency rooms, trauma centers, and health clinics open and operational
- Prevent long lines and wait times at local emergency rooms
- Attract and retain highly skilled physicians, nurses, and medical staff at our local emergency rooms and trauma centers

- Provide critical emergency medical equipment and technology
- Support local health clinics that treat non-emergency patients and preserve our emergency rooms for real emergencies
- Equip and train firefighters and paramedics who are often the first to respond and provide medical care in emergencies
- Upgrade our 911 emergency telephone system

Safeguards to ensure funds are properly spent:

Prop. 67 funds emergency medical care with a modest increase to the existing surcharge on telephone use for the 911 system. Prop. 67 caps the amount a phone company can bill residential telephone customers for the new surcharge at 50 cents per month. The new surcharge does not apply to out-of-state long distance calls, and senior citizens and others on basic lifeline phone rates are completely exempt from the additional cost.

For just pennies each month we can preserve emergency care for California's children, families, and seniors. None of the money from Prop. 67 can be taken away by the Legislature to be used for other purposes.

You never know when you will need a paramedic, emergency room doctor, or nurse. YES on Prop. 67 will make sure that emergency medical care is available when you and your family need it most.

SAVE EMERGENCY CARE. SAVE LIVES.

Please join firefighters, paramedics, doctors, nurses, and patients in voting YES on Prop. 67.

For more information, visit www.saveemergencycare.org

DARLENE BRADLEY, RN, President

California Emergency Nurses Association

MICHAEL J. SEXTON, M.D., President-elect

California Medical Association

CARMELA CASTELLANO, Chief Executive Officer

California Primary Care Association

REBUTTAL to Argument in Favor of Proposition 67

Respected health care advocates, the Congress of California Seniors, the California Sheriffs' Association, and the emergency care workers who run the 911 system all OPPOSE PROP. 67 because *90% of the funds go to large health care corporations and other special interests*—which means:

- No new emergency rooms or trauma centers.
- No money to upgrade existing emergency rooms.
- No provisions to reduce emergency response times. **LESS THAN 1% OF THE MONEY GOES TO THE 911 EMERGENCY SYSTEM.**

Prop. 67 is a \$540 MILLION PHONE TAX—another MISLEADING attempt to give taxpayer money to special interests. READ THE FINE PRINT—and see how misleading it is:

- Supporters claim it's "a modest increase" in phone taxes—but it actually **INCREASES YOUR PHONE TAXES BY 400%**.
- Supporters claim that seniors are exempt, but more than 1 MILLION SENIOR CITIZENS will be affected.

- Supporters claim the tax rates are capped, but there are **NO CAPS ON CELL PHONE OR SMALL BUSINESS PHONE TAXES.**

Prop. 67 **DOES NOT PROVIDE HEALTH INSURANCE** to any of the millions of Californians who do not have any. It gives millions to health corporations, but **DOES NOTHING TO REDUCE PRESCRIPTION DRUG COSTS OR HEALTH INSURANCE PREMIUMS.**

And because there are **NO MANDATORY AUDITS OR FINANCIAL CONTROLS**, there's *potential for waste and fraud.*

Prop. 67 won't solve California's health care problems, but it will **RAISE YOUR PHONE TAXES BY 400%**.

Say NO to the PHONE TAX. Vote NO on 67.

ANGELA MORA, Founder

Office of the Patient Advocate

ROBERT T. DOYLE, President

California State Sheriffs' Association

DR. CHARLES J. SUPPLE, M.D.

EMERGENCY MEDICAL SERVICES. FUNDING. TELEPHONE SURCHARGE. INITIATIVE CONSTITUTIONAL AMENDMENT AND STATUTE.

PROP

67

ARGUMENT Against Proposition 67

Prop. 67 is really a phone tax—a \$540 MILLION TAX INCREASE that will likely *increase in the future*.

If Prop. 67 passes, we will get HIGHER TAXES, but that's only part of the story:

- 1) It's a 400% TAX INCREASE that consumers would have to pay every year.
- 2) NO CAP ON CELL PHONE TAXES—the more you talk, the more taxes you'll pay.
- 3) NO CAP ON SMALL BUSINESS PHONE TAXES.
- 4) More than 1 million seniors, many of whom live on fixed incomes, *will be affected by the phone tax*.

LESS THAN 1% OF THE MONEY FROM PROP. 67 WILL GO TO THE 911 SYSTEM. This initiative is a scam. *The California 911 emergency dispatchers who run the 911 system DON'T support Prop. 67.*

THERE ARE NO ADEQUATE FINANCIAL CONTROLS OR AUDITS. Even though this is a massive half-billion dollar tax increase, it contains no mandatory financial audits to make sure the money is spent properly. In addition to the potential for *waste and fraud*, Prop. 67 will require millions of dollars per year in ongoing administrative costs that the state cannot afford.

THIS INITIATIVE IS MISLEADING.

90% of the money goes directly to special interest groups.

READ THE FINE PRINT, HERE'S WHAT YOU'LL FIND OUT:

- 1) This is really a \$540 million phone tax increase;
- 2) No cap on cell phones;
- 3) No cap on small businesses;
- 4) More than 1 million seniors will be forced to pay higher taxes;
- 5) No mandatory financial audits;

6) California's sheriffs and 911 emergency dispatchers oppose the measure because it is misleading and doesn't do what it says it does.

Listen to what respected voices across California think about the phone tax:

- *California's 911 emergency dispatchers (CALNENA) oppose Prop. 67.*
- *The California Taxpayers' Association and the Howard Jarvis Taxpayers Association oppose Prop. 67 because it's a 400% (\$540 million per year) phone tax increase.*
- *The California Chamber of Commerce says it will hurt our economy and drive businesses from our state.*
- *The Congress of California Seniors opposes it because it will force seniors living on fixed incomes to pay higher taxes.*
- *The California State Sheriffs' Association says Prop. 67 doesn't do what it promises to do.*

CALIFORNIA ALREADY HAS SOME OF THE HIGHEST TAXES IN THE COUNTRY. Just when our economy is starting to bounce back, this huge, half-billion dollar tax increase could *harm businesses, hurt seniors, and gouge consumers—damaging our economy*. WITH NO CAP ON CELL PHONES OR BUSINESSES, THE MORE YOU TALK, THE MORE TAXES YOU HAVE TO PAY.

VOTE NO ON THE PHONE TAX.

L. W. "CHIP" YARBOROUGH, *President*
The California Chapter of the National Emergency
Number Association (CALNENA)

H. L. "HANK" LACAYO, *President*
Congress of California Seniors
LARRY MCCARTHY, *President*
California Taxpayers' Association

REBUTTAL to Argument Against Proposition 67

Before voting on Prop. 67, ask yourself:

Who do you trust to protect quality emergency health care for you and your family? Firefighters, paramedics, doctors, and nurses OR *phone companies*?

Out-of-state phone companies and cell phone companies are bankrolling the campaign to defeat Prop. 67 and deny essential funding for emergency services.

According to the Secretary of State, the top 5 contributors to the campaign against Prop. 67 are:

1. SBC (Texas)
2. Verizon (New York)
3. T-Mobile (Washington)
4. AT&T Wireless (Washington)
5. Sprint (Kansas)

The opponents of Prop. 67 use misleading statistics and scare tactics. Prop. 67 is a modest and sensible initiative that firefighters, paramedics, doctors, and nurses agree will *save lives*.

HERE ARE THE FACTS:

FACT: Prop. 67 caps the surcharge a phone company can add to residential telephone bills at 50¢ per month—a *maximum* of \$6 per year.

FACT: The cost to cell phone users is minimal—if you pay \$30 a month, Prop. 67 will cost you 90¢.

FACT: Prop. 67 completely exempts senior citizens on basic lifeline phone service—they will not pay a dime.

FACT: Prop. 67 provides for audits to ensure funds are properly spent and prohibits the Legislature and phone companies from raiding these funds.

Voters have a clear choice: watch our emergency medical care system unravel OR vote YES ON PROP. 67 to ensure victims of heart attacks, strokes, car accidents, and other emergencies receive life-saving emergency care.

SAVE EMERGENCY CARE. SAVE LIVES. YES ON PROP. 67.

LOU STONE, *Vice President*
California Professional Firefighters
RAMON JOHNSON, M.D., *Past Chair*
California Emergency Medical Services Commission
PAUL KIVELA, M.D., *President*
California Chapter of the American College of
Emergency Physicians

NON-TRIBAL COMMERCIAL GAMBLING EXPANSION. TRIBAL GAMING COMPACT AMENDMENTS. REVENUES, TAX EXEMPTIONS. INITIATIVE CONSTITUTIONAL AMENDMENT AND STATUTE.

OFFICIAL TITLE AND SUMMARY

Prepared by the Attorney General

Non-Tribal Commercial Gambling Expansion. Tribal Gaming Compact Amendments. Revenues, Tax Exemptions. Initiative Constitutional Amendment and Statute.

- Authorizes Governor to negotiate tribal compact amendments requiring that Indian tribes pay 25% of slot machine/gaming device revenues to government fund, comply with multiple state laws, and accept state court jurisdiction.
- If compacted tribes don't unanimously accept required amendments within 90 days, or if determined unlawful, authorizes sixteen specified non-tribal racetracks and gambling establishments to operate 30,000 slot machines/gaming devices, paying 33% of net revenues to fund government public safety, regulatory, social programs.
- Provides exemption from specified state/local tax increases.

Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:

- Increased gambling revenues—potentially over \$1 billion annually. The revenues would be provided primarily to local governments throughout the state for additional child protective, police, and firefighting services.
- Depending on outcome of tribal negotiations, potential loss of state revenues totaling hundreds of millions of dollars annually.

ANALYSIS BY THE LEGISLATIVE ANALYST

BACKGROUND

The California Constitution and state statutes specify the types of legal gambling that can occur in California. For instance, current law allows wagering on horse races and certain games in licensed card rooms. In addition, Indian tribes with tribal-state gambling compacts can operate slot machines and certain other casino-style gambling in California.

Card Rooms and Horse Racing

Card Rooms. The state allows card rooms to conduct card games where the card room operator has no stake in the outcome of the game. The players play against each other and pay the card room a fee for the use of the facilities. Typical card games include draw poker, 7-card stud, and poker pai gow. Certain games—such as twenty-one—are prohibited. There are 96 licensed card rooms in the state. Local governments approve card rooms, as well as establish the hours of operation, the number of tables, and wagering limits. Current state

law limits the expansion of both the number of card rooms and the size of existing card rooms until January 2010.

Horse Racing. The state issues licenses to racing associations that then lease tracks for racing events. In California, there are 6 privately owned racetracks, 9 racing fairs, and 20 simulcast-only facilities. (These latter facilities do not have live racing; instead, they allow betting on televised races occurring elsewhere in the world.)

Gambling on Indian Land

Federal law and the State Constitution govern gambling operations on Indian land. Tribes that enter into a tribal-state gambling compact may operate slot machines and engage in card games where the operator has a stake in the outcome, such as twenty-one. Currently, 64 tribes have compacts and operate 53 casinos with a total of more than 54,000 slot machines. Any new or amended compact must be approved by the

NON-TRIBAL COMMERCIAL GAMBLING EXPANSION.
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ANALYSIS BY THE LEGISLATIVE ANALYST (CONT.)

Legislature, the Governor, and the federal government. As sovereign nations, tribes are largely exempt from state and local taxes and laws, including California environmental laws.

1999 Compacts. Most tribes signed their current compacts in 1999. Under these compacts, a tribe may operate up to two facilities and up to a total of 2,000 slot machines. In exchange, tribes make some payments to the state which can only be used for specified purposes (such as for making payments to tribes that either do not operate slot machines or operate fewer than 350 machines). These payments total over \$100 million annually. Under these compacts, tribes are required to prepare an environmental study analyzing the impact on the surrounding area of any new or expanded gambling facility. These compacts will expire in 2020.

2004 Compacts. In the summer of 2004, five tribes signed amendments to their compacts, and these revised agreements were approved by the state. Under these new agreements, these tribes may operate as many slot machines as they desire. In exchange, tribes make a specified payment annually to the state, with additional payments for each slot machine added to their facilities. As additional tribes sign similar compacts, payments to the state are expected to total in the hundreds of millions of dollars annually. Unlike the payments required by the 1999 compacts, the state can use these payments for any purpose. The newer compacts also require the tribes to (1) prepare more detailed environmental studies; (2) negotiate with local governments regarding payments addressing the impacts of new gambling facilities on the local communities; and (3) follow other provisions related to patron disputes, building codes, and labor relations. These new agreements expire in 2030, ten years later than the 1999 compacts.

PROPOSAL

This measure, which amends the State Constitution and state statutes, sets up two possible scenarios regarding new state gambling revenues.

- The first scenario would occur only if all Indian tribes with compacts agree to specified revisions to their existing compacts.
- The second scenario would be triggered if the tribes do not agree to the revisions. In this case, 5 existing racetracks and 11 existing card rooms would be allowed to operate slot machines.

These two scenarios are discussed below.

Revision of Current Tribal-State Compacts

Under the first scenario, all compact tribes would be required to agree with the Governor to terms required by this measure within 90 days of its passage. Specifically, the measure requires that all tribes with compacts agree to (1) pay 25 percent of their “net win” to the Gaming Revenue Trust Fund (GRTF, a state fund established by the measure) and (2) comply with certain state laws, including those governing environmental protection, gambling regulation, and political campaign contributions. Net win is defined as the wagering revenue from all slot machines operated by a tribe after prizes are paid out, but prior to the payment of operational expenses. Under federal law, the federal government would have to approve the revised agreements.

Expansion of Gambling if Compacts Are Not Revised

As noted above, if the current compacts are not revised under the first scenario, the measure would allow slot machines on non-Indian lands. Specifically, under the second scenario, the measure allows specified racetracks and card rooms located in Alameda, Contra Costa, Los Angeles, Orange, San Diego, and San Mateo Counties to operate up to 30,000 slot machines (see Figure 1). The measure would allow the sale or sharing of slot machine licenses in certain circumstances. The measure also makes permanent the limit on the expansion of both the number of card rooms and the size of existing card rooms (due to expire in January 2010 under current law).

Net Win Payments. Racetracks and card rooms would pay 30 percent of the net win from their slot machines to the GRTF. They would also pay 2 percent of their net win to the city and 1 percent to the county in which the gambling facility is located. The measure specifies that the payments to the GRTF be in place of any state or local gambling-related taxes or fees enacted after September 1, 2003.

The five racetracks also would be required to pay annually an additional 20 percent of the net win on their slot machines. These funds would be administered by the California Horse Racing Board and used to benefit the horse racing industry, including the increase of race purses.

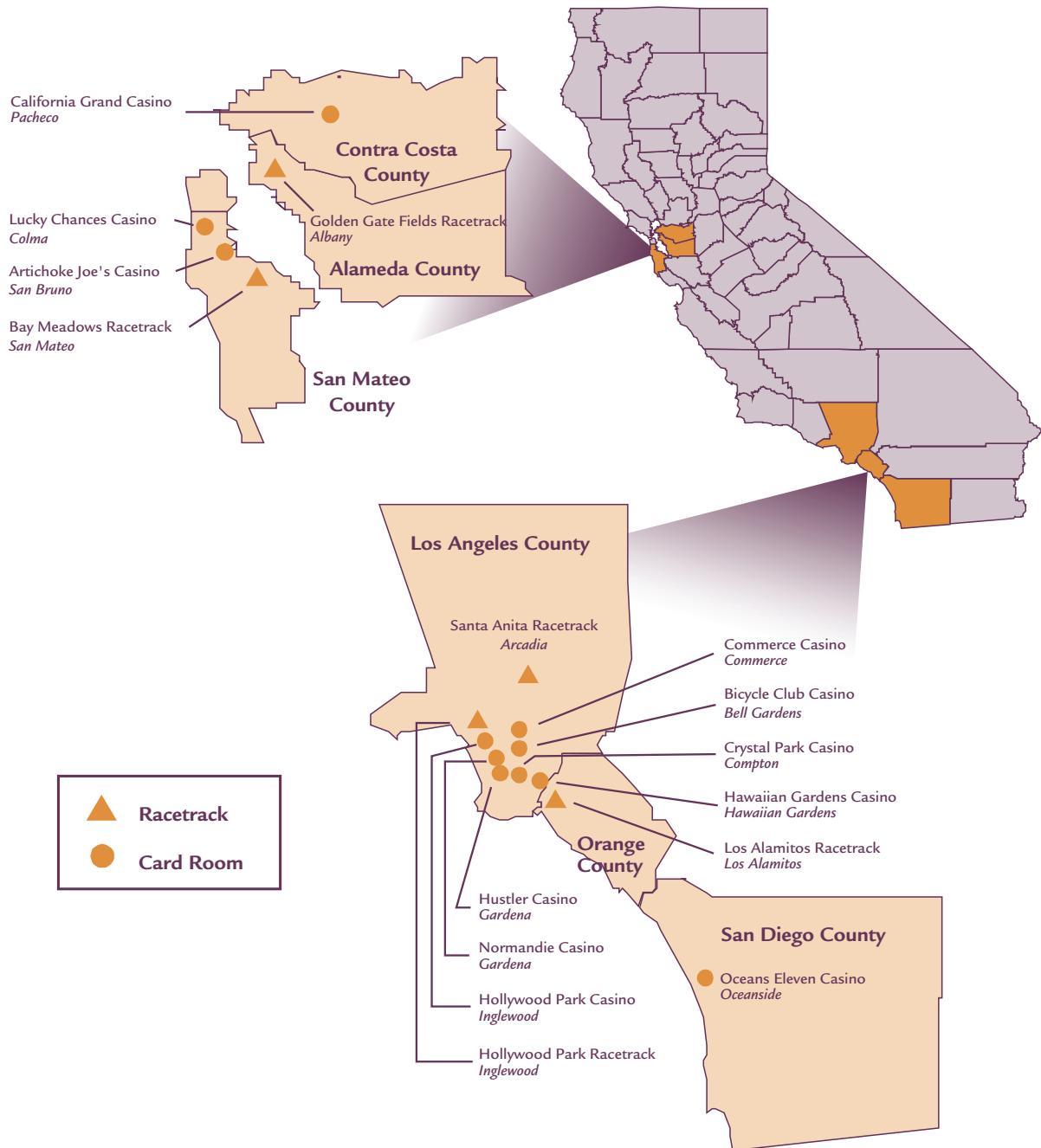
Distribution of Gambling Revenues

Payments based on net win would be made to the GRTF under either scenario—whether tribes revised their compacts or racetracks and card rooms operated slot machines. In either case, slot machine operators

ANALYSIS BY THE LEGISLATIVE ANALYST (CONT.)

FIGURE 1

Sites for Slot Machines at Racetracks and Card Rooms^a



^a Under measure's second scenario (see text).

ANALYSIS BY THE LEGISLATIVE ANALYST (CONT.)

would be required to pay for annual audits of their reported net win and payments made to the GRTF. The measure establishes a five-member board appointed by the Governor to administer the GRTF. Figure 2 describes how funds in the GRTF would be distributed. The bulk of the funds would be distributed to local governments throughout the state for additional child protective, police, and firefighting services.

FIGURE 2

DISTRIBUTION OF FUNDS FROM THE GAMING REVENUE TRUST FUND

- ✓ First, payments would be made for three specific purposes:
 - Up to 1 percent of the funds for administrative costs of the initiative.
 - \$3 million annually for “responsible gambling” programs.
 - Supplemental payments to tribes that do not operate slot machines or operate fewer than 350 machines.
- ✓ Second, remaining funds would be distributed to local governments throughout the state as follows:
 - 50 percent would be allocated to counties to provide services for abused and foster care children. The amount allocated to a county would be based on the number of child abuse referrals.
 - 35 percent to local governments (based on population) for additional sheriffs and police officers.
 - 15 percent to local governments (based on population) for additional firefighters.

The measure also specifies that these funds could not replace funds already being used for the same purpose.

Related Provisions in Proposition 70

Proposition 70 on this ballot also contains provisions affecting the number of slot machines authorized in the state. That measure would allow tribes entering a new or amended compact to expand the types of games authorized at casinos. It would also eliminate the existing limits on the number of slot machines and facilities a tribe can operate. In exchange for the exclusive right to these types of gambling, tribes would pay the state a percentage of their net income from gambling activities. The State Constitution provides that if the provisions of two approved propositions are in conflict, only the provisions of the measure with the higher number of yes votes at the statewide election take effect.

FISCAL EFFECT

The fiscal effect of the measure on state and local governments would depend on whether current compacts are revised or if racetracks and card rooms operate slot machines. The fiscal effect under each scenario is discussed below.

Revision of the Current Tribal-State Compacts

Net Win Payments. While tribes do not publicly report information on their slot machine revenues, it is

estimated that the machines are generating net win of over \$5 billion annually in California. If the tribes agree to this measure’s provisions, tribes would pay 25 percent of their slot machines’ net win to the GRTF—potentially over \$1 billion annually. These payments would be provided primarily to local governments to increase funding for child protective, police, and firefighting services.

Existing Payments to the State. As described above, tribes under the 1999 and 2004 compacts pay hundreds of millions of dollars annually to the state for both specific and general purposes. This measure does not specifically address whether these payments would continue or cease under the compact revision process. As a result, it appears that the continuation of the payments would be subject to negotiation between the tribes and the Governor. If the revised compacts do not include a continuation of these payments, the state would experience a reduction in payments—potentially totaling hundreds of millions of dollars annually.

Expansion of Gambling at Card Rooms and Racetracks

Net Win Payments. If the tribes do not agree to revise their compacts within the time required, specific card rooms and horse racing tracks would be authorized to operate up to 30,000 slot machines. These entities would pay 30 percent of the net win to the GRTF. The amount of these payments would depend on the number of slot machines in operation and their net win. These revenues could potentially be over \$1 billion annually. These revenues would be provided primarily to local governments to increase funding for child protective, police, and firefighting services.

Additional Payments to Local Governments. Also under this scenario, the cities in which these establishments are located would collectively receive payments in the high tens of millions of dollars (2 percent of the net win). Counties in which these establishments are located would collectively receive payments of half of this amount (1 percent of the net win). The use of these funds is not restricted.

Increased Taxable Economic Activity. If the tribes do not agree to the requirements of this measure, the expansion of gambling at card rooms and racetracks could result in an overall increase in the amount of taxable economic activity in California. This would occur if, over time, there was a large diversion of gambling activity and associated spending from other states to California. This would also be the case to the extent that the gambling authorized by this measure replaced existing tribal gambling activities (since much tribal activity is exempt from state taxation). This additional gambling-related activity would lead to an unknown increase in state and local tax revenues.

NON-TRIBAL COMMERCIAL GAMBLING EXPANSION. TRIBAL GAMING COMPACT AMENDMENTS. REVENUES, TAX EXEMPTIONS. INITIATIVE CONSTITUTIONAL AMENDMENT AND STATUTE.

ARGUMENT in Favor of Proposition 68

Can we share some straight talk?

Indian casinos are earning between \$5 Billion and \$8 Billion per year through a monopoly granted to them by the state of California. Under this monopoly, only Indian casinos can operate slot machines in California. But while the rest of us pay taxes on what we earn, the tribes pay almost nothing on their Billions of earnings—even though they use the same roads, schools, police, and fire and emergency medical services that we all pay for.

Last year, one Indian Casino alone had a slot machine profit of over \$300 million and paid no taxes.

It's time Indian Casinos paid their Fair Share.

In Connecticut and New York, Indian casinos pay the state up to a 25% Fair Share of their winnings in exchange for keeping their monopolies.

Proposition 68 says to the Indian Tribes: *You can keep your monopoly on slot machines, but only if you pay a 25% Fair Share like the Indian Casinos in Connecticut and New York.*

The 25% Fair Share would go to pay for local police and fire services and local programs for abused, neglected, and foster children. The Tribes would also be required to comply with the same political campaign contribution and environmental protection laws that all of us already must comply with.

Proposition 68 actually gives the Indian casinos a choice: If they pay their Fair Share, they keep their monopoly on slot machines. But if they don't, the state will also grant rights to a limited number of locations where gaming already exists.

The Indians would keep operating their slots, but they'd get a little competition. A limited number of card clubs and horseracing tracks *where gaming already exists* would be allowed to add slot machines to their existing games.

These card clubs and horseracing tracks are located in the cities of: Arcadia, Bell Gardens, Commerce, Compton, Cypress, Gardena, Hawaiian Gardens, Inglewood, and Oceanside in Southern California and in the cities of Albany, Colma, Pacheco, San Bruno, and San Mateo in Northern California. Unlike Indian casinos, the card clubs and racetracks would pay 33% of their revenues from the slot machines to local government.

With California's current budget crisis, we need the money.

According to the state's former Legislative Analyst, Bill Hamm, Proposition 68 will generate nearly \$2 Billion every year—monies that will be sent directly to all local governments around the state with all communities benefiting equally.

It isn't fair that the tribes can build casinos wherever they want and make Billions of dollars through a monopoly granted by the state without paying taxes or a Fair Share like the rest of us.

But Proposition 68 is fair. It doesn't take any rights away from the Indian Casinos. But it says that if Indian Casinos won't pay a Fair Share to support local public services like all of us, then they can't keep a state monopoly to themselves. You can't have it both ways.

It's time for the Indian Casinos to pay their Fair Share. We urge you to Vote YES on Proposition 68.

LEE BACA, Sheriff

County of Los Angeles

LOU BLANAS, Sheriff

County of Sacramento

ROY BURNS, President

Association of Los Angeles Deputy Sheriffs (ALADS)

REBUTTAL to Argument in Favor of Proposition 68

Proposition 68's promoters—card clubs and race-tracks—are using a bait-and-switch scheme. They want voters to think 68 is about “making the Indian tribes pay their fair share.” It's not.

It's really a deceptive attempt to change California's Constitution to create huge Las Vegas-size commercial casinos on non-Indian lands throughout California.

In fact, the very organizations Prop. 68 promoters claim to help, overwhelmingly reject this deceptive measure:

- Taxpayer groups OPPOSE Prop. 68 because IT WILL HURT—NOT HELP—THE STATE'S BUDGET—not one dollar will go to reduce the state's deficit, and 68 exempts its promoters from paying any future state and local tax increases.
- The California Police Chiefs Association, California State Firefighters Association, the California District Attorneys Association, and more than 30 County Sheriffs OPPOSE because Prop. 68 means MORE CRIME AND HIGHER LAW ENFORCEMENT COSTS. Prop. 68 would place HUGE NEW CASINOS on non-Indian lands in our cities and suburbs—

30,000 new slot machines NEAR MORE THAN 200 SCHOOLS.

- Education leaders and child advocates OPPOSE because Prop. 68 WILL END UP COSTING OUR SCHOOLS MILLIONS, hurting our kids.

- Public safety and local government leaders OPPOSE because Prop. 68 means MORE TRAFFIC CONGESTION on already overcrowded freeways and surface streets.

Please join Governor Schwarzenegger, law enforcement, firefighters, educators, parents, Indian tribes, business, labor, seniors, local government, environmentalists, and taxpayer groups, and VOTE NO ON 68.

STOP THE DECEPTIVE GAMBLING PROPOSITION. It's a bad deal for all Californians.

Please VOTE NO on PROPOSITION 68.

CARLA NIÑO, President

California State PTA

DAVID W. PAULSON, President

California District Attorneys Association

MIKE SPENCE, President

California Taxpayers Protection Committee

**NON-TRIBAL COMMERCIAL GAMBLING EXPANSION.
TRIBAL GAMING COMPACT AMENDMENTS. REVENUES, TAX EXEMPTIONS.
INITIATIVE CONSTITUTIONAL AMENDMENT AND STATUTE.**

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ARGUMENT Against Proposition 68

Message from Governor Arnold Schwarzenegger: "I am officially opposed to Proposition 68, and I strongly urge you to VOTE NO."

This measure is not what it seems. While proponents claim the measure will force Indian gaming tribes to pay their fair share to the state, Proposition 68 does nothing of the sort.

Proposition 68 is not a guaranteed source of revenues for California from Indian gaming tribes. Instead it authorizes 16 new Las Vegas-style casinos to be built in urban areas throughout California.

Governor Schwarzenegger has a vision for California that does NOT include making our state the next pot of gold for commercial casino gambling interests. Governor Schwarzenegger believes casino gaming should be limited to Indian lands.

THE NEW AGREEMENTS GOVERNOR SCHWARZENEGGER NEGOTIATED WITH MANY INDIAN GAMING TRIBES ARE A WINNER FOR TRIBES AND TAXPAYERS. These agreements keep California's promise to Indian tribes while making them pay their fair share. They promote cooperation between tribes and local governments to deal with the impact on law enforcement, traffic congestion, and road construction. Unfortunately, Proposition 68 could destroy these new agreements.

The 16 new casinos authorized by Proposition 68 are located in urban areas of California. They will be near 200 schools and major streets and freeways in Los Angeles, the San Francisco Bay Area and San Diego, further congesting our crowded roads.

NOT A SINGLE PENNY FROM THIS INITIATIVE CAN BE USED TO HELP BALANCE THE STATE BUDGET. Further, the promoters of Proposition 68 have written it so they are exempt from paying any future increases in state and local taxes.

GOVERNOR SCHWARZENEGGER JOINS MORE THAN 400 PUBLIC SAFETY, TAXPAYER, AND OTHER LEADERS IN SAYING:

VOTE NO ON 68

California Police Chiefs Association, California State Firefighters' Association, California Coalition of Law

Enforcement Associations, California District Attorneys Association, More than 50 California Indian Tribes, State Treasurer Phil Angelides, State Controller Steve Westly, Superintendent of Public Instruction Jack O'Connell, Crime Victims United of California, Peace Officers Research Association of California, Sierra Club California, California School Boards Association, The Seniors Coalition, Prevent Child Abuse California, California Taxpayer Protection Committee.

AND 34 COUNTY SHERIFFS:

• Sheriff James Allen • Sheriff Terry Bergstrand • Sheriff Virginia Black • Sheriff Ed Bonner • Sheriff Bob Brooks • Sheriff Bill Cogbill • Sheriff Anthony Craver • Sheriff John Crawford • Sheriff Jim Denney • Sheriff Bob Doyle • Sheriff Robert Doyle • Sheriff Bill Freitas • Sheriff Curtis Hill • Sheriff William Kolender • Sheriff Dan Lucas • Sheriff Ken Marvin, Ret. • Sheriff Scott Marshall • Sheriff Rodney Mitchell • Sheriff Bruce Mix • Sheriff Daniel Paranick • Sheriff Clay Parker • Sheriff Gary Penrod • Sheriff Charles Plummer • Sheriff Jim Pope • Sheriff Ed Prieto • Sheriff Michael Prizmich • Sheriff Perry Reniff • Sheriff Richard Rogers • Sheriff Warren Rupf • Sheriff Robert Shadley, Jr. • Sheriff Gary Simpson • Sheriff Gary Stanton • Sheriff Mark Tracy • Sheriff Dean Wilson.

PROP. 68 WOULD RESULT IN A HUGE EXPANSION OF CASINO GAMBLING ON NON-INDIAN LANDS.

It's a sweetheart deal for the gambling interests behind it, another broken promise to Indian tribes, and a bad deal for the rest of us.

VOTE NO ON 68. STOP THE DECEPTIVE GAMBLING PROPOSITION.

ARNOLD SCHWARZENEGGER, *Governor*

State of California

JEFF SEDIVEC, *President*

California State Firefighters' Association

WAYNE QUINT, JR., *President*

California Coalition of Law Enforcement Associations

REBUTTAL to Argument Against Proposition 68

"[Arnold Schwarzenegger] wants to renegotiate gaming compacts with casino-operating Indian tribes in the hopes of getting tribes to share revenue with the state. He noted tribes pay Connecticut 25 percent of their revenues, and said such an arrangement could pay for 'thousands of police officers, thousands of teachers.'"

—*Sacramento Bee*, Sept. 24, 2003

We agreed then and we agree now. It makes zero sense for the overwhelming majority of Indian casinos—a \$6–\$8 billion industry—to operate in California while paying virtually nothing to support the common good.

It's time for these immensely profitable Indian casinos to give something back to the state that has given them the most lucrative gaming monopoly in history. It's time for the people of California to get their fair share.

Proposition 68 isn't a blank check for the politicians in Sacramento. It requires a real and meaningful fair share payment that must be used to hire local police and

sheriffs, keep local fire stations open, and fund proven educational programs for abused and neglected children.

To make sure it's truly fair, we give the Indian casinos the final choice. They choose to make this 25% contribution—just as they do in New York and Connecticut. Otherwise, the state will allow limited and highly regulated competition with an even bigger financial return to California's communities.

Before you make your decision, please read the initiative. We think you'll agree: it's time the Indian casinos did the right thing. And pay their fair share.

LEE BACA, *Sheriff*

County of Los Angeles

LOU BLANAS, *Sheriff*

County of Sacramento

ROY BURNS, *President*

Association of Los Angeles Deputy Sheriffs (ALADS)

DNA SAMPLES. COLLECTION. DATABASE. FUNDING. INITIATIVE STATUTE.

OFFICIAL TITLE AND SUMMARY

Prepared by the Attorney General

DNA Samples. Collection. Database. Funding. Initiative Statute.

- Requires collection of DNA samples from all felons, and from adults and juveniles arrested for or charged with specified crimes, and submission to state DNA database; and, in five years, from adults arrested for or charged with any felony.
- Authorizes local law enforcement laboratories to perform analyses for state database and maintain local database.
- Specifies procedures for confidentiality and removing samples from databases.
- Imposes additional monetary penalty upon certain fines/forfeitures to fund program.
- Designates California Department of Justice to implement program, subject to available moneys: Authorizes \$7,000,000 loan from Legislature for implementation.

Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:

- Net state costs to collect and analyze DNA samples of potentially several million dollars initially, increasing to nearly \$20 million annually when the costs are fully realized in 2009–10.
- Local costs to collect DNA samples likely more than fully offset by revenues, with the additional revenues available for other DNA-related activities.

ANALYSIS BY THE LEGISLATIVE ANALYST

BACKGROUND

DNA Samples. Deoxyribonucleic Acid (DNA) is the genetic material contained in most living organisms, including human beings, that controls the production of substances needed for the organisms' development and life activities. The genetic information contained in DNA can be used, like a chemical fingerprint, to identify and differentiate between individuals. Using DNA evidence, law enforcement agencies and district attorneys have been able to effectively identify, arrest, and convict criminals, as well as exonerate persons wrongly accused or convicted of a crime.

Under current law, any person convicted of a serious felony offense is required to provide to law enforcement a blood sample from which DNA is obtained. The samples are collected by the California Department of Corrections (CDC), the Department of the Youth Authority (Youth Authority), and local jails, and then

submitted to the California Department of Justice (DOJ). The DOJ laboratory analyzes the samples and stores the DNA profiles of convicted felons in a statewide DNA databank. The DNA profiles are also submitted by DOJ to the Combined DNA Index System, a national repository maintained by the Federal Bureau of Investigation. The information in the DNA databank is compared to evidence collected from crime scenes for possible matches.

Court Fines. Persons convicted of certain crimes, including violations of traffic laws, may be ordered by the court to pay a fine. The total fine typically consists of a "base fine" which goes entirely to local government and a "penalty assessment" which is shared by the state and local governments. The latter is often referred to as a "criminal penalty." The state and local governments use the revenue to support a variety of programs and activities.

ANALYSIS BY THE LEGISLATIVE ANALYST (CONT.)

PROPOSAL

This measure makes the following changes to current law.

Expands DNA Collection. This measure expands the collection of DNA to include all convicted felons and some nonfelons, as well as individuals arrested for certain offenses. Figure 1 lists the individuals who would be required to provide DNA samples under this measure.

FIGURE 1

EXPANDED DNA COLLECTION CATEGORIES

Upon Enactment of Measure

- ✓ Adults and juveniles convicted of *any* felony offense.
- ✓ Adults and juveniles convicted of *any* sex offense or arson offense, or an attempt to commit any such offense (not just felonies).
- ✓ Adults *arrested* for or charged with felony sex offenses, murder, or voluntary manslaughter (or the attempt to commit such offenses).

Additionally, Starting in 2009

- ✓ Adults *arrested* for or charged with *any* felony offense.

The expanded list of qualifying offenses would be retroactive regardless of when the person was convicted (adults) or adjudicated (juveniles). As a result, DNA would be obtained from adults and juveniles already serving time in correctional facilities as well as those who are on parole or probation for these offenses.

Requires Timely Collection and Analysis of Samples. Immediately following either arrest or conviction, state or local law enforcement personnel would be required to collect a sample of inner cheek cells of the mouth (known as a “buccal swab” sample). This sample would be in addition to the right thumbprint and full palm print impression of each hand required by current law. Also, state and local law enforcement would continue to have the authority to collect blood samples upon request by DOJ.

The measure requires DOJ to contract with public or private laboratories to process samples that it has not analyzed within six months of receipt. The DOJ and CDC would be required to publish and place on their Web sites a quarterly progress report on the processing of DNA samples.

Provides Additional Funding. This measure raises existing criminal penalties to fund the proposed expansion of DNA collection. Specifically, an additional \$1 would be levied for every \$10 in penalties, with revenues shared by the state and local governments. The state would receive 70 percent of the revenue in the first two

years, 50 percent in the third year, and 25 percent annually thereafter. Local government would receive the difference to support DNA sample collection, as well as other related activities such as analysis, tracking, and processing of crime scene samples.

Creates a New Crime. This measure makes it a felony offense punishable by 2, 3, or 4 years in prison for a person required to submit a sample or print to tamper (or attempt to tamper) with a DNA sample, or thumb or palm print impression.

FISCAL EFFECTS

State Government. This measure would result in net state costs of potentially several million dollars initially, increasing to nearly \$20 million annually when costs are fully realized in 2009–10. This estimate primarily reflects the costs of analyzing additional DNA samples, partially offset by new revenues proposed by the measure. Specifically, CDC and the Youth Authority would require additional state resources to collect DNA from prisoners and wards currently in custody, as well as parolees, for crimes covered by the measure. In addition, DOJ would incur costs to hire and train staff, purchase equipment and supplies, acquire additional laboratory space, and contract with public or private labs for the processing of DNA samples.

The measure requires a General Fund loan of \$7 million to DOJ for the implementation of its provisions. This loan would be repaid with interest, no later than four years after it is made with revenue generated from the increased penalty assessments.

Local Government. This measure would likely result in no net costs to local governments on a statewide basis. Local law enforcement agencies would require staff and training to collect additional DNA samples. These costs—estimated to be several millions of dollars initially increasing to less than \$8 million annually beginning in 2008–09—would likely be more than fully offset by the local share of penalty revenues generated under the measure. Local penalty revenue above the amount required to support the costs of DNA collection would be used for other related activities, such as analysis of DNA evidence collected from crime scenes.

Other Effects on State and Local Government. This measure could result in other unknown fiscal effects on state and local governments. To the extent that expanded DNA collection results in increased investigations and prosecutions, and higher rates of incarceration, there would be unknown increased costs to state and local governments. It may also lead to unknown state and local savings by identifying individuals who, having been falsely accused and imprisoned, would be released from incarceration.

DNA SAMPLES. COLLECTION. DATABASE. FUNDING. INITIATIVE STATUTE.

ARGUMENT in Favor of Proposition 69

"In California, the remains of a boy missing for two decades are finally identified. Two cold murders are solved in Kansas. And in Texas, a serial sexual predator is captured. The cases are cracked thanks to technology police are calling the fingerprints of the 21st century." (Associated Press, March 2004)

DNA IDENTIFIES CRIMINALS AND PROTECTS THE INNOCENT

"Hunch leads to Rape Suspect's Arrest; Detective obtains DNA Sample from a convicted burglar that links him to attacks on 11 women." (LA Times, April 2004)

"DNA tests clear man of slayings; man jailed since late 2002 on charges of killing his ex-girlfriend and her sister." (Bakersfield Californian, May 2004)

PROPOSITION 69—CALIFORNIA'S ALL-FELON DNA DATABASE

The DNA Fingerprint, Unsolved Crime and Innocence Protection Act helps solve crime, free those wrongfully accused, and stop serial killers. Written by public safety experts, 69 is nonpartisan and endorsed by every major statewide law enforcement organization; crime scene investigators, victims' advocates, district attorneys, defense lawyers, sheriffs, police chiefs, Republicans and Democrats.

PROPOSITION 69 PROTECTS SOCIETY

69 requires convicted felons and those arrested for rape and murder to give DNA (collected by mouth swab, not blood) for a statewide database. Starting in 2009, felony arrestees will also be tested, but those not convicted can have their DNA removed from the database. Taking DNA during the booking process at the same time as fingerprints is more efficient and helps police conduct accurate investigations. No wasting time chasing false leads; DNA can prove innocence or guilt. Protecting peoples' privacy, 69 prohibits any use of DNA besides identification.

34 STATES HAVE ALL-FELON DNA DATABASES

Every unsolved homicide enables criminals to kill again.

Currently, California's DNA database is too small, unable to deal with thousands of unsolved rapes, murders, and child abductions. Initiative sponsor Bruce Harrington's brother and sister-in-law were murdered by one of America's most brutal serial criminals; in Northern California known as the East Area Rapist, in Southern California the Original Nightstalker. Detectives have the killer's DNA, but the database lacks a matching profile. They believe the Harrington murders could have been prevented if DNA technology and a complete database were available back then.

Virginia has a comprehensive DNA database including arrestees. Virginia's population is less than Los Angeles County, but solves more crimes with DNA than California. In 2002, California solved 148 cases; Virginia 445.

DEFENSE LAWYERS THROUGHOUT AMERICA USE DNA TO PROTECT INNOCENT PEOPLE

DNA evidence is one of the most effective ways to prove someone was not involved with a crime. 69's complete DNA database helps ensure people are not wrongfully accused.

RESPECTING TAXPAYERS

Proposition 69 is funded through a small increase in criminal penalties, not a tax increase or deficit spending. Money is distributed to state and local public safety agencies to maintain the database and solve cases.

PROPOSITION 69—PUBLIC SAFETY AND ACCOUNTABILITY

69 can prevent thousands of crimes by taking dangerous criminals off the streets. Using precise DNA technology, innocent people can be quickly exonerated. For a safer California, VOTE YES ON 69.

ARNOLD SCHWARZENEGGER, *Governor of California*

BILL LOCKYER, *California State Attorney General*

STEVE COOLEY, *Los Angeles County District Attorney*

REBUTTAL to Argument in Favor of Proposition 69

As people who have worked on behalf of victims of violent crime, we support the best tools for solving crimes. BUT PROPOSITION 69 WILL NOT MAKE US SAFER. 69 risks taking money that could be spent solving actual crimes. 69 traps thousands of innocent Californians in a criminal database.

69 IS NOT AN "ALL FELON DATABASE." California already has a DNA database of violent criminals. 69 collects DNA samples from anyone arrested, even if your identity is mistaken, if you are mistakenly arrested or among thousands that are arrested and never charged with a crime. Taking thousands of innocent people's DNA and storing it permanently alongside felons is wrong. Mixing the innocent and guilty in one CRIMINAL DATABASE risks your privacy rights.

69 DOES NOTHING TO PROTECT THE INNOCENT. In Nevada, a 26-year-old man was jailed for over a year and faced life in prison before it was discovered that the crime

lab had switched his DNA with that of the true rapist. Last year, it was discovered that a DNA test was misinterpreted in Texas, causing an innocent man to spend 4 years in jail. DNA processing errors may become all too common because 69 requires immediate testing of more than 500,000 Californians.

69 TRAPS YOUR DNA ALONGSIDE CONVICTED CRIMINALS. Once your DNA is in the database, government has no obligation to remove it. The League of Women Voters, responsible law officials, and California's working men and women ALL AGREE: VOTE NO ON 69!

For more information: www.protectmyDNA.com.

RONALD E. HAMPTON, *Executive Director*

National Black Police Association

BOB BARR, *Chair*

Privacy and Freedom Center, American Conservative Union

DNA SAMPLES. COLLECTION. DATABASE. FUNDING. INITIATIVE STATUTE.

PROP

69

ARGUMENT Against Proposition 69

Everyone recognizes the importance of expanding tools to find criminals, but Proposition 69 goes too far. *Proposition 69 risks your privacy.* Your DNA reveals the most intimate and sensitive information about you and your family. *Proposition 69 may put your DNA in a common government database alongside convicted killers and rapists.*

How could this happen? Because Proposition 69 would force many Californians *who have never committed a crime* to be included in a *criminal database*.

INNOCENT PEOPLE ARE TREATED JUST LIKE CRIMINALS.

Every year in California, there are 50,000 arrests that never result in people being charged with a crime. Arrests might range from traffic stops to mistaken identity. *Under Proposition 69, these people must provide a DNA sample. Everyone that is arrested for any felony whatsoever—even trespassing, shoplifting, or writing a bad check—is subject to DNA testing, sampling, and filing in criminal databases.*

California already requires the collection, testing, and storage of DNA from serious and violent felons, including kidnappers, rapists, murderers, and child molesters. Proposition 69 is a dangerous departure from current law because it would put innocent citizens in the same database as convicted criminals.

Initiative Risks Your Privacy.

Proposition 69 is contrary to California's tradition of legal protection of medical, financial, and personal privacy rights. Why? DNA is **FAR MORE THAN A FINGERPRINT.** Your DNA tells anyone who has this information whether you and your family are predisposed to contract diseases such as heart disease, obesity, Alzheimer's, multiple sclerosis, or cancer.

The "safeguards" in the initiative are inadequate to protect your privacy. Once you are in the database, government has no obligation to remove your profile. Restrictions and

enforcement necessary to protect you are not clearly spelled out in the initiative. Moreover, government databases grow and merge. There's no guarantee that these DNA databases will not be expanded in the future. The initiative allows DNA testing and sorting to be conducted by private laboratories. Do you feel confident that private, for-profit laboratories will protect your privacy rights?

PROPOSITION 69 WILL COST MILLIONS.

Proponents of Proposition 69 have hidden the real costs of this initiative. Proposition 69 has tens of millions of dollars of start-up costs and ongoing costs that may not be adequately funded by the initiative. To make up any shortfall, Proposition 69 could **TAKE MONEY FROM OTHER PUBLIC SAFETY, EDUCATION, and government programs.** Proposition 69 will cost millions of dollars for a DNA data bank that puts sensitive genetic information about innocent people alongside criminals.

This initiative allows for collection of Californians' most personal and revealing information, but it lacks government accountability if your DNA is mishandled or misused. Once your DNA is seized by the government, it will be filed alongside criminals. Proposition 69 violates the privacy rights of innocent Californians without necessary safeguards, privacy protection, and accountability to make sure government does its job right.

Vote NO on Proposition 69. This initiative goes too far and costs all of us too much.

BETH GIVENS, *Executive Director*
Privacy Rights Clearinghouse

BOB BARR, *Chair*
Privacy & Freedom Center, American Conservative Union

PAUL BILLINGS, *Chair*
Council for Responsible Genetics

REBUTTAL to Argument Against Proposition 69

Don't be fooled by deceptive attacks. Opponents cannot dispute that an all-felon DNA database makes California safer.

FACT: 34 States Already Have All-Felon DNA Databases:

WASHINGTON, OREGON, MONTANA, WYOMING, UTAH, COLORADO, ARIZONA, NEW MEXICO, SOUTH DAKOTA, KANSAS, TEXAS, MINNESOTA, IOWA, ARKANSAS, LOUISIANA, WISCONSIN, ILLINOIS, TENNESSEE, MISSISSIPPI, ALABAMA, GEORGIA, FLORIDA, NORTH CAROLINA, VIRGINIA, WEST VIRGINIA, MARYLAND, DELAWARE, NEW JERSEY, CONNECTICUT, MASSACHUSETTS, ALASKA, SOUTH CAROLINA, MISSOURI, AND MICHIGAN.

FACT: DNA Is Required From Convicted Felons Only

Only convicted felons are required to have DNA samples included in the database. DNA samples can be removed from the database if felony charges are exonerated.

FACT: 69 Respects Privacy

Analyzed DNA database samples *have no genetic trait information!* Medical/privacy rights are fully protected.

"Since criminal DNA databases were first created 14 years ago, privacy advocates have not found any instance where the databases or DNA samples were misused." *USA Today Editorial*

FACT: 69 Delivers Justice

"The chances of solving a rape or murder increase by 85% with an all-felon DNA database." *California State Sheriffs' Association President Robert Doyle*

"69 protects people from being falsely accused and destroying lives." *Defendants Rights Counsel Christopher Plourd*

FACT: 69 Saves Taxpayers

California taxpayer advocates strongly support Proposition 69 because it doesn't raise taxes and makes investigations efficient, preventing wasted time on false leads. Taxfighters agree 69 saves lives and money.

Sheriffs, police, victims, Governor Arnold Schwarzenegger, Democratic Attorney General Bill Lockyer, and Assemblyman Lou Correa, and Republican Assemblyman Todd Spitzer and State Senator Jim Brulte endorse nonpartisan 69. Learn more: www.DNAYES.org

VOTE YES!

DAVID W. PAULSON, *President*
California District Attorneys Association

SCOTT CURRIE, *President*
California Sexual Assault Investigators Association

JERRY ADAMS, *President*
California Peace Officer's Association

TRIBAL GAMING COMPACTS. EXCLUSIVE GAMING RIGHTS. CONTRIBUTIONS TO STATE. INITIATIVE CONSTITUTIONAL AMENDMENT AND STATUTE.

OFFICIAL TITLE AND SUMMARY

Prepared by the Attorney General

Tribal Gaming Compacts. Exclusive Gaming Rights. Contributions to State. Initiative Constitutional Amendment and Statute.

- Upon request by federally-recognized Indian tribe, Governor must execute renewable 99-year gaming compact.
- Grants exclusive tribal gaming rights; no limits on number of machines, facilities, types of games on Indian land.
- Tribes contribute percentage of net gaming income, based on prevailing state corporate tax rate, to state fund.
- Contributions cease if non-tribal casino-type gaming is permitted.
- Contributions are in lieu of any other fees, taxes, levies.
- Requires off-reservation impact assessments, public notice/comment opportunities before significant expansion or construction of gaming facilities.

Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:

- Unknown effect on payments to the state from Indian tribes. The potential increase or decrease in these payments could be in the tens of millions to over a hundred million dollars annually.
- Likely reduction in tribal payments to local governments, potentially totaling in the millions of dollars annually.

ANALYSIS BY THE LEGISLATIVE ANALYST

BACKGROUND

Indian Tribes in California. Under federal law, Indian tribes in California are considered sovereign nations. As a result, tribes are not required to pay most federal, state, or local taxes (such as income, property, or sales tax). In addition, tribes are largely exempt from state laws, including California environmental and workplace laws.

Gambling on Tribal Lands. Federal law and the State Constitution allow tribes to conduct gambling on Indian land if they enter into agreements with the state. These agreements, called compacts, lay out the conditions under which the gambling may occur. Under current compacts, tribes may operate slot machines and card games, such as twenty-one. Other Nevada-style casino games such as craps and roulette are prohibited. Currently, 64 tribes have compacts and operate 53 casinos with a total of more than 54,000 slot machines.

1999 Compacts. Most tribes signed their current compacts in 1999. Under these compacts, a tribe may operate up to two facilities and up to a total of 2,000 slot machines. In exchange, tribes make some payments to the state which can only be used for specified purposes (such as for making payments to tribes that either do not operate slot machines or operate fewer than 350 machines). These payments total over \$100 million annually. Under these compacts, tribes are required to prepare an environmental study analyzing the impact on the surrounding area of any new or expanded gambling facility. These compacts will expire in 2020.

2004 Compacts. In the summer of 2004, five tribes signed amendments to their 1999 compacts, and these revised

agreements were approved by the state. Under these new agreements, these tribes may operate as many slot machines as they desire. In exchange, these tribes make a specified payment annually to the state, with additional payments for each slot machine added to their facilities. Payments to the state from these revised compacts are expected to total in the low hundreds of millions of dollars annually. Unlike the payments required by the 1999 compacts, the state can use these payments for any purpose. The newer compacts also require the tribes to (1) prepare more detailed environmental studies, (2) negotiate with local governments regarding payments addressing the impacts of new gambling facilities on the local communities, and (3) follow other provisions related to patron disputes, building codes, and labor relations. These new agreements expire in 2030, ten years later than the 1999 compacts.

PROPOSAL

This measure amends the State Constitution and state statutes to require the Governor to amend an existing compact or enter into a new compact with any tribe within 30 days of a tribe's request. Any such compact would have to include certain provisions, as discussed below.

Gambling Revenues. Under the provisions of the measure, a tribe entering into an amended or new compact would pay the state a percentage of its net income from gambling activities. The percentage of net income paid would be equivalent to the corporate tax rate paid by a private business (currently 8.84 percent). The measure specifies that the state could spend these revenues for any purpose. In the event that the tribes lose their exclusive right

TRIBAL GAMING COMPACTS.
EXCLUSIVE GAMING RIGHTS. CONTRIBUTIONS TO STATE.
INITIATIVE CONSTITUTIONAL AMENDMENT AND STATUTE.

PROP

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ANALYSIS BY THE LEGISLATIVE ANALYST (CONT.)

to conduct certain types of gambling in California, the tribes would no longer be required to make these payments to the state. These payments generally would be in place of any other state or local government fees, taxes, or levies on gambling activities. (Tribes, however, would still be required to make the specific payments required under the 1999 compacts.)

Expansion of Gambling. The measure expands the types of games authorized by the compacts to include roulette, craps, and any other form of casino gambling. The measure eliminates the 1999 compact limit on the number of slot machines and facilities a tribe can operate on Indian lands.

Compacts Extended. The measure specifies that any amended or new compact would remain in effect for 99 years. These compacts could be amended or renewed upon agreement of the Governor and a tribe and approval by the federal government.

Environmental Studies. As required under the 1999 compacts, any tribe entering a compact under this measure would be required to prepare an environmental study analyzing the impact on the surrounding area of any new or expanded tribal gambling facility.

Related Provisions in Proposition 68. Proposition 68 on this ballot also contains provisions affecting the number of slot machines authorized in the state. That measure would allow specified card rooms and racetracks to operate slot machines if tribes do not agree to make specified payments to the state and abide by certain state laws. The State Constitution provides that if the provisions of two approved propositions are in conflict, only the provisions of the measure with the higher number of yes votes at the statewide election take effect.

FISCAL EFFECT

Background. Over time, it is likely that additional tribes will seek amendments to their compacts similar to those agreed to by five tribes earlier this year. These amendments would allow tribes to exceed their current limit of 2,000 slot machines. As a result, over the next few years (absent any other changes), the state would likely experience:

- Increased slot machines operated on Indian lands in the thousands.
- Increased state revenues in the hundreds of millions of dollars annually.
- Increased payments to local governments to address the impacts of gambling on communities in the millions of dollars annually.

Changes Under the Measure. In comparison to the existing compacts, the compacts authorized under this measure would generally offer tribes the following:

- **More Games.** Like the 2004 compacts, this measure's compacts would not restrict the number of allowable slot machines. In addition, this measure would allow tribes to offer additional casino games, like craps and roulette.

- **Likely Lower Payments.** Rather than the per machine payments to the state required under the 2004 compacts, this measure's payments would be based on the income generated by the machines (and other games). The amount of payments received by the state, therefore, would vary among tribes, depending on their gambling operations. Consequently, it is difficult to determine the exact amount that would be paid to the state. We have reviewed the payments required by the 2004 compacts and those required under this measure. For any given level of tribal gambling activity, the payments to the state would tend to be lower under this measure.

- **Fewer Regulations.** Tribes under this measure would not be subject to several provisions in the 2004 compacts, such as the requirements for more extensive environmental reviews and negotiations with local governments.

- **Longer Length.** Under the measure, tribes' compacts would last 99 years. This would provide tribes with greater long-term stability for their gambling operations.

Given these provisions compared to existing compacts, we would expect many tribes to request amendments under this measure. In this case, tribes would be able to add additional slot machines and other games to their operations. Consequently, tribal gambling across the state under this measure would likely be higher than otherwise would have been the case.

Estimated Gambling Revenues. Although the measure could lead to an increase in overall gambling in the state, it is unclear what impact that would have on payments to the state. This is because, as noted above, the payments for any given level of gambling activity would tend to be lower than under current law. If the increase in gambling income were to more than offset the lower payments, the state would experience an increase in annual payments. On the other hand, if the increase in gambling income did not offset the lower payments, the state would experience a reduction in annual payments.

The change in revenues from current law would depend on a variety of factors including (1) the extent to which tribes agreed to the measure's provisions, (2) the extent to which new slot machines and games were added at gambling establishments, (3) the income generated from gambling, and (4) how the state enforced the collection of required payments based on the net income of each tribe. The change in payments—whether an increase or decrease—could be in the tens of millions to over a hundred million dollars annually.

Payments to Local Governments. To the extent that tribes opted to accept this measure's provisions rather than those of the 2004 compacts, they would not be subject to the requirement for negotiations with local governments concerning community impacts. As a result, local governments would likely receive less in payments from tribes. The amount of any such reduction is unknown but would likely be in the millions of dollars annually.

TRIBAL GAMING COMPACTS. EXCLUSIVE GAMING RIGHTS. CONTRIBUTIONS TO STATE. INITIATIVE CONSTITUTIONAL AMENDMENT AND STATUTE.

ARGUMENT in Favor of Proposition 70

California Indian Tribes have come forward with this initiative and volunteered to pay millions of dollars from their gaming revenues to help California taxpayers. We want to pay our fair share, which means we would pay the same as any other business pays in state taxes.

We would not pay any more or any less—just the same as everybody else. We think that is fair, even though the law exempts Indian tribes from paying taxes on income from gaming activities on Indian lands. We want to pay our fair share to help California out of the financial problems that our political leaders have created.

When California Indians were rounded up and forced onto land that nobody wanted, they were given the sovereignty to run their own affairs without interference. Now, after decades of hardship, many tribes have been able to achieve some success. Gaming revenues have finally allowed many tribes to provide education, housing, and health care for their members.

As history has sadly shown, however, there are some who now want to take the good fortune away from the successful Indians.

We are very thankful that the people of California voted time and again to respect Indian sovereignty and support Indians' rights to conduct gaming operations on tribal lands.

Now we are once again forced to go directly to the voters and bypass the politicians in Sacramento. After mispending the State surplus, they are trying to get California Indian tribes to make up the difference. They want to come onto our reservations and tell us how to run our businesses. They won't negotiate with Indian tribes

one-by-one, but insist that we all accept a deal that was only negotiated by a few.

Our initiative is very simple and straightforward: We will pay millions of dollars to the State; in return, we want to be able to run our tribal businesses like any other businesses.

This Proposition will continue the ban on new tribal casinos that are NOT on Indian Reservations, unlike Proposition 68, which would result in casinos throughout California.

This Proposition will lead to new agreements allowing each tribe to decide for itself how many casinos and what types or how many games it wishes to operate on its tribal lands. Tribes would get to make these decisions, like other businesses, without government interference. Market forces would determine the best decisions.

Under the new agreements, tribes would prepare environmental impact reports and develop a good-faith plan to mitigate any significant adverse environmental impacts after consultation with the public and local governments.

And just like any other business that has the right to decide what kind of business to operate, Indian tribes would pay on their gaming revenues the equivalent of what other businesses pay as an income tax. This is basically a win-win for everyone.

That's why California's Indian tribes need your help once again to stand up for what's fair. Together, we will be living up to the promises made to California's Indians.

RICHARD M. MILANOVICH, *Tribal Chairman*
Agua Caliente Band of Cahuilla Indians

REBUTTAL to Argument in Favor of Proposition 70

More than 60 California Indian tribes operate casinos, but just one tribe is sponsoring Proposition 70. It says it wants to be treated like other businesses, but what other business can't be audited by the state to determine their taxable income? What other business is granted a 99-year casino gaming agreement?

Proposition 70 is full of loopholes:

- No provision to ensure tribes pay their fair share
- Keeps the state in the dark about the amount of money Indian casinos earn

Governor Schwarzenegger's negotiated agreements with several gaming tribes will add \$1 billion to the state's bottom line this year alone and hundreds of millions more every year. Proposition 70 effectively destroys these agreements.

Don't be misled by this self-serving measure that's been drafted by one lone Indian gaming tribe. Governor Schwarzenegger, leaders in law enforcement, labor, the environmental community, and seniors all say VOTE NO on Proposition 70.

Additional reasons Californians should VOTE NO on Proposition 70:

- Gives tribes a 99-year casino gaming agreement
- Wouldn't require tribes to pay taxes other companies pay, such as property and income taxes
- Allows tribes to own an unlimited number of casinos with no size limits
- Paves the way for UNLIMITED casino gaming in major urban and suburban areas across California

Governor Schwarzenegger's agreements are a winner for tribes and taxpayers. These agreements keep California's promise to Indian tribes while ensuring they pay their fair share.

VOTE NO ON PROPOSITIONS 68 & 70.

DAVID W. PAULSON, *President*
California District Attorneys Association

JACK GRIBBON
California UNITE HERE!

JOHN T. KEHOE, *President*
California Senior Action Network

**EXCLUSIVE GAMING RIGHTS. CONTRIBUTIONS TO STATE.
INITIATIVE CONSTITUTIONAL AMENDMENT AND STATUTE.**

TRIBAL GAMING COMPACTS.

PROP

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ARGUMENT Against Proposition 70

Message from Governor Arnold Schwarzenegger: "I am officially opposed to Propositions 68 & 70, and I strongly urge you to VOTE NO."

This measure is not what it seems, which is why Governor Schwarzenegger is asking you to **VOTE NO**. The wealthy Indian gaming tribes behind Proposition 70 want you to believe this measure will force tribes to "pay their fair share." *The truth is that it gives these Indian gaming tribes a 99-year monopoly on gambling without ever having to pay their fair share in revenues to the state.* If Prop. 70 passes, it will be almost impossible to change.

For years Indian gaming tribes have paid almost nothing to state or local governments. But now, **GOVERNOR SCHWARZENEGGER HAS NEGOTIATED NEW AGREEMENTS WITH MANY TRIBES THAT ARE A WINNER FOR TRIBES AND TAXPAYERS.**

UNFORTUNATELY, PROPOSITION 70 EFFECTIVELY DESTROYS THESE NEW AGREEMENTS. Prop. 70 claims that tribes will pay a percentage of their net profits to the state, but it does not provide the state any auditing vehicle to determine those profits. Without a state audit, taxpayers will never know if they are getting a fair deal or a raw deal.

Unlike the new agreements Governor Schwarzenegger has negotiated, this measure will allow tribes to massively expand gambling by operating an unlimited number of casinos. **PROPOSITION 70 ENCOURAGES TRIBES TO PUT CASINOS IN OUR STATE'S MAJOR CITIES, INCREASING CRIME AND TRAFFIC CONGESTION PROBLEMS.**

Governor Schwarzenegger's agreements promote cooperation between tribes and local governments to deal with the impact on law enforcement, traffic congestion, and road construction while providing needed environmental protections. Proposition 70 will undo these agreements. **PROPOSITION 70 PROVIDES NO MONEY FOR LAW ENFORCEMENT, ENVIRONMENTAL IMPACTS, OR TRANSPORTATION.**

WORKING CALIFORNIANS OPPOSE PROPOSITION 70:

"Responsible Indian tribes have already negotiated and signed agreements with Governor Schwarzenegger that are good for employees and casino customers plus provide a significant boost to the California economy. The compacts already in place will create more than 25,000 new jobs. Most important, the compacts provide stability and predictability for governments, tribes, and local communities."

Bob Balgenorth, President

State Building and Construction Trades Council of California

LAW ENFORCEMENT GROUPS ALSO OPPOSE PROPOSITION 70:

"Casinos can be a magnet for crime. Unfortunately, Proposition 70 provides no funds to local law enforcement agencies to help fight crime in the communities surrounding Indian casinos. Please vote NO on this measure."

Chief Jerry Adams, President

California Peace Officers' Association

PROPOSITION 70 IS A BAD DEAL FOR CALIFORNIA.

Responsible Indian tribes have already negotiated and signed agreements with Governor Schwarzenegger that benefit both tribes and taxpayers. The tribes pay their fair share while agreeing to follow important environmental and public safety laws. Proposition 70 effectively eliminates these protections and gives tribes a 99-year casino gaming agreement that California will never be able to change without another constitutional amendment.

VOTE NO ON PROPOSITION 70.

ARNOLD SCHWARZENEGGER, *Governor*

State of California

LARRY MCCARTHY, *President*

California Taxpayers' Association

SHERIFF BILL KOLENDER, *1st Vice President*

California State Sheriffs' Association

REBUTTAL to Argument Against Proposition 70

The opponents of Proposition 70 have their facts wrong.

Proposition 70's agreements will require Indian tribes that engage in gaming operations to pay the State the **SAME AMOUNT** that every corporation pays in state income taxes. No more, no less—**WHAT COULD BE FAIRER?**

Under Proposition 70, **THE STATE** is not prohibited from agreeing to audits of the Tribes' records to ensure their fair share is paid.

And Proposition 70 will mean that tribal gaming can occur **ONLY** on Indian land and **NOWHERE ELSE**. It will **NOT** lead to increased gambling **OFF** Indian lands.

California Indians sponsored this "Indian Fair Share Initiative" because we knew we had to turn directly to the voters, who have more sense than the politicians.

We've seen the political games that continue to be played by special interest groups, who want Indians to lose their right to conduct gaming so they can take it over.

If Proposition 70 doesn't pass, California will lose billions of dollars in revenue from gaming tribes. Unless the existing compacts are changed, tribes would not be obligated to pay any more for the next 17 years.

Governor Schwarzenegger has proposed his own compacts, but they were so flawed that only about 4% of the state's tribes signed them. No other tribes will sign those agreements because they unfairly take away Indians' rights.

Only this initiative will keep Indian gaming on reservations and provide billions of dollars to California in a way that is **FAIR TO BOTH INDIANS AND TAXPAYERS.**

VOTE YES on PROPOSITION 70.

RICHARD M. MILANOVICH, *Tribal Chairman*

Agua Caliente Band of Cahuilla Indians

PROPOSITION

71

**STEM CELL RESEARCH. FUNDING. BONDS.
INITIATIVE CONSTITUTIONAL
AMENDMENT AND STATUTE.**

OFFICIAL TITLE AND SUMMARY

Prepared by the Attorney General

**Stem Cell Research. Funding. Bonds.
Initiative Constitutional Amendment and Statute.**

- Establishes “California Institute for Regenerative Medicine” to regulate stem cell research and provide funding, through grants and loans, for such research and research facilities.
- Establishes constitutional right to conduct stem cell research; prohibits Institute’s funding of human reproductive cloning research.
- Establishes oversight committee to govern Institute.
- Provides General Fund loan up to \$3 million for Institute’s initial administration/implementation costs.
- Authorizes issuance of general obligation bonds to finance Institute activities up to \$3 billion subject to annual limit of \$350 million.
- Appropriates monies from General Fund to pay for bonds.

Summary of Legislative Analyst’s Estimate of Net State and Local Government

Fiscal Impact:

- State cost of about \$6 billion over 30 years to pay off both the principal (\$3 billion) and interest (\$3 billion) on the bonds. Payments averaging about \$200 million per year.
- Unknown potential state and local revenue gains and cost savings to the extent that the research projects funded by this measure result in additional economic activity and reduced public health care costs.

ANALYSIS BY THE LEGISLATIVE ANALYST

BACKGROUND

Stem Cell Research. A stem cell is a type of cell found in both animals and humans that has the potential to develop into many different types of specialized cells in the body. Scientists have conducted research on stem cells to better understand how animals and humans develop and how healthy cells replace damaged cells. This research has led to the development of treatments of a variety of cancers and blood disorders. Some scientists believe that stem cell research may, at some point in the future, result in new treatments of diseases. (See the nearby box for additional information on stem cell research.)

California law currently permits research involving stem cells. The University of California (UC) is currently engaged in this type of research. The exact amount of UC research funding devoted to stem cell research could not be determined, but the

available information suggests that the total funds spent for these purposes range from the millions of dollars to the tens of millions of dollars annually.

The federal government provides funding for research that uses different types of stem cells, including adult and embryonic stem cells. In the 2002 federal fiscal year, the federal government dedicated more than \$180 million in funding for stem cell research conducted nationwide. The federal government currently places certain restrictions on funding for research that uses embryonic stem cells.

State law currently prohibits human reproductive cloning, a process to create a human that is an exact genetic copy of another.

General Obligation Bonds. The state generally uses general obligation bond funds to finance major state capital outlay projects. General obligation bonds are backed by the state, meaning that

STEM CELL RESEARCH. FUNDING. BONDS. INITIATIVE CONSTITUTIONAL AMENDMENT AND STATUTE.

PROP

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ANALYSIS BY THE LEGISLATIVE ANALYST (CONT.)

STEM CELLS AND STEM CELL RESEARCH

What Are Stem Cells? As described by the National Institutes of Health, stem cells differ from other cells in three main ways. First, they are “unspecialized,” meaning they do not perform specialized functions, such as the way heart muscle cells help blood flow or red blood cells carry oxygen through the bloodstream. Second, under certain conditions, they can be transformed into cells with specialized functions. Third, these cells are capable of reproducing themselves over an extended period of time. As a result, these cells can serve as a repair system for the body by replenishing other cells for as long as the person or animal is alive.

What Are Embryonic and Adult Stem Cells? Human embryonic stem cells appear in an embryo, a fertilized human egg, five to seven days after conception. They are ordinarily extracted from extra embryos that have been donated for research by parents who tried to conceive a child through certain procedures performed at fertility clinics. Embryonic stem cells have the potential to develop into all cell types of the body.

Adult stem cells are obtained for scientific research from many organs and tissues including the brain, bone marrow, blood vessels, skin, and the liver. These stem cells are generally limited to becoming the cell type of its tissue of origin.

Why Do Researchers Want to Study Stem Cells? Scientists indicate that there are many ways in which human stem cells can be used in basic and clinical research. Stem cell research may provide information on the complex events that occur during human development that lead to serious medical conditions like cancer and birth defects. Human stem cells could be used to test the safety of drugs. Also, researchers indicate that stem cells offer the possibility of a renewable source of replacement cells and tissues to treat diseases such as Parkinson’s, Alzheimer’s, heart disease, or diabetes, or to treat spinal cord injuries.

the state guarantees payment of the principal and interest costs on these bonds. General Fund revenues are used to pay these costs. These revenues come primarily from the state personal and corporate income taxes and the sales tax. For more information regarding general obligation bonds, please refer to the section of the ballot pamphlet entitled “An Overview of State Bond Debt.”

PROPOSAL

The measure authorizes the state to sell \$3 billion in general obligation bonds to provide funding for stem cell research and research facilities in California. A new state medical research institute would be established to use the bond funds to award grants and loans for stem cell research and research facilities, and to manage stem cell research activities funded by this measure within California. The major provisions of the measure are discussed below.

New State Institute Created. This measure would establish the California Institute for Regenerative Medicine to award grants and loans for stem cell research and research facilities. The institute would also be responsible for establishing regulatory standards for stem cell research funded by the grants and loans and managing such research and the development of related facilities. The institute could have a staff of up to 50 employees who, under the measure, would be exempt from state civil service requirements.

The institute would be governed by a 29-member Independent Citizen’s Oversight Committee (ICOC), comprised of representatives of specified UC campuses, another public or private California university, nonprofit academic and medical research institutions, companies with expertise in developing medical therapies, and disease research advocacy groups. The Governor, Lieutenant Governor, Treasurer, Controller, Speaker of the Assembly, President pro Tempore of the Senate, and certain UC campus Chancellors would make the appointments to the ICOC.

General Obligation Bond Funding. The measure would authorize the state to sell \$3 billion in general obligation bonds, and limit bond sales to no more than \$350 million per year. The measure states its intent, but does not require in statute, that the bonds be sold during a ten-year period. For at least the first five years after the measure took effect, the repayment of the principal would be postponed and the interest on the debt would be repaid using bond proceeds rather than the

STEM CELL RESEARCH. FUNDING. BONDS. INITIATIVE CONSTITUTIONAL AMENDMENT AND STATUTE.

ANALYSIS BY THE LEGISLATIVE ANALYST (CONT.)

General Fund. Subsequent interest and principal payments after that five-year period would come from the General Fund. The proceeds from the bond sales would be placed in a new California Stem Cell Research and Cures Fund and used primarily to fund the various activities of the institute. The funds authorized for the institute would be continuously appropriated without regard to fiscal year.

Once the measure took effect, the institute would receive a \$3 million start-up loan from the state General Fund for initial administrative and implementation costs. The institute would later repay the General Fund loan using the proceeds from the sale of bonds authorized under this measure.

How Funding Would Be Spent. Under the measure, any funding needed for various bond-related costs (for example, the cost of administering the bond sales) would be deducted before bond proceeds were spent for other purposes.

The institute would be able to use up to 3 percent of the remaining bond proceeds for general administrative costs and up to an additional 3 percent for administrative costs associated with grant-making activities. The remaining funds would be used for the grants and loans for research and research facilities.

Priority for research grant funding would be given to stem cell research that met the institute's criteria and was unlikely to receive federal funding. In some cases, funding could also be provided for other types of research that were determined to

cure or provide new types of treatment of diseases and injuries. The institute would not be allowed to fund research on human reproductive cloning.

Up to 10 percent of the funds available for grants and loans could be used to develop scientific and medical research facilities for nonprofit entities within the first five years of the implementation of the measure.

Benefits From Royalties and Patents. The ICOC would establish standards requiring that all grants and loans be subject to agreements allowing the state to financially benefit from patents, royalties, and licenses resulting from the research activities funded under the measure.

Right to Conduct Stem Cell Research. Consistent with current statute, this measure would make conducting stem cell research a state constitutional right.

FISCAL EFFECTS

Borrowing Costs. As noted earlier, this measure provides that no General Fund payments for the bonds would occur in the first five years after it took effect. The costs to the state after that would depend on the interest rates obtained when the bonds were sold and the length of time it took to repay the debt. If the \$3 billion in bonds authorized by this measure were repaid over a 30-year period at an average interest rate of 5.25 percent, the cost to the General Fund would be approximately \$6 billion to pay off both the principal (\$3 billion) and interest (\$3 billion). The average payment for principal and interest would be approximately \$200 million per year.

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ANALYSIS BY THE LEGISLATIVE ANALYST (CONT.)

Institute Operating Costs. As noted earlier, this measure would limit the amount of bond funding available that the institute could use for its administrative activities. The measure does not specify what would happen if the institute's administrative costs were greater than the amount of available bond funding. The amount of additional General Fund support that would be required, if any, is unknown, but would be unlikely to exceed a few million dollars annually.

Loan Repayment Revenues. If the institute awards loans in addition to grants for stem cell research and facilities, the institute would eventually receive revenues from the repayment of those loans. The measure specifies that any such loan repayment revenues would be used either to provide additional grants and loans or to pay ongoing costs for the administration of the bonds.

State Revenues From Research. As noted earlier, this measure would allow the state to receive payments from patents, royalties, and licenses resulting from the research funded by the institute. The amount of revenues the state would receive from those types of

arrangements is unknown but could be significant. The amount of revenue from this source would depend on the nature of the research funded by the institute and the exact terms of any agreements for sharing of revenues resulting from that research.

Effects on University System. To the extent that the UC system receives a share of the grants awarded by the institute, it could attract additional federal or private research funding for this same purpose. The UC system could also eventually receive significant revenues from patents, royalties, and licenses.

Other Potential Fiscal Effects. If the measure were to result in economic and other benefits that would not otherwise have occurred, it could produce unknown indirect state and local revenue gains and cost savings. Such effects could result, for example, if the added research activity and associated investments due to the measure generate net gains in jobs and taxable income, or if funded projects reduce the costs of health care to government employees and recipients of state services. The likelihood and magnitude of these and other potential indirect fiscal effects are unknown.

STEM CELL RESEARCH. FUNDING. BONDS. INITIATIVE CONSTITUTIONAL AMENDMENT AND STATUTE.

ARGUMENT in Favor of Proposition 71

PROPOSITION 71 IS ABOUT CURING DISEASES AND SAVING LIVES.

Stem cells are unique cells that generate healthy new cells, tissues, and organs. Medical researchers believe stem cell research could lead to treatments and cures for many diseases and injuries, including:

Cancer, heart disease, diabetes, Alzheimer's, Parkinson's, HIV/AIDS, multiple sclerosis, lung diseases, and spinal injuries.

In fact, medical problems that could benefit from stem cell research affect 128 million Americans—including a child or adult in nearly half of all California families.

71 CLOSES THE RESEARCH GAP.

Unfortunately, political squabbling has severely limited funding for the most promising areas of stem cell research. *Meanwhile, millions of people are suffering and dying.*

Prop. 71, the California Stem Cell Research and Cures Initiative, is an affordable solution that closes the research gap, so new treatments and cures can be found.

That's why a YES vote on 71 is endorsed by a broad coalition that includes OVER 20 NOBEL PRIZE WINNING SCIENTISTS, doctors, nurses, Democrats, Republicans, and dozens of organizations, including:

- Alzheimer's Association, California Council • American Nurses Association of California • California Medical Association (representing 35,000 doctors) • Cancer Research and Prevention Foundation • Christopher Reeve Paralysis Foundation • Cystic Fibrosis Research, Inc. • Elizabeth Glaser Pediatric AIDS Foundation • Juvenile Diabetes Research Foundation • Michael J. Fox Foundation for Parkinson's Research • Prostate Cancer Foundation • Sickle Cell Disease Foundation of California.

71 PROTECTS CALIFORNIA'S TAXPAYERS AND BUDGET.

Prop. 71 doesn't create or increase any taxes.

It authorizes tax-free state bonds that will provide a maximum of \$350 million per year over ten years to support stem cell research at California universities, medical schools, hospitals, and research facilities.

- These bonds are self-financing during the first five years, so there's no cost to the State's General Fund during this period of economic recovery.

- By making California a leader in stem cell research and giving our State an opportunity to share in royalties from the research, 71 will generate thousands of new jobs and millions in new state revenues.

That's why California's Chief Financial Officers, State Controller Steve Westly and State Treasurer Phil Angelides, endorse Prop. 71.

STRICT FINANCIAL AND ETHICAL CONTROLS.

Research grants will be allocated by an Independent Citizen's Oversight Committee, guided by medical experts, representatives of disease groups, and financial experts—and subject to independent audits, public hearings, and annual public reports.

Prop. 71 also prohibits any funding for cloning to create babies, reinforcing existing state law banning human reproductive cloning. It's totally focused on finding medical cures.

71 COULD REDUCE HEALTH CARE COSTS BY BILLIONS.

California has the nation's highest total health care spending costs—over \$110 billion annually. A huge share of those costs is caused by diseases that could be treated or cured with stem cell therapies.

- If Prop. 71 leads to cures that reduce our health care costs by only 1%, it will pay for itself—and it could cut health care costs by tens of billions of dollars in future decades.

For more information visit www.YESon71.com.

Vote YES on 71—IT COULD SAVE THE LIFE OF SOME-ONE YOU LOVE.

ALAN D. CHERRINGTON, Ph.D., *President*

American Diabetes Association

CAROLYN ALDIGE, *President*

National Coalition for Cancer Research (NCCR)

JOAN SAMUELSON, *President*

Parkinson's Action Network

REBUTTAL to Argument in Favor of Proposition 71

Stem Cell Research? YES! Human Embryo Cloning? NO!
Here are just some of the many problems with Proposition 71:

** It specifically supports "embryo cloning" research—also called "somatic cell nuclear transfer"—which poses risks to women and unique ethical problems. To provide scientists with eggs for embryo cloning, at least initially, thousands of women may be subjected to the substantial risks of high dose hormones and egg extraction procedures *just* for the purposes of research. In addition, the perfection of embryo cloning technology—even if initially for medical therapies only—will increase the likelihood that human clones will be produced.

** Why privilege this research over other important research and medical needs, especially given the limits on how much California can invest? Why not issue bonds for programs that ALREADY have proven their cost effectiveness? Embryo stem cell research in nonhuman animals has produced only limited results. More compelling evidence of its efficacy should be required

before a large commitment of public resources to study it in humans.

** Proponents are manipulating those seeking cures, building false hopes with exaggerated claims, and creating a costly program without adequate oversight or accountability.

Stem cell research *should* be supported, but not this way. And don't be fooled by those who say that the opponents of Proposition 71 are all opposed to abortion and embryo stem cell research. Many of us are pro-choice, do not oppose all embryo stem cell research, and still oppose this initiative.

Vote "No" on Proposition 71.

JUDY NORSIGIAN, *Executive Director*

Our Bodies Ourselves

FRANCINE COEYTAUX, *Founder*

Pacific Institute for Women's Health

TINA STEVENS, Ph.D., *Author*

Bioethics in America: Origins and Cultural Politics

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ARGUMENT Against Proposition 71

WE SUPPORT STEM CELL RESEARCH, NOT CORPORATE WELFARE

It's wrong to launch a costly new state bureaucracy when vital programs for health, education, and police and fire services are being cut. We cannot afford to pile another \$3 billion in bonded debt on top of a state budget teetering on the edge of financial ruin.

General Fund bond debt will grow from \$33 Billion on May 1, 2004, to a Legislative Accounting Office projection of \$50.75 Billion in debt by June 30, 2005—a *staggering 54% increase* in just 14 months!

WHO BENEFITS?

Backers will cynically use images of suffering children and people with disabilities in their commercials, but pharmaceutical company executives and venture capitalists contributed \$2.6 million to put this measure on the ballot. By getting taxpayers to fund their corporate research, they stand to make billions with little risk.

NO ACCOUNTABILITY

And who will oversee how this money is spent? According to the fine print, the proponents give themselves power to exempt their "Institute for Regenerative Medicine" from aspects of our California "open meeting" law (specifically passed to *stop* this kind of backroom deal-making).

Why do proponents want to keep what they are doing a secret? If we're being asked to pay for this research, then it should be freely available to all, not just to those who will be "awarded" special contracts by the "Institute." The initiative also grants the "Institute" power to rewrite California's medical informed consent safeguards.

Most importantly, the fine print specifically prohibits the Governor and Legislature from exercising oversight and control over how this money is spent—or misspent. Even if the state teeters on the brink of financial ruin, our elected

representatives will *still* have to borrow and spend this money, because the proponents are putting this money grab into our Constitution.

BAD MEDICINE

Opponents of this boondoggle include liberals, conservatives, Republicans, Democrats, Independents, medical professionals, and stem cell researchers. We all strongly *support* Stem Cell Research, but *oppose* this blatant taxpayer rip-off that lines the pockets of a few large corporations.

If there was any doubt about the true motives of the corporate promoters of this bond debt, one need only look at what it *doesn't* fund. The fine print does not initially fund adult and cord blood stem cell research. Adult and cord blood stem cell research has already produced more than 74 major medical breakthroughs, but this measure excludes support for these proven areas of research, without a two-thirds vote of the Institute's "working group."

Consider just one example: Cord blood stem cells are being used to treat sickle cell anemia with a staggering success rate of 90%. That's real progress, helping real people, but it may not receive *one penny* from this initiative.

Join with millions of your fellow citizens in demanding an end to "corporate welfare" and bonded debt. This is no time to spend billions we don't have on a self-serving sham.

Vote "NO" on Proposition 71. It's *not* what they say it is.

www.NoOn71.com

TOM MCCLINTOCK, *California State Senator*

JOHN M.W. MOORLACH, *C.P.A.*

Orange County Treasurer

H. REX GREENE, M.D., *Cancer Center Director and Bioethics Consultant*

REBUTTAL to Argument Against Proposition 71

NOBEL PRIZE WINNING MEDICAL RESEARCHERS, DOCTORS, AND PATIENT GROUPS HAVE STUDIED THIS MEASURE AND URGE: YES on 71.

- Stem cell research is the most promising area of research aimed at finding breakthrough cures for currently incurable diseases and injuries affecting millions of people.
- 71 is a well-designed program to find those cures.
- It's vitally needed because stem cell research is being restricted by politics in Washington.

The claims by opponents are misleading political scare tactics.

71 SUPPORTS ALL TYPES OF STEM CELL RESEARCH—including adult and cord blood stem cell research.

71 FOCUSES ON RESEARCH BY NONPROFIT INSTITUTIONS—NOT CORPORATIONS.

- It's specifically designed to support the type of breakthrough research conducted by universities, medical schools, hospitals, and other nonprofit institutions.

71 REQUIRES PUBLIC ACCOUNTABILITY.

- 71 specifically says the institute overseeing the research MUST COMPLY WITH OPEN MEETING LAWS.
- It requires PUBLIC HEARINGS and INDEPENDENT AUDITS reviewed by the California State Controller

and an independent oversight committee.

71 PROTECTS CALIFORNIA'S BUDGET.

Prop. 71 is a good investment. Studies led by a Stanford University economist project that 71 will generate millions in new state revenues from royalties and new jobs, and that new medical treatments and cures can REDUCE CALIFORNIANS' HEALTH CARE COSTS BY BILLIONS.

71 is endorsed by over 20 Nobel Prize Winning scientists, medical groups representing over 35,000 California doctors and nonprofit disease groups representing millions of suffering patients.

VOTE YES on 71—TO FIND CURES THAT WILL SAVE LIVES.

LEON THAL, M.D., *Director*

Alzheimer's Disease Research Center, University of California at San Diego

PAUL BERG, Ph.D., *Nobel Laureate Professor of Cancer Research,*

Stanford University

ROGER GUILLEMIN, M.D., Ph.D., *Nobel Laureate*

Distinguished Professor,

Salk Institute for Biological Studies

PROPOSITION

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HEALTH CARE COVERAGE REQUIREMENTS. REFERENDUM.

OFFICIAL TITLE AND SUMMARY

Prepared by the Attorney General

Health Care Coverage Requirements. Referendum.

A “Yes” vote approves, and a “No” vote rejects legislation that:

- Provides for individual and dependent health care coverage for employees, as specified, working for large and medium employers;
- Requires that employers pay at least 80% of coverage cost; maximum 20% employee contribution;
- Requires employers to pay for health coverage or pay fee to medical insurance board that purchases primarily private health coverage;
- Applies to employers with 200 or more employees beginning 1/1/06;
- Applies to employers with 50 to 199 employees beginning 1/1/07. Applies to employers with 20 to 49 employees if tax credit enacted.

Summary of Legislative Analyst’s Estimate of Net State and Local Government Fiscal Impact:

- Expenditures fully offset by fee revenues paid mainly by employers, which could range from tens of millions to hundreds of millions of dollars annually, to fund a new state program primarily to purchase private health insurance coverage.
- Reduction in county health program costs potentially in the low hundreds of millions of dollars annually.
- Uncertain net fiscal impact on state-supported health programs.
- Increased costs potentially in the low hundreds of millions of dollars annually for state and local public agencies to provide additional health coverage for their employees.
- Net reduction in state tax revenues potentially in the low hundreds of millions of dollars.
- In summary, unknown net savings or costs to state and local government.

ANALYSIS BY THE LEGISLATIVE ANALYST

BACKGROUND

Health Coverage in California

A majority of Californians under age 65 receive health insurance through their employer or the employer of a family member. Most Californians age 65 and over are covered by the federal Medicare Program. Others purchase health insurance for themselves. Many individuals receiving coverage share in the cost of the premiums paid for their health insurance.

Many low-income persons obtain health care services through the Medi-Cal Program, the Healthy Families Program, or other public programs operated by the state and county governments. Medi-Cal is administered by the state Department of Health Services (DHS), while the Healthy Families Program is administered by the state Managed Risk Medical Insurance Board (MRMIB). However, based upon a 2001 survey, an estimated 6.3 million nonelderly Californians lacked health coverage at some point during the year. These individuals are likely to receive medical assistance from county indigent health care programs or through the charitable activities of health care providers or pay for it themselves. Surveys indicate that of the nonelderly uninsured individuals, more than four out of five are either employed or are family members of someone who is working.

Some of the medical costs incurred by uninsured persons are indirectly shifted by health care providers to others who have health coverage, in effect adding to the cost of their health insurance. There are also indications that the number of employees who are uninsured may be adding to the costs of workers’ compensation insurance, which includes medical coverage for on-the-job injuries.

Recent Legislation

In 2003, the Legislature approved and the Governor signed Senate Bill 2 (Chapter 673) to expand health insurance coverage beginning in 2006 for employees of certain employers and, in some cases, their dependents. The law also established a program to assist lower-income employees with paying their share of health care premiums.

The new law would have gone into effect January 1, 2004. However, Proposition 72, a referendum on this new law, subsequently qualified for the statewide ballot. As a result, SB 2 was put “on hold” and will take effect only if Proposition 72 is approved by the voters at the November 2004 election.

PROPOSAL

If approved, this proposition would allow the provisions of SB 2 to go into effect. Health care researchers have estimated that the provisions of SB 2 could eventually

HEALTH CARE COVERAGE REQUIREMENTS. REFERENDUM.

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ANALYSIS BY THE LEGISLATIVE ANALYST (CONT.)

result in more than 1 million uninsured employees and dependents receiving health coverage. The major provisions of SB 2 are described below.

“Pay or Play” Requirement for Employers

Senate Bill 2 enacts a “pay or play” system of health coverage for certain employers. Under the system, specified California employers would be required to pay a fee to the state to provide health insurance (in other words, “pay”) for their employees and in some cases, for their dependents. Alternatively, the employer could choose to arrange directly with health insurance providers for coverage (in other words, “play”) for these individuals.

Both “pay” and “play” employers are required to pay a fee to the state to support a state health insurance purchasing program. Employers choosing to arrange their own health coverage (in some cases by continuing or modifying the coverage now provided to their employees) would receive a credit that would fully offset their fee. In order for an employer to qualify for a fee offset, the employer would have to provide specified types of coverage. Employers would be responsible for at least 80 percent of the cost of the fee, with the balance borne by their employees. The fee would be collected from employers and the fee requirements enforced by the Employment Development Department (EDD).

Senate Bill 2 would generally apply to both private and public employers, including state government, counties, cities, special districts, and school districts.

Federal law, known as the Employee Retirement Income Security Act, has been interpreted by the courts to generally prohibit states from requiring certain employers to provide health insurance coverage to their employees. As a result, it is possible that the “pay or play” provisions of SB 2 could be challenged in court. Our analysis assumes that the “pay or play” provisions would go into effect.

Who Would Provide and Receive Coverage?

Figure 1 summarizes which employers are affected by the “pay or play” requirements, when they would be subject to the requirements of SB 2, and who would receive health coverage. These requirements depend upon the number of employees an employer has in California. Senate Bill 2 also provides that employers with 20 to 49 employees would be subject to the “pay or play” provisions only if state law were changed to establish a tax credit for those employers equal to 20 percent of their state fee for health coverage. To date, no such tax credit legislation has been enacted, and these employers are

currently exempt from the provisions of SB 2. Employers with 19 or fewer employees within California would not be subject to its requirements.

Any employee who worked more than 100 hours per month for the same employer for three months would qualify for health coverage. Senate Bill 2 defines the list of dependents who could be eligible for coverage to be spouses, minor children, older children who are dependent upon the employee for support, and domestic partners.

Senate Bill 2 imposes penalties on any employer who reduces an employee’s hours of work or takes other steps to avoid having to comply with its “pay or play” requirements.

Contributions by Employees

Employees would generally be required to make a contribution of up to 20 percent of the amount of the fee charged by the state to their employer. Contributions paid by employees would be collected by their employer and transferred to the state.

Low-income employees would have their contributions capped at 5 percent of their wages. Senate Bill 2 defines a low-income employee as an individual who earned wages of less than 200 percent of the federal poverty guidelines—currently about \$19,000 a year in the case of an individual, and about \$31,000 a year in the case of an employee and his or her family.

In addition to these contributions, employees could also be charged part of the additional costs for their coverage in the form of deductibles, copayments, or coinsurance payments in amounts determined by the state. These charges would have to be set at a level that took into account whether the persons would be deterred from obtaining appropriate and timely health care.

State Health Purchasing Program

Senate Bill 2 creates the State Health Purchasing Program to purchase health care coverage for eligible California employees (and their dependents) of employers who opt to pay a fee instead of arranging for health insurance. The purchasing program would be administered by MRMIB. The MRMIB would negotiate contracts with health insurers, primarily private health plans, who agreed to provide health care coverage. The coverage would have to meet existing state standards for health insurance, such as the inclusion of hospital and primary care, and would also include coverage for prescription drugs. The cost of health coverage purchased under the

FIGURE 1

WHICH EMPLOYERS ARE AFFECTED BY THIS MEASURE?

Employers Who Employ . . .	. . . Must Provide Health Coverage to . . .	Starting
200 or more employees in the state	Employees and dependents	1/1/06
50 to 199 employees in the state	Employees only	1/1/07
20 to 49 employees in the state	Employees only, if a specified tax credit is enacted	Undetermined
19 or fewer employees in the state	No requirement	Not applicable

HEALTH CARE COVERAGE REQUIREMENTS. REFERENDUM.

ANALYSIS BY THE LEGISLATIVE ANALYST (CONT.)

program, as well as MRMIB's and EDD's administrative costs for the implementation of the program, would be supported with the funds collected from employers and employees under SB 2.

State Premium Assistance

Senate Bill 2 establishes a program to pay the premiums for health coverage provided through the workplace for low-income employees who are eligible for Medi-Cal or the Healthy Families Program. This provision applies to eligible employees for all California employers, and not just those employees of employers affected by the "pay or play" requirements of SB 2. So, for example, eligible employees of employers that provide health coverage and that have fewer than 20 employees would qualify for premium assistance.

Under the premium assistance program, the state and employers would notify employees of the availability of premium assistance and employees may voluntarily provide information to the state that would indicate if they and their families were eligible for coverage under Medi-Cal or the Healthy Families Program. If these persons were subsequently enrolled in either public program, the state could require them to also enroll in any coverage available from their employer, if that were determined by the state to be cost-effective. The state would reimburse these employees for any premiums they paid for the coverage provided by their employer. However, these employees would remain subject to paying any premiums and copayments required under Medi-Cal or the Healthy Families Program.

Employees and their families receiving premium assistance would also receive what is known as "wraparound" coverage from the state. In this case, this means that the state would provide and pay for any additional medical services for an employee or their family that were included in either the Medi-Cal or Healthy Families benefit package (such as dental coverage), but that were not included in the health coverage provided by the employer.

The implementation of the state premium assistance provisions would be the responsibility of MRMIB and DHS, and would be subject to approval by the federal government.

Health Insurance Marketing Provisions

Senate Bill 2 expands to medium-sized employers a series of provisions now in state law that are intended to make it easier and more affordable for small employer groups to purchase health coverage. For example, if a health plan or insurer offered and sold an insurance product to one medium-sized employer, they would be required to offer and sell the same product to other employers of similar size. Senate Bill 2 provides that, should its "pay or play" requirements be invalidated in court, these provisions affecting health coverage purchases by medium-sized employers would also become inoperative.

General Fund Loan

Senate Bill 2 authorizes loans from the state General Fund, subject to appropriation in the annual budget act, for costs incurred by MRMIB and EDD for the

establishment and administration of the State Health Purchasing Fund. The loans are to be repaid with interest within five years after the state begins the collection of fees from employers.

FISCAL EFFECTS

The health coverage requirements of SB 2 would have a number of significant fiscal effects on state and local governments, including counties, cities, special districts, and school districts. In addition, they could have significant effects on individuals and businesses. These effects are complex, uncertain, and difficult to predict over time. Among the factors that could cause savings and costs to vary significantly are:

- How some provisions of SB 2 were eventually implemented by state and local officials and interpreted by the courts.
- The proportion of employers who chose to participate in the State Health Purchasing Program.
- How the health insurance marketplace responded to the new law in the products and prices it offered to public and private purchasers of care.

Given these uncertainties, we believe that the net savings or costs to the state and local governments are unknown. Our estimates assume that SB 2 affects employers with 50 or more employees. The more significant identifiable savings and costs to state and local governments that could result from this SB 2 are summarized below.

Purchasing Program Revenues and Expenditures

The "pay or play" requirements of SB 2 would generate significant revenues to the state from fees paid by employers that chose to "pay" for health coverage rather than to "play" by directly arranging their own health coverage. Also, the state would receive additional revenues from contributions for coverage paid by the employees of the firms choosing to "pay."

The state revenues received from these employers and employees would, in turn, be used to fully offset the costs of the State Health Purchasing Program. The most significant program costs would be for the purchase of health insurance coverage, primarily from private insurers, for employees of these employers (and, in the case of some employers, the dependents of these employees). These state revenues would also be used to fully offset administrative and other costs related to the State Health Purchasing Program.

The proportion of employers who would choose to "pay" the fee to the state, thereby obtaining health coverage from the State Health Purchasing Program, rather than to "play" by arranging health coverage on their own, is a major unknown factor. The choices ultimately made by employers on whether to "pay or play" would have a significant impact on the amount of fee revenue paid to the state as well as the size of the State Health Purchasing Program. We estimate that the amount of fees collected from employers and employees and spent for the purchasing program could range from the tens of millions of dollars to the hundreds of millions of dollars annually, depending on the participation level of employers. This

HEALTH CARE COVERAGE REQUIREMENTS. REFERENDUM.

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ANALYSIS BY THE LEGISLATIVE ANALYST (CONT.)

estimate assumes that the state collects the fee only from firms that choose to “pay” and not from firms that “play” by arranging health coverage on their own and therefore receive a credit that fully offsets their fee.

Effect on Other Publicly Funded Health Programs

State. The net effect of SB 2 on state-funded health programs is uncertain. Some provisions are likely to result in state savings while other provisions are likely to result in costs, as discussed below.

On the one hand, the “pay or play” requirement for employers to either pay a fee to the state or provide health coverage would generally have the effect of reducing state costs for Medi-Cal and Healthy Families benefits. This is because costs for these state-supported health coverage programs would likely decrease as additional employees and dependents received coverage from the State Health Purchasing Program or through coverage arranged by employers.

On the other hand, the premium assistance and wrap-around coverage components of SB 2 would generally have the effect of increasing state costs for Medi-Cal and Healthy Families benefits. These provisions would result in the enrollment of additional employees and dependents in the two programs, additional state expenditures to reimburse employees for the premiums they paid for employer-based coverage, and additional state expenditures for wrap-around coverage.

Taking all of these provisions and their fiscal effects into account, we estimate that the fiscal impact on Medi-Cal benefits would eventually be a net savings to the state amounting to tens of millions of dollars annually. However, we estimate that SB 2 would result in a net cost to the state for Healthy Families Program benefits of roughly the same magnitude. Given the uncertainties associated with SB 2, it is not clear at this time whether it would ultimately result in a net cost or savings to the state for state-supported health benefits.

Local. County costs for providing health care for indigents are likely to decrease significantly as more employees and dependents receive health coverage that is paid for by employers, Medi-Cal, and the Healthy Families Program. We estimate that the implementation of SB 2 would eventually result in savings to county governments on a statewide basis, potentially in the low hundreds of millions of dollars annually.

State Administrative Costs

Senate Bill 2 specifies that part of the fees collected from employers would be used by MRMIB and EDD to offset their costs for administering the new State Health Purchasing Program. However, under the terms of SB 2, administrative costs incurred by DHS and MRMIB for the premium assistance program are not included among those that would be offset from fee revenue, and thus would probably be supported from the state General Fund and federal funds. We estimate that MRMIB, EDD, and DHS would incur significant administrative costs, probably amounting collectively in the low tens of millions of dollars annually, to implement SB 2.

Costs to Public Employers

The “pay or play” requirements of SB 2 generally apply to public employers, including the state, counties, cities, special districts, and school districts. Although full-time employees of public agencies in California usually have health coverage, some seasonal, temporary, and part-time employees and their dependents currently lack health coverage. We estimate that the additional cost to the state and local agencies to comply with SB 2 could potentially amount to the low hundreds of millions of dollars annually beginning in 2006–07.

These additional costs could be partially offset by savings to public agencies in certain circumstances. For example, some spouses of public agency employees would receive coverage from their own employers as a result of SB 2. Because these spouses would no longer receive coverage as dependents of employees of those public agencies, such agencies could realize some savings on their health coverage costs. The amount of the offsetting savings from this and other factors is unknown.

Effects on State Revenues

Senate Bill 2 would impact state revenues in two major ways.

First, some businesses would face increased operating costs to pay for employees’ health insurance. To the extent that businesses absorb these costs, their taxable income would be less and, thus, income tax revenues would decline. Many employers would act to avoid absorbing these costs, however, such as by “passing them along” to consumers through higher product prices or to employees by cutting back on hours or wages. These steps could reduce overall economic activity, causing declines in personal income taxes and sales taxes. Revenue losses also would occur if California lost economic activity to other states.

Partially offsetting the above factors would be potential revenue gains due to any reduction in the health premiums that otherwise would have been paid by certain employers, as well as expanded economic activity in the health care sector. Current premiums paid by employers for health insurance and workers’ compensation insurance may reflect some “cost-shifting” to cover health care costs of the uninsured. To the extent that SB 2 reduces the number of uninsured persons, it could reduce cost-shifting and could lower premiums paid by employers, thus increasing taxable income. In addition, employers’ costs for complying with SB 2 may be reduced if the State Health Purchasing Program negotiates lower insurance rates, or the health care marketplace itself responds to SB 2 with reduced rates. Finally, the significant expansion of health coverage could increase state tax revenues paid by health plans and insurers.

Taking these and other factors into consideration, SB 2 would likely result in a net reduction in state tax revenues, potentially in the low hundreds of millions of dollars, with the actual magnitude depending on the behavioral responses of employers and the health care marketplace.

HEALTH CARE COVERAGE REQUIREMENTS. REFERENDUM.

ARGUMENT in Favor of Proposition 72

Across California, millions of people are working harder and harder to pay their bills. Worst of all is the skyrocketing cost they pay for health care.

Many companies are forcing employees to pay more for health care through higher premiums or cuts in coverage. For employees, higher insurance costs compete with their mortgage or rent, food, and transportation. Many employees are going without the medical care and prescription drugs their families need, creating a health care crisis in California.

It is simply wrong when employees can't afford health insurance for themselves and their children. 72 makes sure that private health insurance remains within reach.

72 WILL LIMIT WHAT EMPLOYEES PAY FOR HEALTH CARE

- **PROBLEM:** Employees are paying more—not just because of rising health care costs, but also because businesses are shifting a greater share of the burden to their workers. *The amount California families pay for premiums has increased 70% in the last three years.* Last year, employee premiums increased at *twice* the rate of business premiums. Unless something is done, more and more will be passed on to you.
- **SOLUTION:** Under 72, large and medium-sized companies must pay *at least* 80% of the cost of employees' premiums for health insurance.

72 WILL PROVIDE HEALTH INSURANCE TO 1.1 MILLION WORKING PEOPLE AND CHILDREN CURRENTLY UNINSURED

- **PROBLEM:** Some employers do not offer their employees insurance. The number of working people without insurance is increasing.
- **SOLUTION:** 72 requires large and mid-sized employers to pay for health insurance for employees, extending *coverage to an additional 1.1 million working people and their children.*

72 ENSURES COVERAGE YOU NEED

- **PROBLEM:** Already 30% of businesses say they plan to cut benefits. More will follow.

- **SOLUTION:** Under 72, coverage includes *prescription drugs, preventive care, and major medical.*

72 PROTECTS TAXPAYERS

- **PROBLEM:** California taxpayers pay \$4.6 billion annually to cover emergency room and health care bills for the uninsured. Taxpayers will pay even more unless something changes.

- **SOLUTION:** 72 protects taxpayers by providing health care coverage to an additional 1.1 million workers and their children, taking them out of emergency rooms and *placing them in the care of their own doctors.*

72 LEVELS THE PLAYING FIELD FOR RESPONSIBLE COMPANIES

- **PROBLEM:** Companies that *don't* provide affordable health care to their employees have an advantage over companies that *do*.
- **SOLUTION:** 72 *protects responsible companies from unfair competition* by requiring all large and mid-sized companies to pay for health care for employees.

Consumers Union, nonprofit publisher of *Consumer Reports*, says, "After studying Proposition 72, we conclude it is a necessary step forward that protects health coverage for working Californians."

By capping employees' health care premiums, 72 will keep private health insurance within reach of working families.

If nothing changes, workers will continue to pay more and more for health insurance—or lose their coverage. 72 provides an answer. It's a good first step in protecting employer-based health insurance—and the 19 million Californians who depend on it. Visit www.saveyourhealthcare.com.

RICHARD HOLOBER, *Executive Director*
Consumer Federation of California

DEBORAH BURGER, RN, *President*
California Nurses Association

RICHARD F. CORLIN, M.D., *Past President*
California Medical Association & American Medical Association

REBUTTAL to Argument in Favor of Proposition 72

PROPOSITION 72 WILL NOT CONTROL HEALTH COSTS

Health costs are skyrocketing but Proposition 72 WILL NOT control these costs. Proposition 72 makes the problem worse by creating a huge bureaucracy to administer a government-run health care scheme **COSTING EMPLOYERS AND WORKERS** an estimated \$7 BILLION by 2007.

PROPOSITION 72 CREATES A GOVERNMENT-RUN HEALTH CARE SYSTEM

The backers of 72 are hiding the fact it creates a government-run system. Read it for yourself!—"Chapter 3. State Health Purchasing Program." Many people may lose their existing private coverage and end up in the state plan.

The former head of the state board charged with implementing 72 says it won't work:

"Proposition 72 is fatally flawed and poorly structured. It mandates coverage without controlling costs and forces workers and employers to pay whether they can afford to or not. Proposition 72 just doesn't work."

John Ramey, Former Executive Director
Managed Risk Medical Insurance Board

PROPOSITION 72 DOES NOT HELP THE UNINSURED OR TAXPAYERS

We all want to help the uninsured, but Proposition 72 isn't the solution. Up to 500,000 workers' jobs will be at risk if Proposition 72 becomes law. These people could end up unemployed AND uninsured.

THREATENS ACCESS TO YOUR DOCTORS

Under Proposition 72's state plan, you could lose access to your doctors and hospitals and have to be treated by government-approved providers.

Proposition 72 is not the kind of reform we need! **PLEASE JOIN DOCTORS, CHARITIES, EDUCATORS, AND TAXPAYERS—VOTE NO ON 72!**

THOMAS LAGRELIUS, M.D., *President*
California Chapter, Association of American Physicians and Surgeons

GLORIA RIOS, *Director*
California Association of School Business Officials

JON COUPAL, *President*
Howard Jarvis Taxpayers Association

HEALTH CARE COVERAGE REQUIREMENTS. REFERENDUM.

PROP

72

ARGUMENT Against Proposition 72

Real health care reform should control costs and cover more people, but Proposition 72 fails that test. Passed by the Legislature with no meaningful hearings and signed by Governor Davis just days before he was recalled, Proposition 72 creates a huge government-run health care system funded by an estimated \$7 billion in new taxes by 2007 on employers and workers.

WORKERS MAY LOSE PRIVATE COVERAGE

Proposition 72 may hurt people who already have health coverage through their employer. You could get forced out of your current plan and into the government-run system! Under Proposition 72 you could lose access to your personal doctor and hospital and end up with a high deductible policy that requires you to pay thousands out of your pocket before getting coverage.

BUREAUCRATS GIVEN TOO MUCH POWER

Under Prop. 72, bureaucrats determine what medical services and providers are covered by the state-run health system and how much you'll pay to support the government-run plan. There are no caps on the administrative fees they can charge. The Orange County Register called it health care with, "the bedside manner of the DMV."

PAY WHETHER YOU WANT IT OR NOT

Proposition 72 is poorly written. You can't decline coverage even if you don't want it or can't afford your share of costs! Employees will pay up to 20% of the cost!

KILLS JOBS/ECONOMY

Proposition 72 will damage California's economy and mean MORE PEOPLE WITHOUT INSURANCE because thousands will lose their jobs as companies close or move out of state. California businesses already struggling with high workers' comp and energy costs just can't afford billions in new health care costs.

COSTS WORKERS \$1,700 PER FAMILY

Covered workers will be forced to pay up to 20% of the premiums. The Los Angeles Economic Development Corporation estimates family coverage will cost workers up

to \$1,700 per year.

Employers must pay 80% of the cost. Many must also pay for dependent coverage, costing over \$6,800 per worker each year.

COSTS SCHOOLS AND NONPROFITS MILLIONS

The Association of California School Administrators says Proposition 72 will cost school districts hundreds of millions annually—money urgently needed in classrooms! Non-profit organizations like Easter Seals and the Goodwill of Long Beach and South Bay oppose Prop. 72 because it makes it harder to provide services to people in need.

Here's how Proposition 72 damages Californians:

"At Easter Seals, the high costs and mandates of Proposition 72 will force us to stop creating new and needed services for people with disabilities."

Gary Kasai, President, Easter Seals Superior California

"Proposition 72 will mandate the worst kind of managed health care we have. This means there will be more and more patients with terrible insurance."

Thomas LaGrelus, M.D., President, California Chapter, Association of American Physicians and Surgeons

"Prop. 72 will discourage those of us who have worked so hard to fulfill the American dream from growing their business and providing more jobs in our communities. Some will simply have to close shop."

C.C. Yin, Restaurant Owner

JOIN EMPLOYERS, EDUCATORS, DOCTORS, NON-PROFITS, AND TAXPAYERS: VOTE NO ON PROPOSITION 72!

ALLAN ZAREMBERG, *President*

California Chamber of Commerce

SANDRA CARSTEN, *President*

Association of California School Administrators

JAMES G. KNIGHT, M.D., *2003 President*

San Diego Medical Society

REBUTTAL to Argument Against Proposition 72

Opponents are using scare tactics so voters will be afraid to approve protections for employees. Their claims are false.

SCARE TACTIC: GOVERNMENT HEALTH CARE REPLACES PRIVATE COVERAGE

Prop. 72 sets standards for health coverage and the share of costs employers must pay—just like the minimum wage sets standards for wages.

"Prop. 72 is the opposite of government-run health care. It strengthens private employer health insurance." John Garamendi, *California Insurance Commissioner*

If you already get health insurance from your employer, your employer can keep that same coverage under 72 and can continue to pay up to 100% of premiums. You get the security of knowing your employer cannot pay less than 80% of premiums and must maintain preventive care, prescription drugs, and major medical.

SCARE TACTIC: 72 COSTS MORE

Opponents claim premiums could be \$1,700 under 72. But the average California family ALREADY pays \$2,452 in premiums (*Sacramento Bee*, 3/17/04).

Under 72, the average California family will *save money*.

SCARE TACTIC: JOB KILLER

- Corporate lobbyists always complain about California's business climate, but California is the world's 6th largest economy.
- 93% of California's restaurants and retailers are exempt.
- Businesses will benefit from a healthier, more productive workforce.

IF WE DO NOTHING:

- Employee premiums will keep rising.
- More working families will be uninsured.
- Taxpayers will continue paying health care costs for employees of big companies like Wal-Mart and McDonalds.

Don't be confused by scare tactics. 72 keeps private health care within the reach of California families.

PAUL KIVELA, M.D., *President*

California Chapter American College of Emergency Physicians

BARBARA E. KERR, *President*

California Teachers Association

TOM PORTER, *California State Director*

AARP

AN OVERVIEW OF STATE BOND DEBT

Prepared by the Legislative Analyst's Office

This section provides an overview of the state's current bond debt. It also discusses the impact that the bond measures on this ballot would, if approved, have on this bond debt level and the costs of paying it off over time.

BACKGROUND

What Is Bond Financing? Bond financing is a type of long-term borrowing that the state uses to raise money for various purposes. The state obtains this money by selling bonds to investors. In exchange, it agrees to repay this money, with interest, according to a specified schedule.

Why Are Bonds Used? The state has traditionally used bonds to finance major capital outlay projects such as roads, educational facilities, prisons, parks, water projects, and office buildings. This is done mainly because these facilities provide services over many years, their large dollar costs can be difficult to pay for all at once, and different taxpayers over time benefit from the facilities. Recently, however, the state has also used bond financing to help close major shortfalls in its General Fund budget.

What Types of Bonds Does the State Sell? The state sells three major types of bonds. These are:

- **General Fund-Supported Bonds.** These are paid off from the state's General Fund, which is largely supported by tax revenues. These bonds take two forms. The majority are *general obligation* bonds. These must be approved by the voters and their repayment is guaranteed by the state's general taxing power. The second type is *lease-revenue* bonds. These are paid off from lease payments (primarily financed from the General Fund) by state agencies using the facilities they finance. These bonds do not require voter approval and are not guaranteed. As a result, they have somewhat higher interest costs than general obligation bonds.
- **Traditional Revenue Bonds.** These also finance capital projects but are not supported by the General Fund. Rather, they are paid off from a designated revenue stream—usually generated by the projects they finance—such as bridge tolls. These bonds also do not require voter approval.
- **Budget-Related Bonds.** In March 2004, the voters authorized \$15 billion in bonds to pay off the state's accumulated budget deficit and other obligations. Of this amount, \$11.3 billion was raised through bond sales in May and June of 2004. This leaves \$3.7 billion available for later sales. The General Fund cost of repaying the principal and interest on these bonds is the equivalent of one-quarter-cent share of the state sales tax (over \$1.2 billion in 2004–05). The bonds' repayments are also guaranteed by the state's general taxing power in the event the sales tax proceeds fall short.

What Are the Direct Costs of Bond Financing? The state's cost for using bonds depends primarily on their interest rates and the time period over which they are repaid. For example, most recently sold general obligation bonds will be paid off over a 30-year period. Assuming tax-exempt interest rates for such bonds of about 5.25 percent, the cost of paying them off over 30 years is about \$2 for each dollar borrowed—\$1 for the amount borrowed and \$1 for interest. This cost, however, is spread over the entire 30-year period, so the cost after adjusting for inflation is considerably less—about \$1.25 for each \$1 borrowed.

THE STATE'S CURRENT DEBT SITUATION

Amount of General Fund Debt. As of June 1, 2004, the state had about \$40 billion of traditional General Fund bond debt outstanding on which it is making principal and

interest payments. This consists of about \$33 billion of general obligation bonds and \$7 billion of lease-revenue bonds. In addition, the state has not yet sold about \$30 billion of authorized general obligation bonds, either because the projects involved have not yet been started or those in progress have not yet reached their major construction phase. The above totals do not include the \$15 billion of deficit-related bonds authorized in March 2004, of which \$11.3 billion had been sold through June 30, 2004.

General Fund Debt Payments. We estimate that General Fund debt payments for traditional general obligation and lease-revenue bonds will be about \$3.5 billion in 2004–05. As previously authorized but currently unsold bonds are marketed, outstanding bond debt costs would rise to approximately \$5.8 billion in 2009–10, and slowly decline thereafter if no new bonds are authorized. If the annual costs of the deficit-related bonds are included, total debt-service costs will be \$4.8 billion in 2004–05, rising to a peak of \$7.4 billion in 2009–10.

Debt-Service Ratio. The level of General Fund debt payments stated as a percentage of state revenues is referred to as the state's debt-service ratio. This ratio is used by policymakers and the investment community as one indicator of the state's debt burden. This ratio increased in the early 1990s and peaked at slightly over 5 percent in the middle of the decade. The ratio currently stands at about 4.6 percent, and is expected to increase to a peak of 5.9 percent in 2008–09 as currently authorized bonds are sold. If the annual debt service on the deficit-related bonds is included, the ratio is currently about 6.2 percent, and will increase to a peak of 7.5 percent in 2008–09 before declining in subsequent years.

EFFECTS OF BOND PROPOSITIONS ON THIS BALLOT

There are two bond measures on this ballot:

- Proposition 61, which would authorize the state to issue \$750 million of general obligation bonds to finance various children's hospital facilities.
- Proposition 71, which would authorize the state to issue \$3 billion of general obligation bonds for stem cell research.

The impacts of these measures on the state's debt situation are discussed below.

Impacts on Debt Payments. If the \$3.75 billion in bonds on this ballot are approved and eventually sold, there would be additional debt-service payments averaging about \$250 million annually over the life of the bonds. The annual debt-service payments, however, would be more modest in the near term, probably less than \$50 million through 2009–10. This is primarily because provisions of Proposition 71 require that principal payments be deferred and interest costs be paid from the stem cell-related bond proceeds for the first five years after the measure takes effect. The lower payments in this initial five-year period would be offset by payments that are slightly higher than the \$250 million average in the subsequent years, as the deferred principal payments come due.

Impacts on the Debt-Service Ratio. Because of the deferred debt-service payments provided for in Proposition 71, only sales related to Proposition 61 hospital bonds would have an impact on General Fund debt-service payments during the next five years. Thus, approval of the bonds on this ballot would have only modest impacts on the debt-service ratio through 2009–10—less than 0.1 percent. Thereafter, the sale of the bonds would result in annual increases in the debt-service ratio of roughly 0.3 percent per year.

Proposition 59

This amendment proposed by Senate Constitutional Amendment 1 of the 2003–2004 Regular Session (Resolution Chapter 1, Statutes of 2004) expressly amends the California Constitution by amending a section thereof; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED AMENDMENT TO SECTION 3 OF ARTICLE I

SEC. 3. (a) The people have the right to instruct their representatives, petition government for redress of grievances, and assemble freely to consult for the common good.

(b) (1) *The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.*

(2) *A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access. A statute, court rule, or other authority adopted after the effective date of this subdivision that limits the right of access shall be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.*

(3) *Nothing in this subdivision supersedes or modifies the right of privacy guaranteed by Section 1 or affects the construction of any statute, court rule, or other authority to the extent that it protects that right to privacy, including any statutory procedures governing discovery or disclosure of information concerning the official performance or professional qualifications of a peace officer.*

(4) *Nothing in this subdivision supersedes or modifies any provision of this Constitution, including the guarantees that a person may not be deprived of life, liberty, or property without due process of law, or denied equal protection of the laws, as provided in Section 7.*

(5) *This subdivision does not repeal or nullify, expressly or by implication, any constitutional or statutory exception to the right of access to public records or meetings of public bodies that is in effect on the effective date of this subdivision, including, but not limited to, any statute protecting the confidentiality of law enforcement and prosecution records.*

(6) *Nothing in this subdivision repeals, nullifies, supersedes, or modifies protections for the confidentiality of proceedings and records of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses provided by Section 7 of Article IV, state law, or legislative rules adopted in furtherance of those provisions; nor does it affect the scope of permitted discovery in judicial or administrative proceedings regarding deliberations of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses.*

Proposition 60

This amendment proposed by Senate Constitutional Amendment 18 of the 2003–2004 Regular Session (Resolution Chapter 103, Statutes of 2004) expressly amends the California Constitution by amending a section thereof; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED AMENDMENT TO ARTICLE II

That Section 5 of Article II thereof is amended to read:

SEC. 5. (a) The Legislature shall provide for primary elections for partisan offices, including an open presidential primary whereby the

candidates on the ballot are those found by the Secretary of State to be recognized candidates throughout the nation or throughout California for the office of President of the United States, and those whose names are placed on the ballot by petition, but excluding any candidate who has withdrawn by filing an affidavit of noncandidacy.

(b) *A political party that participated in a primary election for a partisan office has the right to participate in the general election for that office and shall not be denied the ability to place on the general election ballot the candidate who received, at the primary election, the highest vote among that party's candidates.*

Proposition 60A

This amendment proposed by Senate Constitutional Amendment 18 of the 2003–2004 Regular Session (Resolution Chapter 103, Statutes of 2004) expressly amends the California Constitution by adding a section thereto; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED AMENDMENT TO ARTICLE III

That Section 9 is added to Article III thereof, to read:

SEC. 9. *The proceeds from the sale of surplus state property occurring on or after the effective date of this section, and any proceeds*

from the previous sale of surplus state property that have not been expended or encumbered as of that date, shall be used to pay the principal and interest on bonds issued pursuant to the Economic Recovery Bond Act authorized at the March 2, 2004, statewide primary election. Once the principal and interest on those bonds are fully paid, the proceeds from the sale of surplus state property shall be deposited into the Special Fund for Economic Uncertainties, or any successor fund. For purposes of this section, surplus state property does not include property purchased with revenues described in Article XIX or any other special fund moneys.

Proposition 61

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure adds sections to the Health and Safety Code; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

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

SECTION 1. Part 6 (commencing with Section 1179.10) is added to Division 1 of the Health and Safety Code, to read:

PART 6. CHILDREN'S HOSPITAL BOND ACT OF 2004

CHAPTER 1. GENERAL PROVISIONS

1179.10. *This part shall be known and may be cited as the Children's Hospital Bond Act of 2004.*

1179.11. *As used in this part, the following terms have the following meanings:*

(a) "Authority" means the California Health Facilities Financing Authority established pursuant to Section 15431 of the Government Code.

(b) "Children's hospital" means either:

(1) *A University of California general acute care hospital described below:*

(A) *University of California, Davis Children's Hospital.*

(B) *Mattel Children's Hospital at University of California, Los Angeles.*

(C) *University Children's Hospital at University of California, Irvine.*

(D) *University of California, San Francisco Children's Hospital.*

(E) *University of California, San Diego Children's Hospital.*

(2) *A general acute care hospital that is, or is an operating entity of, a California nonprofit corporation incorporated prior to January 1, 2003, whose mission of clinical care, teaching, research, and advocacy*

Proposition 61 (cont.)

focuses on children, and that provides comprehensive pediatric services to a high volume of children eligible for governmental programs and to children with special health care needs eligible for the California Children's Services program and:

(A) *Provided at least 160 licensed beds in the categories of pediatric acute, pediatric intensive care and neonatal intensive care in the fiscal year ending between June 30, 2001, and June 29, 2002, as reported to the Office of Statewide Health Planning and Development on or before July 1, 2003.*

(B) *Provided over 30,000 total pediatric patient (census) days, excluding nursery acute days, in the fiscal year ending between June 30, 2001, and June 29, 2002, as reported to the Office of Statewide Health Planning and Development on or before July 1, 2003.*

(C) *Provided medical education of at least eight (rounded to the nearest integer) full-time equivalent pediatric or pediatric subspecialty residents in the fiscal year ending between June 30, 2001, and June 29, 2002, as reported to the Office of Statewide Health Planning and Development on or before July 1, 2003.*

(c) "Committee" means the Children's Hospital Bond Act Finance Committee created pursuant to Section 1179.32.

(d) "Fund" means the Children's Hospital Fund created pursuant to Section 1179.20.

(e) "Grant" means the distribution of money in the fund by the authority to children's hospitals for projects pursuant to this part.

(f) "Program" means the Children's Hospital Program established pursuant to this part.

(g) "Project" means constructing, expanding, remodeling, renovating, furnishing, equipping, financing, or refinancing of a children's hospital to be financed or refinanced with funds provided in whole or in part pursuant to this part. "Project" may include reimbursement for the costs of constructing, expanding, remodeling, renovating, furnishing, equipping, financing, or refinancing of a children's hospital where such costs are incurred after January 31, 2003. "Project" may include any combination of one or more of the foregoing undertaken jointly by any participating children's hospital that qualifies under this part.

CHAPTER 2. THE CHILDREN'S HOSPITAL PROGRAM

1179.20. The proceeds of bonds issued and sold pursuant to this part shall be deposited in the Children's Hospital Fund, which is hereby created.

1179.21. The purpose of the Children's Hospital Program is to improve the health and welfare of California's critically ill children, by providing a stable and ready source of funds for capital improvement projects for children's hospitals. The program provided for in this part is in the public interest, serves a public purpose, and will promote the health, welfare, and safety of the citizens of the state.

1179.22. The authority is authorized to award grants to any children's hospital for purposes of funding projects, as defined in subdivision (g) of Section 1179.11.

1179.23. (a) Twenty percent of the total funds available for grants pursuant to this part shall be awarded to children's hospitals as defined in paragraph (1) of subdivision (b) of Section 1179.11.

(b) Eighty percent of the total funds available for grants pursuant to this part shall be awarded to children's hospitals as defined in paragraph (2) of subdivision (b) of Section 1179.11.

1179.24. (a) The authority shall develop a written application for the awarding of grants under this part within 90 days of the adoption of this act. The authority shall award grants to eligible children's hospitals, subject to the limitations of this part and to further the purposes of this part based on the following factors:

(1) The grant will contribute toward expansion or improvement of health care access by children eligible for governmental health insurance programs and indigent, underserved, and uninsured children.

(2) The grant will contribute toward the improvement of child health care or pediatric patient outcomes.

(3) The children's hospital provides uncompensated or undercompensated care to indigent or public pediatric patients.

(4) The children's hospital provides services to vulnerable pediatric populations.

(5) The children's hospital promotes pediatric teaching or research programs.

(6) Demonstration of project readiness and project feasibility.

(b) An application for funds shall be submitted to the authority for approval as to its conformity with the requirements of this part. The authority shall process and award grants in a timely manner, not to exceed 60 days.

(c) A children's hospital identified in paragraph (1) of subdivision (b) of Section 1179.11 shall not apply for, and the authority shall not award to that children's hospital, a grant that would cause the total amount of grants awarded to that children's hospital to exceed one-fifth of the total funds available for grants to all children's hospitals pursuant to subdivision (a) of Section 1179.23. Notwithstanding this grant limitation, any funds available under subdivision (a) of Section 1179.23 that have not been exhausted by June 30, 2014, shall become available for an application from any children's hospital identified in paragraph (1) of subdivision (b) of Section 1179.11.

(d) A children's hospital identified in paragraph (2) of subdivision (b) of Section 1179.11 shall not apply for, and the authority shall not award to that children's hospital, a grant that would cause the total amount of grants awarded to that children's hospital to exceed seventy-four million dollars (\$74,000,000) from funds available for grants to all children's hospitals pursuant to subdivision (b) of Section 1179.23. Notwithstanding this grant limitation, any funds available under subdivision (b) of Section 1179.23 that have not been exhausted by June 30, 2014, shall become available for an application from any children's hospital defined in paragraph (2) of subdivision (b) of Section 1179.11.

(e) In no event shall a grant to finance a project exceed the total cost of the project, as determined by the children's hospital and approved by the authority.

(f) All projects that are awarded grants shall be completed within a reasonable period of time. If the authority determines that the children's hospital has failed to complete the project under the terms specified in awarding the grant, the authority may require remedies, including the return of all or a portion of the grant. A children's hospital receiving a grant under this part shall submit certification of project completion to the authority.

(g) Grants shall only be available pursuant to this section if the authority determines that it has sufficient money available in the fund. Nothing in this section shall require the authority to award grants if the authority determines that it has insufficient moneys available in the fund to do so.

(h) The authority may annually determine the amount available for purposes of this part. Administrative costs for this program shall not exceed the actual costs or one percent, whichever is less.

1179.25. The Bureau of State Audits may conduct periodic audits to ensure that bond proceeds are awarded in a timely fashion and in a manner consistent with the requirements of this part, and that awardees of bond proceeds are using funds in compliance with applicable provisions of this part.

CHAPTER 3. FISCAL PROVISIONS

1179.30. Bonds in the total amount of seven hundred fifty million dollars (\$750,000,000), not including the amount of any refunding bonds, may be issued and sold to provide a fund to be used for carrying out the purposes expressed in this part and to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code. The bonds, when sold, shall be and constitute a valid and binding obligation of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of the principal of, and interest on, the bonds as the principal and interest become due and payable.

1179.31. The bonds authorized by this part shall be prepared, executed, issued, sold, paid, and redeemed as provided in the State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code), and all of the provisions of that law apply to the bonds and to this part and are hereby incorporated in this part as though set forth in full in this part.

1179.32. (a) Solely for the purpose of authorizing the issuance and sale pursuant to the State General Obligation Bond Law of the bonds authorized by this part, the Children's Hospital Bond Act Finance Committee is hereby created. For purposes of this part, the Children's Hospital Bond Act Finance Committee is "the committee" as that term is used in the State General Obligation Bond Law. The committee consists of the Controller, Director of Finance, and the Treasurer, or their designated representatives. The Treasurer shall serve as chairperson of the committee. A majority of the committee may act for the committee.

(b) The authority is designated the "board" for purposes of the State General Obligation Bond Law, and shall administer the fund pursuant to this part.

1179.33. The committee shall determine whether or not it is necessary or desirable to issue bonds authorized pursuant to this part in order to carry out the actions specified in Section 1179.21 and, if so, the

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amount of bonds to be issued and sold. Successive issues of bonds may be authorized and sold to carry out those actions progressively, and it is not necessary that all of the bonds be issued or sold at any one time.

1179.34. There shall be collected each year and in the same manner and at the same time as other state revenue is collected, in addition to the ordinary revenues of the state, a sum in an amount required to pay the principal of, and interest on, the bonds each year. It is the duty of all officers charged by law with any duty in regard to the collection of the revenue to do and perform each and every act that is necessary to collect that additional sum.

1179.35. Notwithstanding Section 13340 of the Government Code, there is hereby appropriated continuously from the General Fund in the State Treasury, for the purposes of this part, an amount that will equal the total of the following:

(a) The sum annually necessary to pay the principal of, and interest on, bonds issued and sold pursuant to this part, as the principal and interest become due and payable.

(b) The sum necessary to carry out Section 1179.36, appropriated without regard to fiscal years.

1179.36. For the purposes of carrying out this part, the Director of Finance may authorize the withdrawal from the General Fund of an amount not to exceed the amount of the unsold bonds that have been authorized by the committee to be sold for the purpose of carrying out this part. Any amounts withdrawn shall be deposited in the fund. Any money made available under this section shall be returned to the General Fund from proceeds received from the sale of bonds for the purpose of carrying out this part.

1179.37. All money deposited in the fund that is derived from premium and accrued interest on bonds sold shall be reserved in the fund and shall be available for transfer to the General Fund as a credit to expenditures for bond interest.

1179.38. Pursuant to Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code, the cost of bond issuance shall be paid out of the bond proceeds. These costs shall be shared proportionally by each program funded through this bond act.

1179.39. The authority may request the Pooled Money Investment Board to make a loan from the Pooled Money Investment Account in

accordance with Section 16312 of the Government Code, for purposes of carrying out this part. The amount of the request shall not exceed the amount of the unsold bonds that the committee, by resolution, has authorized to be sold for the purpose of carrying out this part. The authority shall execute any documents required by the Pooled Money Investment Board to obtain and repay the loan. Any amounts loaned shall be deposited in the fund to be allocated by the board in accordance with this part.

1179.40. The bonds may be refunded in accordance with Article 6 (commencing with Section 16780) of Chapter 4 of Part 3 of Division 4 of Title 2 of the Government Code, which is a part of the State General Obligation Bond Law. Approval by the voters of the state for the issuance of the bonds described in this part includes the approval of the issuance of any bonds issued to refund any bonds originally issued under this part or any previously issued refunding bonds.

1179.41. Notwithstanding any other provision of this part, or of the State General Obligation Bond Law, if the Treasurer sells bonds pursuant to this part that include a bond counsel opinion to the effect that the interest on the bonds is excluded from gross income for federal tax purposes, subject to designated conditions, the Treasurer may maintain separate accounts for the investment of bond proceeds and for the investment of earnings on those proceeds. The Treasurer may use or direct the use of those proceeds or earnings to pay any rebate, penalty, or other payment required under federal law or take any other action with respect to the investment and use of those bond proceeds required or desirable under federal law to maintain the tax-exempt status of those bonds and to obtain any other advantage under federal law on behalf of the funds of this state.

1179.42. The people hereby find and declare that, inasmuch as the proceeds from the sale of bonds authorized by this part are not "proceeds of taxes" as that term is used in Article XIII B of the California Constitution, the disbursement of these proceeds is not subject to the limitations imposed by that part.

1179.43. Notwithstanding any other provision of this part, the provisions of this part are severable. If any provision of this part or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

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This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure amends a section of the California Constitution, and amends, adds, and repeals sections of the Elections Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

VOTER CHOICE OPEN PRIMARY ACT

SECTION 1. Title.

This measure shall be known and may be cited as the "Voter Choice Open Primary Act."

SEC. 2. Findings and Declarations.

The people of the State of California hereby find and declare all of the following:

(a) The current system of primaries in California limits voters' choices, and has resulted in a steady decline in voter participation in this state.

(b) The "Voter Choice Open Primary Act" will establish an election system in California that will allow all voters to vote for state elected offices and federal elected offices on a primary election ballot regardless of the party registration of the candidates or the voters.

(c) A voter choice open primary will ensure California voters more choice, greater participation, increased privacy, and a sense of fairness without burdening political parties' constitutional rights. Encouraging California citizens to vote is a legitimate and essential objective of this state, and will preserve constitutional order by ensuring a strong, participatory democratic process.

(d) A voter choice open primary will permit California voters to select the candidate they most prefer, regardless of the candidate's party

registration. This type of primary will result in more competitive election contests in which candidates will be able to take positions on a wide range of issues.

(e) A voter choice open primary will give California voters a real choice. They will be able to vote for any candidate for any voter-nominated office in the primary election, and will not be limited to voting only for those candidates of the party, if any, with which the candidates are registered.

(f) A voter choice open primary will guarantee competition in the general election. California voters will be given two competitive choices in the general election, involving greater voter participation than in the primary election. This will replace the current system in which the political parties protect incumbents through reapportionment plans, making over 90 percent of all state legislative and congressional seats safe for incumbents or candidates of one or the other of the major parties.

(g) A voter choice open primary will result in greater voter participation. By allowing voters complete freedom of choice among many candidates for office, regardless of the candidates' party registration, a voter choice open primary will encourage increased voter participation. In addition, some two million voters who have chosen not to register with a party, comprising some 15 percent of all California voters, will have a chance to participate fully in the voter choice open primary.

(h) A voter choice open primary will result in a greater number of candidates running for state elected offices and federal elected offices. Candidates who are not registered with a political party will now be able to compete in primary elections.

(i) A voter choice open primary will preserve the right of California's political parties to endorse candidates for voter-nominated offices by any method selected by the parties.

(j) A voter choice open primary will not infringe on the constitutional rights of political parties. California political parties will continue to decide whether non-party members: (1) may participate in the selec-

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tion of delegates to a national political party convention at which a nominee for President is chosen; or (2) may participate in the selection of members of political party county central committees; or both.

(k) A voter choice open primary will not affect the power of the Legislature to alter existing law governing the means by which political parties select delegates to national political party conventions at which a party nominee for President is chosen, or elect or select members of political party state and county central committees, or both.

(l) A political party will have the right to determine whether or not the voter registration status of candidates registered as voters with that particular political party will be included on the ballot, sample ballot, voter pamphlet, and other related election materials intended for distribution to the voters.

SEC. 3. Purpose and Intent.

The people of the State of California hereby declare their purpose and intent in enacting the “Voter Choice Open Primary Act” to be as follows:

(a) To amend the current primary election system in California, which limits voters’ choices and has resulted in a steady decline in voter participation in this state.

(b) To establish an election system that allows all California voters to vote for candidates for state elected offices and federal elected offices on a primary election ballot, regardless of the party registration, if any, of the candidates or the voters.

(c) To ensure California voters more choice, greater participation, increased privacy, and a sense of fairness, without burdening political parties’ constitutional rights.

(d) To increase voter participation by allowing California voters complete freedom of choice to select their most preferred candidate, regardless of his or her party registration.

(e) To give California voters a real choice by allowing them to vote for any candidate for any voter-nominated office in the primary election.

(f) To increase competition in the general election by giving California voters two competitive choices in the general election, where some two to four million additional voters vote, than in the primary election.

(g) To allow some two million California voters who have chosen not to register with a political party the chance to participate fully in a voter choice open primary.

(h) To encourage a greater number of candidates to run for voter-nominated offices.

(i) To preserve the right of California’s political parties to endorse candidates for voter-nominated offices and to decide whether non-party members may participate in the selection of a party’s presidential delegates or party county central committee members, or both.

(j) To protect the constitutional rights of political parties.

(k) To retain existing law and the power of the Legislature to alter existing law governing the means by which political parties select delegates to national political party conventions, or elect or select members of political party state and county central committees, or both.

(l) To give each qualified political party the right to determine whether the voter registration status of candidates registered with the party will be included on the ballot and other related election materials intended for distribution to the voters.

SEC. 4. Section 5 of Article II of the California Constitution is amended to read:

SEC. 5. (a) *The State of California shall hold a voter choice open primary election for the offices specified in subdivisions (e) and (f).*

(b) *A voter choice open primary is a direct or special primary election in which each voter, whether registered or not registered with a political party, may vote for any qualified candidate, including qualified write-in candidates, for each office for which the voter is eligible to vote in the voter’s respective political subdivision.*

(c) *All candidates shall be listed on a single voter choice open primary ballot. The candidates, regardless of party registration, including candidates registered with no party, who are the top two vote-getters for each office, shall be listed on the general election ballot.*

(d) *In special elections, all candidates shall be listed on a single special voter choice open primary ballot. If one candidate receives a majority of the votes on the special voter choice open primary ballot, that candidate shall be declared elected. If no candidate receives a majority of the votes on the special voter choice open primary ballot,*

the candidates, regardless of party registration, including candidates registered with no party, who are the top two vote-getters for each office shall be listed on the special general election ballot.

(e) *The state elected offices in a voter choice open primary election shall include the offices of Governor, Lieutenant Governor, Attorney General, Insurance Commissioner, Controller, Secretary of State, Treasurer, Member of the State Legislature, and Member of the Board of Equalization.*

(f) *The federal elected offices in a voter choice open primary election shall include the offices of Member of the United States House of Representatives and Member of the United States Senate.*

(g) *The Legislature shall provide for primary elections on a ballot separate from the voter choice open primary ballot for ~~partisan offices~~ delegates to a national political party convention at which a nominee for President is chosen, including an open presidential primary whereby the candidates on the ballot are those found by the Secretary of State to be recognized candidates throughout the nation or throughout California for the office of President of the United States, and those whose names are placed on the ballot by petition, but excluding any candidate who has withdrawn by filing an affidavit of noncandidacy.*

(h) *Nothing in this section shall be construed to alter the law governing recall elections.*

SEC. 5. Section 13 of the Elections Code is amended to read:

13. (a) No person shall be considered a legally qualified candidate for any office, ~~or party nomination for a partisan voter-nominated office, or for a political party position~~ under the laws of this state unless that person has filed a declaration of candidacy or statement of write-in candidacy with the proper official for the particular election or primary, or is entitled to have his or her name placed on a general election ballot by reason of having been nominated at a primary election, or having been selected to fill a vacancy on the general election ballot as provided in Section 8806, or having been selected as an independent candidate ~~for presidential elector pursuant to Section 8304 Part 2 (commencing with Section 8300) of Division 8.~~

(b) Nothing in this section shall be construed as preventing or prohibiting any qualified voter of this state from casting a ballot for any person by writing the name of that person on the ballot, or from having that ballot counted or tabulated, nor shall any provision of this section be construed as preventing or prohibiting any person from standing or campaigning for any elective office by means of a “write-in” campaign. However, nothing in this section shall be construed as an exception to the requirements of Section 15341.

(c) It is the intent of the Legislature, in enacting this section, to enable the Federal Communications Commission to determine who is a “legally qualified candidate” in this state for the purposes of administering Section 315 of Title 47 of the United States Code.

SEC. 6. Section 322.5 is added to the Elections Code, to read:

322.5. *“Federal elected office” means any federal office in the Congress of the United States of America that is filled by the voters at an election, including specifically members of the House of Representatives and of the United States Senate. Members of the House of Representatives and of the United States Senate shall be considered voter-nominated offices. The offices of President and Vice President of the United States, for which candidates are chosen through the process of both (1) voters electing, at a direct presidential primary election, delegates to a national political party convention at which a nominee for President is chosen, and (2) the convening of the electoral college subsequent to the national general presidential election, shall not be considered to be federal elected offices.*

SEC. 7. Section 323 of the Elections Code is amended to read:

323. *“Federal election” means any presidential election, general election, primary election, or special election held solely or in part for the purpose of selecting, nominating, or electing : any candidate for the office of President, Vice President, presidential elector, Member of the United States Senate, or Member of the United States House of Representatives.*

(a) *In any year which is evenly divisible by the number four, any candidate for President or Vice President (1) who delegates to a national political party convention choose as their nominee or (2) who may be selected by the electoral college system; or*

(b) *Any candidate for federal elected office for the Congress of the United States.*

SEC. 8. Section 334 of the Elections Code is amended to read:

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334. “Nonpartisan office” means ~~an office for which no party may nominate a candidate~~ of the Superintendent of Public Instruction and judicial, school, county, and municipal offices ~~are nonpartisan offices~~. “Nonpartisan office” also means offices not otherwise defined in Sections 322.5 and 356.5. “Nonpartisan office” shall not mean any political party position as defined in Section 338.

SEC. 9. Section 334.5 is added to the Elections Code, to read:

334.5. “No party” means a voter who indicates on his or her affidavit of registration that he or she does not designate a political party when registering to vote. The term “no party” shall also mean the status of any person registered as a voter, or who may register as a voter, with the designated category of “decline to state” a political party on his or her affidavit of registration, as described in subdivision (b) of Section 2151. The designation of “decline to state” shall include any person who registers as “no party” on his or her affidavit of registration. Any person who is a candidate with the designation of “no party” on the ballot shall be considered an officeholder independent of any political party once elected to office and at all times during which such person maintains his or her “no party” registration status while serving as the officeholder.

SEC. 10. Section 337 is added to the Elections Code, to read:

337. “Party ballot” means a ballot for a particular political party, as defined in Section 337.5, on which shall be listed either or both of the following:

(a) In any year which is evenly divisible by the number four, the names of candidates for President from among whom delegates to a national political party convention of that party choose their nominee; and

(b) Political party positions relating to members to be elected for county central committees of that party.

SEC. 11. Section 337.3 is added to the Elections Code, to read:

337.3. “Political affiliation” means the status of a voter as being registered with a qualified political party or as “no party”. Any references in this code to the affiliation of a voter shall mean the status of a voter as being registered with a particular qualified political party or as “no party” on the voter’s affidavit of registration. Notwithstanding this definition, any references to the affiliation of a voter in Division 7 (commencing with Section 7050) shall mean the registration status of a voter as being registered with a particular political party.

SEC. 12. Section 338 of the Elections Code is amended and renumbered to read:

~~338.~~ 337.5. “~~Party~~” “Political party” means a political party or organization that has qualified for participation in any primary election pursuant to Division 5 (commencing with Section 5000). References in this code to “party” shall refer to a political party.

SEC. 13. Section 337 of the Elections Code is amended and renumbered to read:

~~337.~~ 338. “~~Partisan office~~” “Political party position” means ~~an office for which a party may nominate a candidate~~ (a) any delegate to a national political party convention who shall choose a nominee for President, or (b) any political party central committee member who is elected only by voters registered with, or otherwise authorized by, the political party with which such delegate or member is registered.

SEC. 14. Section 338.5 is added to the Elections Code, to read:

338.5. “Political subdivision” means the area within which voters reside who are qualified to vote with respect to particular political party positions, federal elected offices, state elected offices, nonpartisan offices, or measures that qualify to be listed on the election ballot in that area.

SEC. 15. Section 356.5 is added to the Elections Code, to read:

356.5. “State elected office” means a state office that is filled by the voters at a voter choice open primary election or at a general election, including specifically the offices of Governor; Lieutenant Governor; Attorney General; Insurance Commissioner; Controller; Secretary of State; Treasurer; Superintendent of Public Instruction; Member of the Legislature, and Member of the State Board of Equalization. All of these offices shall be considered voter-nominated offices, with the exception of Superintendent of Public Instruction, which shall be considered a nonpartisan office.

SEC. 16. Section 359.2 is added to the Elections Code, to read:

359.2. “Voter choice open primary” means a direct primary election or a special primary election in which each voter, regardless of party registration, including a voter not registered with any political party, may vote in the manner described in Section 2001 for any quali-

fied candidate for each voter-nominated office for which the voter is eligible to vote in the relevant political subdivision, and in which all candidates for voter-nominated offices, regardless of party registration, including candidates not registered with a political party, shall be listed on a single voter choice open primary ballot.

SEC. 17. Section 359.3 is added to the Elections Code, to read:

359.3. (a) “Voter choice open primary ballot” means a ballot on which shall be listed the following:

- (1) Candidates for voter-nominated offices;
- (2) Candidates for non-partisan offices; and
- (3) Measures.

(b) In the event that a county elections official determines that a voter choice open primary ballot will be larger than can be conveniently handled, the county elections official may create a separate ballot for voters, containing nonstatewide nonpartisan offices and statewide measures, pursuant to Section 13230. This separate ballot shall be titled with the heading: “LOCAL ELECTED OFFICES AND MEASURES BALLOT”. Statewide nonpartisan offices and statewide measures shall at all times be included on the “Voter Choice Open Primary Ballot” and not on the “Local Elected Offices and Measures Ballot”.

SEC. 18. Section 359.5 is added to the Elections Code, to read:

359.5. (a) “Voter-nominated office” means any state elected office or federal elected office for which a candidate is nominated or elected by the voters, regardless of the political party or “no party” registration status of both the candidate and the voters.

(1) Any election to a “voter-nominated office” shall not utilize a political party nomination process.

(2) The voter registration status of a candidate for voter-nominated office shall be stated, as described in Section 13105, either as with a qualified political party, subject to the political party’s consent as specified in Section 7031, or as “no party” on a ballot, a sample ballot, and the voter pamphlet. The following statement shall be included on the ballot and sample ballot and in the voter pamphlet: “The designation of the political party registration status on the ballot of a candidate for a voter-nominated office is for the voters’ informational purposes only, and does not indicate that the political party with which a candidate may be registered has nominated that candidate or that the party necessarily agrees with or endorses that candidate.” The statement shall be printed in not less than eight-point boldface type on each page of a ballot and a sample ballot on which the political party registration status of any candidate is printed and in not less than 10-point boldface type on each page in a ballot pamphlet on which the political party registration status of any candidate is printed. The state elected offices in a voter choice open primary election shall include the offices of Governor, Lieutenant Governor, Attorney General, Insurance Commissioner, Controller, Secretary of State, Treasurer, Member of the State Legislature, and Member of the Board of Equalization. The federal elected offices in a voter choice open primary election shall include the offices of Member of the United States House of Representatives and Member of the United States Senate.

(b) “Voter-nominated office” shall not mean offices as described in Section 334, any delegate to a national political party convention who shall choose a nominee for President, or any political party central committee member. Delegates to national political party conventions and county central committee members, which shall be considered political party positions and not voter-nominated offices, shall be selected or elected only by voters registered with, or otherwise authorized pursuant to subdivision (c) of Section 13102 by, the political party with which such delegates and members are registered.

SEC. 19. Section 2001 is added to the Elections Code, to read:

2001. (a) Each voter entitled to vote, whether registered or not registered with a political party, shall be able to vote for all state elected offices and federal elected offices in each voter’s respective political subdivision in every voter choice open primary election.

(b) All registered voters shall have the choice to vote for any of the candidates described in subdivision (a) regardless of the political party registration, if any, of the candidate.

(c) Subdivision (a) shall not apply to the choosing, selection or election of political party positions as defined in Section 338.

SEC. 20. Section 2150 of the Elections Code is amended to read:

2150. (a) The affidavit of registration shall show:

- (1) The facts necessary to establish the affiant as an elector.

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(2) The affiant's name at length, including his or her given name, and a middle name or initial, or if the initial of the given name is customarily used, then the initial and middle name. The affiant's given name may be preceded, at affiant's option, by the designation of Miss, Ms., Mrs., or Mr. No person shall be denied the right to register because of his or her failure to mark a prefix to the given name and shall be so advised on the voter registration card. This subdivision shall not be construed as requiring the printing of prefixes on an affidavit of registration.

(3) The affiant's place of residence, residence telephone number, if furnished, and e-mail address, if furnished. No person shall be denied the right to register because of his or her failure to furnish a telephone number or e-mail address, and shall be so advised on the voter registration card.

(4) The affiant's mailing address, if different from the place of residence.

(5) The affiant's date of birth to establish that he or she will be at least 18 years of age on or before the date of the next election.

(6) The state or country of the affiant's birth.

(7) The affiant's California driver's license number, California identification card number, or other identification number as specified by the Secretary of State. No person shall be denied the right to register because of his or her failure to furnish one of these numbers, and shall be so advised on the voter registration card.

(8) The affiant's political party ~~affiliation~~ or "no party" registration. *The word "Party" shall follow the listing of each qualified political party on the affidavit of registration .*

(9) That the affiant is currently not imprisoned or on parole for the conviction of a felony.

(10) A prior registration portion indicating whether the affiant has been registered at another address, under another name, or as ~~intending to affiliate~~ registered with another party ~~;~~ or as "no party." If the affiant has been so registered, he or she shall give an additional statement giving that address, name, or party or "no party" registration status .

(b) The affiant shall certify the content of the affidavit as to its truth and correctness, under penalty of perjury, with the signature of his or her name and the date of signing. If the affiant is unable to write he or she shall sign with a mark or cross.

(c) The affidavit of registration shall also contain a space that would enable the affiant to state his or her ethnicity or race, or both. An affiant may not be denied the ability to register because he or she declines to state his or her ethnicity or race.

(d) If any person, including a deputy registrar, assists the affiant in completing the affidavit, that person shall sign and date the affidavit below the signature of the affiant.

SEC. 21. Section 2151 of the Elections Code is amended to read:

2151. (a) At the time of registering and of transferring registration, each elector may *designate a political party on his or her affidavit of registration declare the name of the political party with which he or she intends to affiliate at the ensuing primary election* . The name of that political party shall be stated in the affidavit of registration and the index.

The voter registration card shall inform the affiant that any elector may ~~decline to state~~ *designate "no party" instead of a political party affiliation* , but no person shall be entitled to vote the ballot of any political party at any ~~primary~~ election unless he or she has stated the name of the party ~~with which he or she intends to affiliate on the affidavit of registration or unless he or she has declined to state a party affiliation designated "no party"~~ and the political party, by party rule duly noticed to the Secretary of State, authorizes a person who has ~~declined to state a party affiliation designated "no party"~~ to vote the ballot of that political party. The voter registration card shall include a listing of all qualified political parties *and of "No Party" from which a person may designate a choice of either a political party or "no party."* *The word "Party" shall follow the listing of each qualified political party on the affidavit of registration .*

No person shall be permitted to vote the ballot of any party or for any delegates to the convention of any party other than the party designated in his or her registration, except as provided by Section 2152 or unless he or she has ~~declined to state a party affiliation designated "no party"~~ and the party, by party rule duly noticed to the Secretary of State, authorizes a person who has ~~declined to state a party affiliation~~

designated "no party" to vote the party ballot or for delegates to the party convention.

(b) *All affidavits of registration on which persons have designated that they "decline to state" a political party shall be classified and treated by elections officials as a designation of "no party" consistent with the definition contained in Section 334.5. Elections officials may continue to use, distribute, and receive existing supplies of affidavits of registration that include the designation of "decline to state" and that may or may not contain the word "party" after the listing of each qualified political party. However, elections officials shall take all reasonable steps to reprint and provide new affidavits of registration that comply with subsection (a) as supplies of the prior affidavit format are fully utilized.*

SEC. 22. Section 2152 of the Elections Code is amended to read:

2152. Whenever any voter ~~has declined to designate or has changed desires to change his or her political party or "no party" registration status~~ *affiliation* prior to the close of registration for an election, he or she may either so designate or have a change recorded by executing a new affidavit of registration and completing the prior registration portion of the affidavit.

SEC. 23. Section 2154 of the Elections Code is amended to read:

2154. In the event that the county elections official receives an affidavit of registration that does not include portions of the information for which space is provided, the county elections official ~~voters~~ shall apply the following rebuttable presumptions:

(a) If no middle name or initial is shown, it shall be presumed that none exists.

(b) If ~~no~~ *the affiant has not designated a political party affiliation is shown* , it shall be presumed that the affiant has ~~no party affiliation designated "no party."~~

(c) If no execution date is shown, it shall be presumed that the affidavit was executed on or before the 15th day prior to the election, provided that (1) the affidavit is received by the county elections official on or before the 15th day prior to the election, or (2) the affidavit is postmarked on or before the 15th day prior to the election and received by mail by the county elections official.

(d) If the affiant fails to identify his or her state of birth within the United States, it shall be presumed that the affiant was born in a state or territory of the United States if the birthplace of the affiant is shown as "United States," "U.S.A.," or other recognizable term designating the United States.

SEC. 24. Section 2155 of the Elections Code is amended to read:

2155. Upon receipt of a properly executed affidavit of registration or address correction notice or letter pursuant to Section 2119, Article 2 (commencing with Section 2220), or the National Voter Registration Act of 1993 (42 U.S.C. Sec. 1973gg), the county elections official shall send the voter a voter notification by nonforwardable, first-class mail, address correction requested. The voter notification shall state the party ~~affiliation~~ or "no party" status for which the voter has registered in the following format:

Party: (Name of political party , e.g., Libertarian, or No Party)

The voter notification shall be substantially in the following form:

VOTER NOTIFICATION

You are registered to vote. The party ~~affiliation~~ or "no party" status for which you have registered is shown on the reverse of this card. This card is being sent as a notification of:

1. Your recently completed affidavit of registration,

OR,

2. A correction to your registration because of an official notice that you have moved. If your residence address has not changed or if your move is temporary, please call or write the county elections official immediately.

You may vote in any election held 15 or more days after the date shown on the reverse side of this card.

Your name will appear on the index kept at the polls.

Please contact your county elections office if the information shown on the reverse side of this card is incorrect.

(Signature of Voter)

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SEC. 25. Section 2185 of the Elections Code is amended to read:

2185. Upon written demand of the chair or vice chair of a party state central committee or of the chair of a party county central committee, the county elections official shall furnish to each committee, without charge therefor, the index of registration for the primary and general elections or for any special election at which a ~~partisan voter-nominated office or a political party position~~ is to be filled. The index of registration shall be furnished to the committee demanding the index not less than 25 days prior to the day of the primary, general, or special election for which they are provided. Upon written demand, the county elections official shall also furnish to the committee the index of registration of voters who registered after the 54th day before the election, which shall be compiled and prepared by Assembly districts. The county elections official shall furnish either two printed copies or, if available, one copy in an electronic form of the indexes specified in this section.

SEC. 26. Section 2187 of the Elections Code is amended to read:

2187. (a) Each county elections official shall send to the Secretary of State, in a format described by the Secretary of State, a summary statement of the number of voters in the county. The statement shall show the total number of voters in the county, the number registered ~~as affiliated~~ with each qualified political party, the number registered in nonqualified parties, and the number who ~~declined to state any party affiliation~~. ~~are registered as "no party."~~ The statement shall also show the number of voters, by political party or "no party" registration status ~~affiliations~~, in each city, supervisorial district, Assembly district, Senate district, and congressional district located in whole or in part within the county.

(b) The Secretary of State, on the basis of the statements sent by the county elections officials and within 30 days after receiving those statements, shall compile a statewide list showing the number of voters, by party ~~affiliations~~ registration and "no party" registration status, in the state and in each county, city, supervisorial district, Assembly district, Senate district, and congressional district in the state. A copy of this list shall be made available, upon request, to any elector in this state.

(c) Each county that uses data processing equipment to store the information set forth in the affidavit of registration shall send to the Secretary of State one copy of the magnetic tape file with the information requested by the Secretary of State. Each county that does not use data processing storage shall send to the Secretary of State one copy of the index setting forth that information.

(d) The summary statements and the magnetic tape file copy or the index shall be sent at the following times:

(1) On the 135th day before each presidential primary and before each direct primary, with respect to voters registered on the 154th day before the primary election.

(2) Not less than 50 days prior to the primary election, with respect to voters registered on the 60th day before the primary election.

(3) Not less than 7 days prior to the primary election, with respect to voters registered before the 14th day prior to the primary election.

(4) Not less than 50 days prior to the general election, with respect to voters registered on the 60th day before the general election.

(5) Not less than 7 days prior to the general election, with respect to voters registered before the 14th day prior to the general election.

(6) On or before March 1 of each odd-numbered year, with respect to voters registered as of February 10.

(e) The Secretary of State may adopt regulations prescribing the content and format of the magnetic tape file or index referred to in subdivision (c) and containing the registered voter information from the affidavits of registration.

(f) The Secretary of State may adopt regulations prescribing additional regular reporting times, except that the total number of reporting times in any one calendar year shall not exceed 12.

(g) The Secretary of State shall make the information from the magnetic tape files or the printed indexes available, under conditions prescribed by the Secretary of State, to any candidate for federal, state, or local office, to any committee for or against any proposed ballot measure, to any committee for or against any initiative or referendum measure for which legal publication is made, and to any person for election, scholarly or political research, or governmental purposes as determined by the Secretary of State.

SEC. 27. Section 3006 of the Elections Code is amended to read:

3006. (a) Any printed application that is to be distributed to voters for requesting absent voter ballots shall contain spaces for the following:

(1) The printed name and residence address of the voter as it appears on the affidavit of registration.

(2) The address to which the ballot is to be mailed.

(3) The voter's signature.

(4) The name and date of the election for which the request is to be made.

(5) The date the application must be received by the elections official.

(b) (1) The information required by paragraphs (1), (4), and (5) of subdivision (a) may be preprinted on the application. The information required by paragraphs (2) and (3) of subdivision (a) shall be personally affixed by the voter.

(2) An address, as required by paragraph (2) of subdivision (a), may not be the address of any political party, a political campaign headquarters, or a candidate's residence. However, a candidate, his or her spouse, immediate family members, and any other voter who shares the same residence address as the candidate may request that an absentee ballot be mailed to the candidate's residence address.

(3) Any application that contains preprinted information shall contain a conspicuously printed statement, as follows: "You have the legal right to mail or deliver this application directly to the local elections official of the county where you reside."

(c) The application shall inform the voter that if he or she is not ~~affiliated~~ ~~registered~~ with a political party, in addition to receiving any other ballot or ballots to which the voter is entitled, the voter may request to receive an absentee party ballot for a particular political party for the primary election, if that political party has adopted a party rule, duly noticed to the Secretary of State, authorizing that vote. The application shall contain a toll-free telephone number, established by the Secretary of State, that the voter may call to access information regarding which political parties have adopted such a rule. The application shall contain a check-off box with a conspicuously printed statement that reads, as follows: "I am not presently ~~affiliated~~ ~~registered~~ with any political party. However, for this primary election only, I request an absentee ballot for the _____ Party." The name of the political party shall be personally affixed by the voter.

(d) The application shall provide the voters with information concerning the procedure for establishing permanent absentee voter status, and the basis upon which permanent absentee voter status is claimed.

(e) The application shall be attested to by the voter as to the truth and correctness of its content, and shall be signed under penalty of perjury.

SEC. 28. Section 3007.5 of the Elections Code is amended to read:

3007.5. (a) The Secretary of State shall prepare and distribute to appropriate elections officials a uniform electronic application format for an absent voter's ballot that conforms to this section.

(b) The uniform electronic application shall contain spaces for at least the following information:

(1) The name and residence address of the registered voter as it appears on the affidavit of registration.

(2) The address to which the ballot is to be mailed.

(3) The name and date of the election for which the request is made.

(4) The date the application must be received by the elections official.

(5) The date of birth of the registered voter.

(c) The uniform electronic application shall inform the voter that if he or she is not ~~affiliated~~ ~~registered~~ with a political party, in addition to receiving any other ballot or ballots to which the voter is entitled, the voter may request to receive an absentee party ballot for a particular political party for the primary election, if that political party has adopted a party rule, duly noticed to the Secretary of State, authorizing that vote. The application shall contain a toll-free telephone number, established by the Secretary of State, that the voter may call to access information regarding which political parties have adopted such a rule. The application shall list the parties that have notified the Secretary of State of the adoption of such a rule. The application shall contain a checkoff box with a conspicuously printed statement that

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reads, as follows: “I am not presently ~~affiliated~~ registered with any political party. However, for this primary election only, I request an absentee ballot for the _____ Party.” The name of the political party shall be personally affixed by the voter.

(d) The uniform electronic application shall contain a conspicuously printed statement, as follows: “Only the registered voter himself or herself may apply for an absentee ballot. An application for an absentee ballot made by a person other than the registered voter is a criminal offense.”

(e) The uniform electronic application shall include the following statement: “A ballot will not be sent to you if this application is incomplete or inaccurate.”

(f) The uniform electronic application format shall not permit the form to be electronically submitted unless all of the information required to complete the application is contained in the appropriate fields.

SEC. 29. Section 3205 of the Elections Code is amended to read:

3205. (a) Absent voter ballots mailed to, and received from, voters on the permanent absent voter list are subject to the same deadlines and shall be processed and counted in the same manner as all other absent voter ballots.

(b) Prior to each primary election, county elections officials shall mail to every voter not ~~affiliated~~ registered with a political party whose name appears on the permanent absent voter list a notice and application regarding voting in the primary election. The notice shall inform the voter that *if he or she is not registered with a political party, in addition to receiving any other ballot or ballots to which the voter is entitled, he or she may request to receive an absentee party ballot for a particular political party for the primary election, if that political party adopted a party rule, duly noticed to the Secretary of State, authorizing these voters to vote in their primary. The notice shall also contain a toll-free telephone number, established by the Secretary of State, that the voter may call to access information regarding which political parties have adopted such a rule. The application shall contain a check-off box with a conspicuously printed statement that reads as follows: “I am not presently ~~affiliated~~ registered with any political party. However, for this primary election only, I request an absentee ballot for the _____ Party.” The name of the political party shall be personally affixed by the voter.*

SEC. 30. Section 5000 of the Elections Code is amended to read:

5000. (a) For purposes of this division, the definition of ~~“party”~~ “political party” in Section ~~338~~ 337.5 is applicable.

(b) This chapter shall apply to political bodies and to parties not otherwise provided for in Division 7 (commencing with Section ~~7050~~ 7030).

SEC. 31. Section 5100 of the Elections Code is amended to read:

5100. A party is qualified to participate in any primary election under any of the following conditions:

~~(a) If at the last preceding gubernatorial election there was polled for any one of its candidates for any office voted on throughout the state, at least 2 percent of the entire vote of the state.~~

~~(b) (a) If on or before the 135th day before any primary election, it appears to the Secretary of State, as a result of examining and totaling the statement of voters and their political ~~affiliations~~ party registrations transmitted to him or her by the county elections officials, that voters equal in number to at least ~~4~~ one-third of 1 percent of the entire vote of the state at the last preceding gubernatorial election have declared their ~~intention to affiliate~~ registration with that party.~~

~~(c) (b) If on or before the 135th day before any primary election, there is filed with the Secretary of State a petition signed by voters, equal in number to at least ~~40~~ 5 percent of the entire vote of the state at the last preceding gubernatorial election, declaring that they represent a proposed party, the name of which shall be stated in the petition, which proposed party those voters desire to have participate in that primary election. This petition shall be circulated, signed, verified and the signatures of the voters on it shall be certified to and transmitted to the Secretary of State by the county elections officials substantially as provided for initiative petitions. Each page of the petition shall bear a caption in 18-point boldface type, which caption shall be the name of the proposed party followed by the words “Petition to participate in the primary election.”~~

SEC. 32. Part 1.5 (commencing with Section 7030) is added to Division 7 of the Elections Code, to read:

PART 1.5. GENERAL PROVISIONS

7030. Political parties qualifying pursuant to Division 5 (commencing with Section 5000) shall be entitled to participate in an election, as provided in this code, for the purpose of permitting voters who are registered with a particular party and any other voters pursuant to subdivision (c) of Section 13102 to select or elect political party positions as defined in Section 338. Any election pursuant to this section shall be conducted by means of a party ballot separate from the voter choice open primary ballot.

7031. Within 120 days after the effective date of this section, each qualified political party shall notify the Secretary of State whether or not it consents to inclusion on the ballot, sample ballot, voter pamphlet and other related elections materials intended for distribution to voters, of the voter registration status of candidates registered as voters with that particular political party. The notice to the Secretary of State shall be on a form provided by the Secretary of State. Such consent, if given, shall apply uniformly to all offices listed in subdivisions (e) and (f) of Section 5 of Article II of the California Constitution for all direct and special primary and general elections. A party may notify the Secretary of State of its decision to change its consent at any time, to become effective for any elections held not less than 88 days after receipt of the notice by the Secretary of State. Within 120 days after a new political party qualifies pursuant to Division 5 (commencing with Section 5000), the party shall comply with the requirements of this section. For any qualified political party that does not provide a notice of its consent or lack of consent, it shall be deemed that the party does not consent to inclusion of the voter registration status of candidates registered with that party for the purposes described in this section.

7032. Any nomination of candidates for voter-nominated state elected offices and federal elected offices in a voter choice open primary election provided for in this code shall be made by the voters and not by political parties. Any candidate nominated by the voters for any voter-nominated office in any voter choice open primary election shall not be considered the nominee or endorsed candidate of any political party by virtue of such nomination by the voters.

7033. Nothing in this code shall be construed to infringe in any way upon the legal rights of any political party, duly qualified under Division 5 (commencing with Section 5000), and as defined in Section 337.5, to endorse candidates listed on a voter choice open primary ballot for any voter-nominated office.

SEC. 33. Section 8000 of the Elections Code is amended to read:

8000. (a) This chapter shall apply to both of the following:

(1) Nomination of candidates for voter-nominated state elected offices and federal elected offices, as defined in Section 359.5.

(2) Any other candidates for any other offices or political party positions described in this code who are not otherwise described in paragraph (1) of subdivision (a), or subdivision (b), of this section.

(b) This chapter does not apply to:

~~(a)~~ (1) Recall elections.

~~(b)~~ (2) Presidential primary.

~~(c)~~ (3) Nomination of officers of cities or counties whose charters provide a system for nominating candidates for those offices.

~~(d)~~ (4) Nomination of officers for any district not formed for municipal purposes.

~~(e)~~ (5) Nomination of officers for general law cities.

~~(f)~~ (6) Nomination of school district officers.

SEC. 34. Section 8000.5 is added to the Elections Code, to read:

8000.5. (a) Each voter entitled to vote, whether registered or not registered with a political party, shall receive a ballot in each direct voter choice open primary election by any voting mechanism the state deems official for any such election that includes all candidates for voter-nominated state elected offices and federal elected offices, and nonpartisan office, in the voter's political subdivision, as defined in this code. All candidates for voter-nominated office, whether registered with a political party or not, shall appear on every such ballot. Each voter entitled to vote, whether registered or not registered with a political party, shall be entitled to vote for any candidate on said ballot. The candidates, regardless of party registration, including candidates registered as “no party,” who are the top two vote-getters for each voter-nominated office shall become the nominees of the voters and be listed on the ballot for the ensuing general election.

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(b) Ballots for use in presidential primaries and for political party positions shall be governed respectively by Division 6 (commencing with Section 6000) and Division 7 (commencing with Section 7030) and by other provisions of this code relating to such ballots.

SEC. 35. Section 8001 of the Elections Code is amended to read:

8001. (a) No declaration of candidacy for a ~~partisan~~ voter-nominated state elected office or federal elected office, or for membership on a county central committee, shall be filed by a candidate whose affidavit of registration designates a particular political party unless (1) at the time of presentation of the declaration and continuously for not less than three months immediately prior to that time, or for as long as he has been eligible to register to vote in the state, the candidate is shown by his affidavit of registration to be ~~affiliated~~ registered with the political party ~~the nomination of which he seeks designated in the declaration,~~ and (2) the candidate has not been registered ~~as affiliated~~ with a qualified political party other than that political party ~~the nomination of which he seeks designated in the declaration~~ within 12 months, or, in the case of an election governed by Chapter 1 (commencing with Section 10700) of Part 6 of Division 10, within three months immediately prior to the filing of the declaration.

(b) The elections official shall attach a certificate to the declaration of candidacy showing the date on which the candidate registered ~~as intending to affiliate~~ with the political party ~~the nomination of which he seeks designated in the declaration,~~ and indicating that the candidate has not been ~~affiliated~~ registered with any other qualified political party for the period specified in subdivision (a) or (c) immediately preceding the filing of the declaration. This section shall not apply to declarations of candidacy filed by a candidate ~~of registered~~ with a political party participating in its first direct primary election subsequent to its qualification as a political party pursuant to Section 5100.

(c) No declaration of candidacy for a voter-nominated state elected office or federal elected office shall be filed by a candidate whose affidavit of registration designates "no party" unless the candidate is not, and was not at any time during the 12 months preceding the filing of the declaration of candidacy, registered as a voter with any qualified political party, or, in the case of an election governed by Chapter 1 (commencing with Section 10700) of Part 6 of Division 10, at any time during the three months immediately preceding the filing of the declaration, registered as a voter with a political party qualified under Section 5100.

SEC. 36. Section 8003 of the Elections Code is repealed:

8003. ~~This chapter does not prohibit the independent nomination of candidates under Part 2 (commencing with Section 8300), subject to the following limitations:~~

(a) ~~A candidate whose name has been on the ballot as a candidate of a party at the direct primary and who has been defeated for that party nomination is ineligible for nomination as an independent candidate. He is also ineligible as a candidate named by a party central committee to fill a vacancy on the ballot for a general election.~~

(b) ~~No person may file nomination papers for a party nomination and an independent nomination for the same office, or for more than one office at the same election.~~

SEC. 37. Section 8022 of the Elections Code is amended to read:

8022. (a) Each candidate for a ~~party~~ nomination by the voters in a voter choice open primary election for the office of State Senator or Member of the Assembly, or for any state constitutional office, or for Insurance Commissioner, at the direct voter choice open primary election shall file a written and signed declaration of his or her intention to become a candidate for ~~his or her party's~~ nomination by the voters for that office. The declaration of intention shall be filed with either the Secretary of State or the elections official of the county in which the candidate is a resident. The declaration of intention shall be filed, on a form to be supplied by the elections official, not more than 14 nor less than five days prior to the first day on which nomination papers may be presented for filing. If the incumbent fails to file a declaration of intention by the end of that period, persons other than the incumbent may file declarations of intention no later than the first day for filing nomination papers. However, if the incumbent's failure to file a declaration of intention is because he or she has already served the maximum number of terms permitted by the California Constitution for that office, there shall be no extension of the period for filing the declaration of intention. The filing fees and copies of all declarations of intention filed with the county elections official in accordance with this article shall be immediately forwarded to the Secretary of State. The declaration of intention provided for in this section shall be in substantially the following form:

I hereby declare my intention to become a candidate for the _____ Party's nomination
(Name of political party)

by the voters for the office of _____
(Name of office and district, if any)

at the direct voter choice open primary election.

() I am registered as a voter with the _____; or
(Name of political party, if any)

() I am registered as a voter as "no party."
(Candidate check applicable statement)

(Signature of candidate)

(Address of candidate)

(b) No person may be a candidate nor have his or her name printed upon any ballot as a candidate for a ~~party~~ nomination by the voters for the office of Senator or Member of the Assembly, or for any state constitutional office, or for Insurance Commissioner at the direct voter choice open primary election unless he or she has filed the declaration of intention provided for in this section. However, if the incumbent of the office who is ~~affiliated~~ registered with any qualified political party files a declaration of intention, but for any reason fails to qualify for nomination for the office by the last day prescribed for the filing of nomination papers, an additional five days shall be allowed for the filing of nomination papers for the office, and any person, other than the incumbent if otherwise qualified, may file nomination papers for the office during the extended period, notwithstanding that he or she has not filed a written and signed declaration of intention to become a candidate for the office as provided in subdivision (a).

SEC. 38. Section 8025 of the Elections Code is amended to read:

8025. If ~~only one~~ any candidate has declared a candidacy for a ~~partisan~~ nomination to a voter-nominated office at the direct voter choice open primary election ~~for a party qualified to participate at that election~~, and that candidate dies after the last day prescribed for the delivery of nomination documents to the elections official, as provided in Section 8020, but not less than ~~83~~ 74 days before the election, any person qualified under the provisions of Section 8001 may circulate and deliver nomination documents for the office to the elections official up to 5 p.m. on the ~~74th~~ 68th day prior to the election. In that case, the elections official shall, immediately after receipt of those nomination documents, certify and transmit them to the Secretary of State in the manner specified in this article.

SEC. 39. 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 _____, 20____, and declare the following to be true:

- (1) My name is _____.
- (2) (A) I am registered as a voter with the _____;
(Name of political party, if any)

(This statement is required for a candidate for voter-nominated state elected office or federal elected office using a party registration status on the ballot, as permitted by a political party pursuant to Section 7031, or for member of a political party county central committee); or

- (B) I am registered as a voter as "no party."

(This statement is required for candidates who designate "no party" registration)

- (3) I want my name and occupational designation to appear on the ballot as follows: _____.

- (4) Addresses:

- (A) Residence _____

- (B) Business _____

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(C) Mailing _____

(5) Telephone numbers: Day _____ Evening _____

(6) Web site: _____

(7) Fax number: _____

(8) Email address: _____

(9) I meet the statutory and constitutional qualifications for this office (including, but not limited to, citizenship, residency, and party affiliation registration, if required). (With respect to registration, candidates for voter-nominated offices or for county central committee members must comply with subdivision (a) of Section 8001 and candidates who register as “no party” must comply with subdivision (c) of Section 8001.

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

(11) 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 _____, 20____.

Notary Public (or other official)

Examined and certified by me this _____ day of _____, 20____.

County Elections Official

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) A candidate for a judicial office may not 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.

(c) For purposes of subparagraph (A) of paragraph (2) of subdivision (a), the use by a candidate of his or her political party registration status on the ballot is subject to the candidate’s registration status complying with the time limitations set forth in subdivision (a) of Section 8001 and, for candidates for voter-nominated offices, to the political party’s consent as specified in Section 7031.

(d) For purposes of subparagraph (B) of paragraph (2) of subdivision (a), the use by a candidate of his or her registration status as “no party” on the ballot is subject to the candidate’s registration status complying with the time limitations set forth in subdivision (c) of Section 8001.

(e) Notwithstanding any other provision of law, a person who intends to qualify as a candidate for a voter-nominated office, and who fails to comply with the requirements of subdivision (a) of Section 8001 for a reason other than the person’s voluntary action, has the right to be listed as a candidate for that office on the ballot and shall have his or her voter registration status printed on the ballot as “No Party,” provided that the person meets all other qualification requirements for candidacy for that office.

(f) Notwithstanding any other provision of law, a candidate who has met all qualification requirements for candidacy for a voter-nominated office, but who is found after such qualification not to be entitled to the application of paragraph (2) of subdivision (a) of Section 13105 for a reason other than a voluntary action by the candidate, has the right to be listed as a candidate for that office on the ballot and shall have his or her voter registration status printed on the ballot as “No Party.” Subdivision (d) of Section 13105 shall not be applicable under this subdivision.

SEC. 40. Section 8041 of the Elections Code is amended to read:

8041. (a) The nomination paper for a county central committee member candidate shall be in substantially the following form:

NOMINATION PAPER

I, the undersigned signer for _____ for the _____ Party nomination to the _____ county central committee of _____ County, to be voted for at the primary election to be held on the _____ day of _____, 20____, hereby assert as follows:

I am a resident of _____ County and registered to vote at the address shown on this paper and ~~affiliated registered with the _____ Party. I am not at this time a signer of any other nomination paper of any other candidate for the above-named office, or in case there are several places to be filled in the above-named office, I have not signed more nomination papers than there are places to be filled in the above-named office county central committee.~~ My residence is correctly set forth after my signature hereto:

Name _____

Residence _____

(b) The nomination paper for candidates who are not county central committee member candidates shall be in substantially the following form:

NOMINATION PAPER

I, the undersigned signer for _____ for nomination to the office of _____, to be voted for at the primary election to be held on the _____ day of _____, 20____, hereby assert as follows:

I am a resident of _____ County and registered to vote at the address shown on this paper. I am not at this time a signer of any other nomination paper of any other candidate for the above-named office, or in case there are several places to be filled in the above-named office, I have not signed more nomination papers than there are places to be filled in the above-named office. My residence is correctly set forth after my signature hereto:

Name _____

Residence _____

(b) (c) The affidavit of the circulator for nomination papers as described in subdivisions (a) and (b) shall read as follows:

AFFIDAVIT OF THE CIRCULATOR

I, _____, solemnly swear (or affirm) that the signatures on this section of the nomination paper were obtained between _____, 20____, and _____, 20____; that I circulated the petition and I saw the signatures on this section of the nomination paper being written; and that, to the best of my information and belief, each signature is the genuine signature of the person whose name it purports to be.

My voting residence is _____.

Signed _____

Subscribed and sworn to before me this _____ day of _____, 20____.

(SEAL)

Notary Public (or other official)

Examined and certified by me this _____ day of _____, 20____.

Elections Official

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 nomination paper in his or her possession which is entitled to be filed under Section 18202 of the Elections Code.

SEC. 41. Section 8062 of the Elections Code is amended to read:

8062. (a) The number of registered voters required to sign a nomination paper for the respective offices and political party positions are as follows:

(1) ~~State~~ Statewide constitutional office, Insurance Commissioner, or United States Senate, not less than 65 nor more than 100.

(2) House of Representatives in Congress, State Senate or Assembly, Board of Equalization, or any office voted for in more than one county, and not statewide, not less than 40 nor more than 60.

(3) Candidacy in a single county or any political subdivision of a county, other than State Senate or Assembly, not less than 20 nor more than 40.

(4) ~~When~~ Political party county central committee member, when any political party has less than 50 voters in the state or in the county

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or district in which the election is to be held, one-tenth the number of voters of the party.

(5) When there are less than 150 voters in the county or district in which the election is to be held, not less than 10 nor more than 20.

(b) *The number of registered voters required to sign a nomination paper for a candidate for the House of Representatives in Congress, California State Senate, or California State Assembly, to be voted for at a special election to fill a vacancy, shall comply with subdivision (a) of Section 8062 and must be filed in the manner prescribed in subdivision (a) of Section 10704.*

~~(b)~~ (c) The provisions of this section are mandatory, not directory, and no nomination paper shall be deemed sufficient that does not comply with this section. However, this subdivision shall not be construed to prohibit withdrawal of signatures pursuant to Section 8067. This subdivision also shall not be construed to prohibit a court from validating a signature which was previously rejected upon showing of proof that the voter whose signature is in question is otherwise qualified to sign the nomination paper.

SEC. 42. Section 8068 of the Elections Code is amended to read:

8068. Signers shall be voters in the district or political subdivision in which the candidate is to be voted on. ~~Signers and shall need not be registered affiliated with the any political party to be eligible to sign nomination papers for a candidate for a voter-nominated office, if any, in which the nomination is proposed, but must be registered with the appropriate party to sign nomination papers for a candidate for a political party central committee.~~

SEC. 43. Section 8081 of the Elections Code is amended to read:

8081. Before any nomination document is filed in the office of the county elections official or forwarded for filing in the office of the Secretary of State, the county elections official shall verify (1) the signatures in each case, and (2) the political ~~affiliations~~ party registration in the case of a person seeking a political party position, of the signers on the nomination paper with the registration affidavits on file in the office of the county elections official. The county elections official shall mark "not sufficient" any signature (a) that does not appear in the same handwriting as appears on the affidavit of registration in his or her office, or, (b) in the case of a political party position, that is accompanied by a declaration of party ~~affiliation~~ registration that is not in accordance with the declaration of party ~~affiliation~~ registration in the affidavit of registration. The county elections official may cease to verify signatures once the minimum requisite number of signatures has been verified.

SEC. 44. Section 8106 of the Elections Code is amended to read:

8106. (a) Notwithstanding any other provision of this article, a candidate may submit a petition containing signatures of registered voters in lieu of a filing fee as follows:

(1) For the office of California State Assembly, 1,500 signatures.

(2) For the office of California State Senate and the United States House of Representatives, 3,000 signatures.

(3) For candidates running for statewide office, 10,000 signatures.

(4) For all other offices for which a filing fee is required, if the number of registered voters in the district in which he or she seeks nomination is 2,000 or more, a candidate may submit a petition containing four signatures of registered voters for each dollar of the filing fee, or 10 percent of the total of registered voters in the district in which he or she seeks nomination, whichever is less.

(5) For all other offices for which a filing fee is required, if the number of registered voters in the district in which he or she seeks nomination is less than 2,000, a candidate may submit a petition containing four signatures of registered voters for each dollar of the filing fee, or 20 percent of the total of registered voters in the district in which he or she seeks nomination, whichever is less.

~~(6) Notwithstanding any other provision of this section, a candidate seeking the nomination of a qualified party with whom he or she is registered, the registered voters of which who were eligible to vote at the last statewide election constituted less than 5 percent of all registered voters eligible to vote at the last statewide election, may submit a petition containing signatures of 10 percent of the registered voters of that party in the district in which he or she seeks nomination, or 150 signatures, whichever is less.~~

~~(7)~~ (6) A voter may sign both a candidate's nomination papers and his or her in-lieu-filing-fee petition. However, if signatures appearing on the documents are counted towards both the nomination paper and the

in-lieu-filing-fee petition signature requirements, a person may only sign one of the documents.

(b) The Secretary of State or an elections official shall furnish to each candidate, upon request, and without charge therefor, forms for securing signatures. The number of forms which the elections official shall furnish a candidate shall be a quantity that provides the candidates with spaces for signatures sufficient in number to equal the number of signatures that the candidate is required to secure pursuant to subdivision (a) if the candidate desires that number of forms. However, the elections official, rather than provide the candidate with the number of forms set forth in the preceding sentence, or upon the request of a candidate, may provide the candidate with a master form that may be duplicated by the candidate at the candidate's expense for the purpose of circulating additional petitions. The Secretary of State shall provide the master form. The elections official may provide candidates a form other than the master form provided by the Secretary of State. However, that form shall meet all statutory requirements, and the elections official shall also make available and accept the master form provided by the Secretary of State. All forms shall be made available commencing 45 days before the first day for circulating nomination papers. However, in cases of vacancies for which a special election is authorized or required to be held to fill the vacancy, and where the prescribed nomination period would commence less than 45 days after the creation of the vacancy, the forms shall be made available within five working days after the creation of the vacancy. No other form except the form furnished by the Secretary of State or the elections official or forms duplicated from a master form shall be used to secure signatures. Each petition section shall bear an affidavit signed by the circulator, in substantially the same form as set forth in Section 8041. The substitution of signatures for fees shall be subject to the following provisions:

(1) Any registered voter may sign an in-lieu-filing-fee petition for any candidate for whom he or she is eligible to vote.

(2) If a voter signs more candidates' petitions than there are offices to be filled, the voter's signatures shall be valid only on those petitions which, taken in the order they were filed, do not exceed the number of offices to be filled.

(3) In-lieu-filing-fee petitions shall be filed at least 15 days prior to the close of the nomination period. Upon receipt of the minimum number of in-lieu-filing-fee signatures required, or a sufficient combination of signatures and pro rata filing fee, the elections official shall issue nomination papers provisionally. Within 10 days after receipt of a petition, the elections official shall notify the candidate of any deficiency. The candidate shall then, prior to the close of the nomination period, either submit a supplemental petition, or pay a pro rata portion of the filing fee to cover the deficiency.

(4) If the petition is circulated for an office in more than one county, the candidate shall submit the signatures to the elections official in the county in which the petition was circulated. The elections official shall at least two days after verifying the signatures on the petition, notify the Secretary of State of the total number of valid signatures. If the number of signatures is insufficient, the Secretary of State shall notify the candidate and the elections officials of the fact. The candidate may submit the necessary number of valid signatures at any time prior to the close of the period for circulating nomination papers. Each circulator of an in-lieu-filing-fee petition shall be a registered voter of the district or political subdivision in which the candidate is to be voted on. The circulator shall serve within the county in which he or she resides.

(5) Each candidate may submit a greater number of signatures to allow for subsequent losses due to invalidity of some signatures. The elections official shall not be required to determine the validity of a greater number of signatures than that required by this section.

(c) For the purposes of this section, the requisite number of signatures shall be computed from the latest registration figures forwarded to the Secretary of State pursuant to Section 2187 prior to the first day on which petitions are available.

(d) All valid signatures obtained pursuant to this section shall be counted towards the number of voters required to sign a nomination paper in accordance with Section 8061 or 8405.

SEC. 45. Section 8121 of the Elections Code is amended to read:

8121. Not less than five days before he or she transmits the certified list of candidates to the county elections officials, as provided in Section 8120, the Secretary of State shall notify each candidate for ~~partisan~~ voter-nominated office and political party position of the names, addresses, offices, occupations, and party ~~affiliations~~ registration status of all other persons who have filed for the same office or party position.

Proposition 62 (cont.)

SEC. 46. Section 8124 of the Elections Code is amended to read:
8124. The certified list of candidates sent to each county elections official by the Secretary of State shall show:

- (a) The name of each candidate.
- (b) The office for which each person is a candidate.
- (c) The political party, if any, with which each person represents; candidate is registered, or that the candidate designated "no party" registration, unless the office is nonpartisan.

SEC. 47. Section 8125 of the Elections Code is amended to read:
8125. The certified list of candidates sent to each county elections official by the Secretary of State shall be in substantially the following form:

CERTIFIED LIST OF CANDIDATES FOR NOMINATION

SECRETARY OF STATE

To the County Elections Official of _____ County:

I, _____, Secretary of State, do hereby certify that the following list contains the name of each person for whom nomination papers have been filed in my office and who is entitled to be voted for in the above-named county at the direct primary election to be held on the _____ day of _____, 49 20____, the designation of the office for which each person is a candidate, his or her name being stated under with the name of the political party if any, with which he or she represents is registered, except in the case of a nonpartisan office, and that each person is entitled to be voted for in your county at that election by any registered qualified elector of your county, whether registered with any political party or not. Each candidate who is registered as "no party" is designated as "No Party" on the following list. The listing of a candidate's political party registration status on the ballot is subject to the provisions of Section 7031.

~~PARTY~~ VOTER-NOMINATED OFFICES

STATE (AND DISTRICT) OFFICES

(Title of office)	(Name of candidate)	(Registered Political Party or No Party)
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____ District		

CONGRESSIONAL OFFICES
(Including United States Senator, if any)

_____	_____	_____
_____	_____	_____
_____ District		

LEGISLATIVE OFFICES

_____	_____	_____
_____	_____	_____
_____ District		
_____ District		

~~PARTY~~

STATE (AND DISTRICT) OFFICES

I further certify the following list contains the name of each person for whom nomination papers have been filed in my office, together with a designation of the office for which each person is a candidate, and that each person is entitled to be voted for in your county at that election by any registered qualified elector of your county, whether registered as intending to affiliate with any political party or not.

NONPARTISAN OFFICES

SUPERINTENDENT OF PUBLIC INSTRUCTION

_____	_____
_____	_____

Dated at Sacramento, California, this _____ day of _____, 49 20____.

(SEAL) _____ Secretary of State

SEC. 48. Section 8148 of the Elections Code is amended to read:
8148. Not less than 68 days before the general election, the Secretary of State shall deliver to the appropriate county elections official a certificate showing:

- (a) The name of every person entitled to receive votes within that county at the general election who has received the nomination by the voters in a voter choice open primary election as a candidate for public office pursuant to this chapter.
- (b) For each nominee of the voters the name of the party that has nominated him or her, if any, with which each candidate who has been nominated is registered, or that the nominee is registered as "no party."
- (c) The designation of the public office for which he or she has been nominated.

SEC. 49. Section 8150 of the Elections Code is amended to read:
8150. The certificate of the Secretary of State showing candidates nominated or selected at a primary election, and justices of the Supreme Court and courts of appeal to appear on the general elections ballot, shall be substantially in the following form:

CERTIFICATE OF SECRETARY OF STATE
SHOWING CANDIDATES NOMINATED
OR SELECTED AT PRIMARY ELECTION

SECRETARY OF STATE

To the County Elections Official of _____ County:

I, _____, Secretary of State, do hereby certify that below are stated the names of those persons entitled to receive votes within your county at the general election who have (1) received partisan nominations for voter-nominated state elected offices and federal elected offices, or have been selected as candidates for nonpartisan office at the primary election or (2) in the case of justices of the Supreme Court or the courts of appeal, are the justices who are subject to confirmation by the voters at the general election. These nominations and selections are evidenced by the compilation and statement required to be made by me and filed in my office. Set forth along with their respective names, other than the names of justices of the Supreme Court or the courts of appeal, there is shown the candidate's designation of his or her office, profession, vocation or occupation, and there is also shown separately and respectively for each nominee the name of the political party or organization, if any, that has nominated him or her with which the nominee of the voters is registered, and the designation of the public office for which he or she is so nominated. Each candidate who is not registered with a party is designated as "No Party" on the following list. The listing of a candidate's political party registration status on the ballot is subject to the provisions of Section 7031.

STATE (AND DISTRICT) OFFICES

(Name of candidate)	(Candidate's designation of office, occupation, etc.)	(Party Registered Political Party or No Party)	(Office)
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____ District			

CONGRESSIONAL OFFICES

_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____ District			

LEGISLATIVE OFFICES

_____	_____	_____	_____
_____	_____	_____	_____
_____ District			

SUPERINTENDENT OF PUBLIC INSTRUCTION

_____	_____	_____
_____	_____	_____

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I also certify that at the state conventions that met, according to law, at the State Capitol on the _____ day of _____, 20____, the following persons were nominated as electors of President and Vice President of the United States, for the parties respectively hereinafter placed at the head of the column containing their respective names, and you are hereby directed to print the names of the candidates for President and Vice President for whom those electors have pledged themselves to vote, upon the official ballots to be used at the general election, as representing the candidates of their respective parties for that office.

PRESIDENTIAL ELECTORS

_____ Party	_____ Party
_____ President	_____ President
_____ Vice President	_____ Vice President
1 _____	1 _____
2 _____	2 _____
3 _____	3 _____
etc.	etc.

Dated at Sacramento, California, this _____ day of _____, 20____.

(SEAL)

Secretary of State

SEC. 50. Section 8300 of the Elections Code is amended to read:

8300. (a) A candidate for ~~any public office, including that of presidential elector, for which no nonpartisan candidate has been nominated or elected at any primary election,~~ may be nominated subsequent to or in lieu of a primary election pursuant to this chapter. *A candidate for presidential elector whose name has been on the ballot as a candidate of a party at the direct primary and who has been defeated for that party nomination for presidential elector is ineligible for nomination as an independent candidate for presidential elector.*

(b) *The provisions for independent nominations in Part 2 (commencing with Section 8300) of Division 8 shall apply only to any candidate for presidential elector.*

SEC. 51. Section 8301 of the Elections Code is repealed:

~~8301. A candidate for whom a nomination paper has been filed as a partisan candidate at a primary election, and who is defeated for his or her party nomination at the primary election, is ineligible for nomination as an independent candidate.~~

SEC. 52. Section 8302 of the Elections Code is amended to read:

8302. For the purposes of this chapter, Chapter 1 (commencing with Section 8000) of Part 1, and Part 4 (commencing with Section 8800), so far as consistent with this chapter, shall apply to ~~all offices for which independent nominations for presidential electors are made at the presidential primary and direct primary elections, as well as to elections for any other office to which those provisions would not ordinarily apply.~~

SEC. 54. Section 8400 of the Elections Code is amended to read:

8400. Nomination papers for ~~a statewide office for which the candidate is to be nominated~~ *presidential electors* shall be signed by voters of the state equal to not less in number than 1 percent of the entire number of registered voters of the state at the time of the close of registration prior to the preceding general election. ~~Nomination papers for an office, other than a statewide office, shall be signed by the voters of the area for which the candidate is to be nominated, not less in number than 3 percent of the entire number of registered voters in the area at the time of the close of registration prior to the preceding general election. Nomination papers for Representative in Congress, State Senator or Assembly Member, to be voted for at a special election to fill a vacancy, shall be signed by voters in the district not less in number than 500 or 1 percent of the entire vote cast in the area at the preceding general election, whichever is less, nor more than 1,000.~~

SEC. 55. Section 8403 of the Elections Code is amended to read:

8403. (a) ~~(1)~~ Nomination papers shall be prepared, circulated, signed, and delivered to the county elections official for examination no earlier than 148 days before the election and no later than 5 p.m. 88 days before the election.

(2) ~~For offices for which no filing fee is required, nomination papers shall be prepared, circulated, signed, and delivered to the county elections official for examination no earlier than 193 days before the election and no later than 5 p.m. 88 days before the election.~~

(b) ~~All nomination~~ *Nomination* documents ~~that are required to be filed in the office of the Secretary of State shall, within 24 days after being left with the county elections official in compliance with paragraph (1) or (2) of subdivision (a), be forwarded by the county elections official to the Secretary of State, who shall receive and file them.~~

(c) ~~If the total number of signatures submitted to a county elections official for an office entirely within that county does not equal the number of signatures needed to qualify the candidate, the county elections official shall declare the petition void and is not required to verify the signatures. If the district falls within two or more counties, the county elections official shall within two working days report in writing to the Secretary of State the total number of signatures submitted.~~

~~(d)~~ (c) If the Secretary of State finds that the total number of signatures submitted in the ~~district or~~ state is less than the minimum number required to qualify the candidate he or she shall within one working day notify in writing the counties involved that they need not verify the signatures.

SEC. 56. Section 8404 of the Elections Code is amended to read:

8404. Each signer of a nomination paper shall sign but one paper for the same office, ~~except that in case two or more persons are to be elected to the same office at the same election, an elector may sign the nomination papers of as many persons as there are persons to be elected to the office, and that act on the part of an elector shall not be deemed in conflict with the signer's statement prescribed in this chapter.~~ The signer shall state his or her place of residence, giving his or her street and number, if any.

SEC. 57. Section 8405 of the Elections Code is repealed:

~~8405. Notwithstanding any other provision of law to the contrary, if an independent candidate submits an in lieu filing fee petition pursuant to Section 8106, the county elections official, upon the request of the candidate, shall accept all valid signatures appearing on the candidate's in lieu filing fee petition toward the number of signatures required to be submitted on an in lieu filing fee petition and on a nomination paper.~~

~~If the in lieu filing fee petition does not contain the requisite number of signatures required under Section 8400, the candidate shall be entitled to file, within the time period allowed for filing nomination papers, a nomination paper in order to obtain the requisite number of valid signatures required to be submitted to the elections official pursuant to this chapter.~~

SEC. 58. Section 8409 of the Elections Code is amended to read:

8409. Each candidate ~~or group of candidates~~ shall submit a nomination paper that shall be substantially in the ~~following form prescribed in subdivision (b) and (c) of Section 8041.~~

County of _____, Nomination paper of _____, candidate for the office of _____.
State of California ->
County of _____) ss.

SIGNER'S STATEMENT

I, undersigned, am a voter of the County of _____, State of California. I hereby nominate _____, who resides at No. _____, _____ Street, City of _____, County of _____, State of California, as a candidate for the office of _____ to be voted for at the election to be held on the _____ day of _____, 20____. I have not signed the nomination paper of any other candidate for the same office.

Number	Signature	Printed Name	Residence
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____
4.	_____	_____	_____
5.	_____	_____	_____
etc.	_____	_____	_____

CIRCULATOR'S AFFIDAVIT

I, _____, solemnly swear (or affirm) that I secured signatures in the County of _____ to the nomination paper of _____ as candidate for the office of _____; that the signatures were obtained between _____, 20____ and _____, 20____; that I saw all the signatures on this section of the nomination paper being signed and that, to the best of my information and belief, each signature is the genuine signature of the person whose name it purports to be.

Proposition 62 (cont.)

My residence address is _____

(Signed) _____

Circulator

Subscribed and sworn to before me this _____ day of _____, 20____.

(SEAL)

Notary Public (or other official)

SEC. 59. Section 8451 of the Elections Code is amended to read:

8451. Circulators shall be *residents of the State of California voters in the district or political subdivision in which the candidate is to be voted on and shall serve only in that district or political subdivision*.

SEC. 60. Section 8454 of the Elections Code is amended to read:

8454. ~~(a) Circulators obtaining signatures to the nomination paper of any candidate may, at any time not more than 148 nor less than 88 days prior to the election, obtain signatures to the nomination paper of the candidate.~~

~~(b) Circulators obtaining signatures to the nomination paper of any candidate for presidential elector may, at any time not more than 193 nor less than 88 days prior to the election, obtain signatures to the nomination paper of the candidate.~~

SEC. 61. Section 8550 of the Elections Code is amended to read:

8550. At least 88 days prior to the election, each *independent* candidate *for presidential elector* shall leave with the officer with whom his or her nomination papers are required to be left, a declaration of candidacy which states all of the following:

- (a) The candidate's residence, with street and number, if any.
- (b) That the candidate is a voter in the precinct in which he or she resides.
- (c) The name of the office for which he or she is a candidate.
- (d) That the candidate will not withdraw as a candidate before the election.
- (e) That, if elected, the candidate will qualify for the office.

~~(f) That the candidate is not, and was not at any time during the 13 months preceding the general election at which a candidate for the office mentioned in the declaration of candidacy shall be elected, or in the case of an election governed by Chapter 1 (commencing with Section 10700) of Part 6 of Division 10, at any time during the three months immediately preceding the filing of the declaration, registered as affiliated with a political party qualified under Section 5100. The statement required by this subdivision shall be omitted for a candidate for the presidential elector.~~

The name of a candidate shall not be placed on the ballot unless the declaration of candidacy provided for in this section has been properly filed.

SEC. 62. Section 8600 of the Elections Code is amended to read:

8600. (a) Every person who desires to be a write-in candidate and have his or her name as written on the ballot of an election counted for a particular office shall file:

~~(a) (1) A statement of write-in candidacy that contains the following information:~~

- ~~(1) (A) Candidate's name.~~
- ~~(2) (B) Residence address.~~
- ~~(3) (C) A declaration stating that he or she is a write-in candidate.~~
- ~~(4) (D) The title of the office for which he or she is running.~~
- ~~(5) The party nomination which he or she seeks, if running in a primary election.~~

~~(6) (E) The date of the election.~~

~~(b) (2) The requisite number of signatures on the nomination papers, if any, required pursuant to Sections 8062, 10220, 10510 or, in the case of a special district not subject to the Uniform District Election Law (Part 4 (commencing with Section 10500) of Division 10), the number of signatures required by the principal act of the district.~~

~~(b) Any person eligible to be a candidate for a particular office may qualify and run as a write-in candidate at any election for that office pursuant to this chapter.~~

~~(c) Any person eligible to be a candidate for a particular office may qualify and run as a write-in candidate at any general election for that office, notwithstanding that such person may have run as a candidate or~~

as a write-in candidate for such office in a direct or special voter choice open primary election immediately preceding said general election.

(d) Subparagraphs (B) and (C) of paragraph (1) of subdivision (a) shall not be applicable to a delegate to a national political party convention or to a presidential elector. This subdivision is not intended to restrict the application of any other write-in provisions of this code to any delegate or elector.

SEC. 63. Section 8603 of the Elections Code is amended to read:

8603. Signers of nomination papers for write-in candidates shall be voters in the district or political subdivision in which the candidate is to be voted on. ~~In addition, if the candidate is seeking a party nomination for an office, the signers shall also be affiliated. Signers need not be registered with the any political party whose nomination is sought to be eligible to sign nomination papers for any write-in candidate for a voter-nominated office.~~

SEC. 64. Section 8605 of the Elections Code is amended to read:

8605. No person whose name has been written in upon a ballot for an office at the direct or special voter choice open primary election for a voter-nominated state elected office or federal elected office may have his or her name ~~placed~~ *listed by the elections official* upon the ballot as a candidate for that office for the ensuing general election unless one of the following is applicable:

(a) At that direct or special primary he or she received for that office votes ~~equal in number to 1 percent of all votes cast for the office at the last preceding general election at which the office was filled. In the case of an office that has not appeared on the ballot since its creation, the requisite number of votes shall equal 1 percent of the number of all votes cast for the office that had the least number of votes in the most recent general election in the jurisdiction in which the write-in candidate is seeking office sufficient to qualify as one of the top two vote-getters pursuant to Section 15451.~~

~~(b) He or she is an independent nominee pursuant to Part 2 (commencing with Section 8300).~~

~~(c) (b) He or she has been designated by a party central committee qualified to fill a vacancy on the ballot for the general election pursuant to Section 8806 or 8807.~~

SEC. 65. Section 8802 of the Elections Code is repealed:

~~8802. Any person nominated by a party at the direct primary election for a partisan office may be appointed to fill a vacancy on the general election ballot for any other partisan office, as provided in Section 8806, and in that case his or her appointment shall constitute a vacancy on the general election ballot for the office for which he or she was nominated. The vacancy thus arising shall be filled in the manner prescribed in Section 8806.~~

SEC. 66. Section 8805 of the Elections Code is amended to read:

8805. (a) *Whenever a candidate for nomination for a voter-nominated office at a primary election dies not less than 74 days before the day of the election, the name of the candidate who has died shall be removed from the primary election ballot. The elections official shall declare the nomination process open and shall accept nomination documents from persons seeking to be listed as candidates for that office on the primary election ballot in accordance with Section 8025.*

(b) Whenever a candidate for nomination for a partisan voter-nominated office at a primary election dies on or less than 74 days before the day of the election, and a sufficient number of ballots are marked as being voted for him or her to entitle him or her to nomination if he or she had lived until after the primary election, a vacancy exists shall exist on the general election ballot, which shall be filled in the manner provided in Section 8806 for filling a vacancy caused by the death of a candidate.

SEC. 67. Section 8806 of the Elections Code is amended to read:

8806. ~~Vacancies permitted to be filled may, in the case of legislative offices, be filled by the county central committee or committees of the party in which the vacancy occurs, in the county or counties comprising the legislative district of the deceased candidate. In the case of all other district or state offices requiring party nomination, except congressional offices, the vacancies may be filled by the state central committee of the party.~~

~~Vacancies permitted to be filled may, in the case of congressional offices, be filled by those members of the state central committee of the party who reside in the congressional district in which the vacancy occurs, and who were registered to vote in that district at~~

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~~the time the vacancy occurred, acting together with the members of the county central committee or committees of the party residing in that congressional district.~~

~~References in this section to state and county central committees shall be construed to refer to the newly elected or selected state and county central committees, unless the organizational meetings of those committees are held in January following the general election.~~

(a) If a vacancy occurs at least 68 days prior to the general election among the top two candidates nominated at the direct primary election to be listed on the ballot for the succeeding general election for a voter-nominated office, the name of the candidate receiving at the direct primary election the next highest number of votes shall be listed on the general election ballot to fill the vacancy.

(b) In the event that there is either only one candidate on the ballot for a specific voter-nominated office or there are two candidates who were the only candidates in the preceding voter choice open primary election, and a vacancy occurs 74 days or more prior to the general election as to a candidate who was nominated by the voters for that office, the name of that candidate shall be removed from the general election ballot. The elections official shall declare the nomination process open and shall accept through the 68th day prior to the general election all nomination documents from persons seeking to be listed as candidates for that office on the general election ballot. In the event that any candidate receives a majority of all votes cast for that office in the ensuing general election, that candidate shall be declared elected to the office. In the event that no candidate receives a majority of all votes cast for that office in the general election, the candidates, regardless of party registration, including candidates registered as "no party," who are the top two vote-getters shall be listed as the nominees of the voters on a special run-off election to be held not less than 63 days and not more than 70 days after the general election. The top two vote-getters shall be eligible to be listed on the run-off election ballot regardless of party registration, including candidates registered as "no party." The name of a write-in candidate shall not be listed on the special run-off election ballot unless the write-in candidate was one of the top two vote-getters in the general election or otherwise qualifies under Section 8605.

(c) In the event that there are two candidates on the ballot for a specific voter-nominated office, and a vacancy occurs less than 74 days prior to the general election as to either candidate nominated by the voters for that office, both names shall be listed on the general election ballot. In the event that the candidate occupying the non-vacant position wins a majority of the vote at the general election, that candidate shall be declared elected to that office. In the event that the candidate occupying the vacant position wins a majority of the vote at the general election, that candidate shall be declared elected to the office. The office to which the candidate occupying the vacant position was elected shall be vacant at the beginning of the term for which he or she was elected. In that event, a special election to fill the vacancy in the office shall be held pursuant to Part 6 (commencing with Section 10700) of Division 10.

(d) In the event that there is only one candidate on the ballot for a specific voter-nominated office, and a vacancy occurs less than 74 days prior to the general election as to the candidate who was nominated by the voters for that office, the name of the candidate occupying the vacant position shall be listed on the general election ballot. In the event that the candidate wins a majority of the vote at the general election, that candidate shall be declared elected to the office. The office to which the candidate was elected shall be vacant at the beginning of the term for which he or she was elected. In that event, a special election to fill the vacancy in the office shall be held pursuant to Part 6 (commencing with Section 10700) of Division 10.

SEC. 68. Section 8811 of the Elections Code is amended to read:

8811. Whenever, upon the death of any candidate, the vacancy created is filled by a party committee pursuant to Section 8806 or 8807, a certificate to that effect shall be filed with the officer with whom a declaration of candidacy for that office may be filed, and, upon payment of the filing fee applicable to the office, shall be accepted and acted upon by that officer as in the case of an original declaration certificate.

SEC. 69. Section 10704 of the Elections Code is amended to read:

10704. (a) A special voter choice open primary election shall be held in the district political subdivision in which the vacancy occurred on the eighth Tuesday or, if the eighth Tuesday is the day of or the day following a state holiday, the ninth Tuesday preceding the day of the special general election at which the vacancy is to be filled. Candidates

at the special voter choice open primary election shall be nominated by the voters in the manner set forth in Chapter 1 (commencing with Section 8000) of Part 1 of Division 8, except that nomination papers shall not be circulated more than 63 days before the primary election, shall be left with the county elections official for examination not less than 43 47 days before the primary election, and shall be filed by the county elections official with the Secretary of State not less than 39 43 days before the primary election.

(b) Notwithstanding Section 3001, applications for absent voter ballots may be submitted not more than 25 days before the primary election, except that Section 3001 shall apply if the special election or special voter choice open primary election is consolidated with a statewide election. Applications received by the elections official prior to the 25th day shall not be returned to the sender, but shall be held by the elections official and processed by him or her following the 25th day prior to the election in the same manner as if received at that time.

SEC. 70. Section 10705 of the Elections Code is amended to read:

10705. (a) All candidates shall be listed on one ballot for a particular office in a special voter choice open primary election and, considering any write-in candidates in such election and except as provided in subdivision (b), if any candidate receives a majority of all votes cast, he or she shall be declared elected; and no special general election shall be held. This subdivision shall apply to multiple candidates listed on the special voter choice open primary election ballot or where one candidate is listed on such ballot.

(b) ~~If only one candidate qualifies to have his or her name printed on the special general election ballot, that candidate shall be declared elected, and no special general election shall be held, even if that candidate received less than a majority of the votes cast. If no candidate in a special voter choice open primary election receives a majority of the votes cast, the provisions of Section 10706 shall govern the holding of a special general election.~~

(c) Whenever a candidate for nomination by the voters at a special voter choice open primary election dies after being nominated at said election, a vacancy exists which shall be resolved substantially in a manner consistent with the provisions pertaining to voter-nominated offices set forth in Part 4 (commencing with Section 8800) of Division 8, except that nomination papers shall be left with the county elections official for examination not less than 47 days before the special voter choice open primary election, and shall be filed by the county elections official with the Secretary of State not less than 43 days before the election.

(d) Any ballot, sample ballot, or voter pamphlet prepared in connection with a special primary or special general election shall contain the following statement on each page on which the political party registration status of any candidate is printed, not smaller than 8-point boldface type on each ballot and sample ballot and not smaller than 10-point boldface type in any voter pamphlet, that: "The designation of the political party registration status on the ballot of a candidate for a voter-nominated office is for the voters' informational purposes only, and does not indicate that the political party with which a candidate may be registered has nominated that candidate or that the party necessarily agrees with or endorses that candidate." In addition, any such ballot, sample ballot, or voter pamphlet shall contain the following statement once in a conspicuous manner, in the same type sizes described in this subdivision, that: "Where the registration status of a candidate has been left blank, the party with which the candidate is registered has not consented to use of party registration status on the ballot."

SEC. 71. Section 10706 of the Elections Code is amended to read:

10706. ~~(a) If one candidate receives a majority of the votes in a special voter choice open primary election, that candidate shall be declared elected. If no candidate receives a majority of votes cast in a special voter choice open primary election as provided in Section 10705, the name names of that the candidate candidates of each qualified political party who receives the most are the top two vote-getters, votes cast for all candidates regardless of party registration, including candidates registered as "no party," of that party for that office at the special primary election shall be placed listed on the special general election ballot as the candidate of that party nominees of the voters. The name of a write-in candidate shall not be placed on the ballot unless he or she also meets the requirements of subdivision (a) of Section 8605.~~

~~(b) In addition to the candidates referred to in subdivision (a), each candidate who has qualified for the ballot by reason of the independent nomination procedure pursuant to Part 2 (commencing with Section 8300) of Division 8 shall be placed on the special general election bal-~~

TEXT OF PROPOSED LAWS

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lot as an independent candidate. However, if two or more of these candidates are recorded on their affidavits of registration as being affiliated with the same political body, only the candidate with the greatest number of votes shall be placed on the special general election ballot.

SEC. 72. Section 12104 of the Elections Code is amended to read:

12104. (a) A notice designating the offices for which candidates are to be nominated shall be in substantially the following form:

NOTICE BY SECRETARY OF STATE OF OFFICES FOR WHICH CANDIDATES ARE TO BE NOMINATED AT THE DIRECT PRIMARY

Secretary of State
Sacramento, _____, 19 20 ____.

To the County Elections Official of the County of _____:

Notice is hereby given that the offices for which candidates are to be nominated by the voters at the primary election to be held on the _____ day of _____, 19 20 ____, together with the names of the political parties qualified to participate in the election are as follows:

STATE AND DISTRICT OFFICES

CONGRESSIONAL OFFICES

LEGISLATIVE OFFICES

Notice is also hereby given that at the primary election candidates are to be nominated for the following office:

SUPERINTENDENT OF PUBLIC INSTRUCTION

Notice is also hereby given that at the primary election, in the county first above mentioned, candidates are to be nominated for any county offices or judicial offices to which candidates are to be elected at the ensuing general election ; .

~~And notice is also hereby given that at the primary election there shall be elected in each county a county central committee for each political party above named pursuant to Division 7 (commencing with Section 7000) of the Elections Code.~~

(SEAL)

Secretary of State

(b) The notice designating the political parties qualified to participate in this election for ~~nominations of candidates~~ the purpose of selecting delegates to national political party conventions at which a nominee for President is chosen, or electing members of county central committees, or both, shall be in substantially the following form:

NOTICE BY SECRETARY OF STATE OF POLITICAL PARTIES QUALIFIED TO PARTICIPATE IN THE DIRECT PRIMARY ELECTION FOR POLITICAL PARTY POSITIONS

Secretary of State
Sacramento, _____, 19 20 ____.

To the County Elections Official of the County of _____:

Notice is hereby given that the political parties qualified to participate in this election for ~~nominations of candidates to partisan offices~~ the purpose of selecting delegates to national political party conventions at which a nominee for President is chosen, or electing members of county central committees in each county pursuant to Division 7 (commencing with Section 7030), or both, are as follows:

(SEAL)

Secretary of State

SEC. 73. Section 12108 of the Elections Code is amended to read:

12108. In any case where this chapter requires the publication or distribution of a list of the names of precinct board members, or a portion of the list, the officers charged with the duty of publication shall ascertain the name of the political party, if any, with which each precinct board member is ~~affiliated~~ registered , as shown in the affidavit of registration of that person. When the list is published or distributed, there shall be printed the name of the board member's party or an abbreviation of the name to the right of the name, or immediately below the name, of each precinct board member. If a precinct board member is not ~~affiliated~~ registered with a political party, the words "No party ;" "~~Nonpartisan,~~" or "~~Decline to state~~" shall be printed in place of the party name.

SEC. 74. Section 13102 of the Elections Code is amended to read:

13102. (a) All voting shall be by ballot. There shall be provided, at each polling place, at each election at which public officers are to be voted for, but one form of voter choice open primary ballot for all candidates for voter-nominated office, nonpartisan public office, and measures, except that, for ~~partisan~~ primary elections, one form of party ballot shall be provided for each qualified political party as well as one form of ~~nonpartisan~~ voter choice open primary ballot, in accordance with subdivision (b). The party ballot and the voter choice open primary ballot shall comply with the provisions of Section 13203.

(b) At ~~partisan~~ primary elections, each voter not registered as ~~intending to affiliate~~ with any one of the political parties participating in the election shall be furnished only a ~~nonpartisan~~ voter choice open primary ballot, unless he or she requests a ballot of a political party and that political party, by party rule duly noticed to the Secretary of State, authorizes a person who has ~~declined to state a party affiliation~~ designated "no party" on his or her affidavit of registration to vote the ballot of that political party. The ~~nonpartisan~~ voter choice open primary ballot shall contain ~~only~~ the names of all candidates for voter-nominated offices, nonpartisan offices and measures to be voted for at the primary election. Each party ballot shall list the candidates for President or the members to be elected for county central committees of that party, or both. Each voter registered as ~~intending to affiliate~~ with a political party participating in the election shall be furnished ~~only~~ a party ballot of the political party with which he or she is registered , and ~~the nonpartisan~~ a ballot containing candidates for voter-nominated offices , ~~both~~ each of which shall be printed ~~together as one ballot~~ in the form prescribed by Section 13207. Each voter shall also be furnished with a Local Elected Offices and Measures ballot if any.

(c) A political party may adopt a party rule in accordance with subdivision (b) that authorizes a person who has ~~declined to state a party~~ designated "no party" ~~affiliation~~ on his or her affidavit of registration to vote the ballot of that political party at the next ensuing ~~partisan~~ primary election. The political party shall notify the party chair immediately upon adoption of that party rule. The party chair shall provide written notice of the adoption of that rule to the Secretary of State not later than the 135th day prior to the ~~partisan~~ primary election at which the vote is authorized.

(d) At all times while subdivision (c) of Section 13102 is in effect and at any time when at least one political party chooses in its discretion to comply with the procedures provided for in this section, elections officials shall print in sample voter choice open primary ballots and in voter information guides a list of all political parties that have adopted a party rule as described in subdivision (c) of Section 13102. In addition to this list, the elections officials shall print instructions to voters who have designated "no party" on their affidavits of registration informing them that they have the right at their option to vote, in addition to a voter choice open primary ballot, the ballot of a party shown on the list. The instructions shall specify how such voters may obtain such ballots. This information shall be printed on the first page of sample voter choice open primary ballots and in a prominent manner in voter pamphlets, including a listing in a table of contents and an index if any.

~~(d)~~ (e) The county elections official shall maintain a record of which political party's ballot was requested pursuant to subdivision (b), or whether a ~~nonpartisan~~ voter choice open primary ballot was requested, by each person who ~~declined to state a party~~ designated "no party" ~~affiliation~~ on his or her affidavit of registration . The record shall be made available to any person or committee who is authorized to receive copies of the printed indexes of registration for primary and general elections pursuant to Section 2184.

~~(e) This section shall become operative on March 6, 2002.~~

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SEC. 75. Section 13103 of the Elections Code is amended to read:

13103. Every ballot ~~shall that contain all~~ contains any of the following shall comply with the provisions set forth below :

(a) The title of each office ; *shall be* arranged to conform as nearly as practicable to the plan set forth in this chapter.

(b) The names of all qualified candidates *shall be listed* , except that:

(1) Instead of the names of candidates for delegate to the national conventions, there shall be printed the names of the presidential candidates to whom they are pledged or the names of candidates for chairmen of party national convention delegations.

(2) Instead of the names of candidates for presidential electors, there shall be printed in pairs the names of the candidates of the respective parties for President and Vice President of the United States. These names shall appear under the title "President and Vice President."

(c) The titles and summaries of measures submitted to vote of the voters *shall be listed* .

SEC. 76. Section 13105 of the Elections Code is amended to read:

13105. (a) In the case of candidates for ~~partisan~~ voter-nominated office in a primary election, a general election, or in a special election to fill a vacancy in the office of Representative in Congress, State Senator, or Member of the Assembly , immediately to the right of and on the same line as the name of the candidate, or immediately below the name, if there is not sufficient space to the right of the name, there shall be printed in eight-point roman lowercase type either that (1) the candidate is registered as "No Party;" or (2) the name of the qualified political party that has provided consent as specified in Section 7031 with which the candidate is registered ~~affiliated~~ .

(b) If a political party has provided consent as specified in Section 7031, the following words shall be printed on the ballot: "Registered as: (insert name of qualified party, e.g., Democrat, Republican, or Green)." Any candidate using a party registration designation must comply with the requirements of subdivision (a) of Section 8001 and is subject to the political party's consent as specified in Section 7031. Any ballot prepared in connection with an election pursuant to this section shall contain the following statement, not smaller than eight-point boldface type, on each page on which the political party registration status of any candidate is printed, that: "The designation of the political party registration status on the ballot of a candidate for a voter-nominated office is for the voters' informational purposes only, and does not indicate that the political party with which a candidate may be registered has nominated that candidate or that the party necessarily agrees with or endorses that candidate."

(c) If a candidate has qualified for the ballot as a voter who designated "no party;" the words "Registered as: No Party" shall be printed instead of the name of a political party in accordance with the above rules. Any candidate using a "no party" registration designation must comply with the requirements of subdivision (c) of Section 8001.

(d) If a candidate is registered with a political party and that party does not provide consent as specified in Section 7031, the candidate shall not be permitted to have his or her party registration status printed on the ballot. In this case, the space in which the registration status of the candidate would otherwise be printed shall be left blank. Any ballot prepared in connection with an election pursuant to this section shall contain the following statement once in a conspicuous manner, not smaller than eight-point boldface type, that: "Where the registration status of a candidate has been left blank, the party with which a candidate is registered has not consented to use of party registration status on the ballot."

(~~b~~) (e) In the case of candidates for President and Vice President, the name of the party (e.g., Democrat, Republican, or Reform) shall appear to the right of and equidistant from the pair of names of these candidates in the same type size as described in subdivision (a) .

(~~e~~) If for a general election any candidate has received the nomination of any additional party or parties, the name(s) shall be printed to the right of the name of the candidate's own party. Party names of a candidate shall be separated by commas. If a candidate has qualified for the ballot by virtue of an independent nomination the word "Independent" shall be printed instead of the name of a political party in accordance with the above rules.

SEC. 77. Section 13109 of the Elections Code is amended to read:

13109. Consistent with other provisions of this code that govern the content of ballots, ~~The~~ the order of precedence of offices , political party positions, and measures on the ballot shall be as listed below for

those offices , political party positions, and measures that apply to the election for which ~~this a particular type of~~ ballot is provided. Beginning in the column to the left:

(a) Under the heading, PRESIDENT AND VICE PRESIDENT: Nominees of the qualified political parties and independent nominees for President and Vice President.

(b) Under the heading, PRESIDENT OF THE UNITED STATES:

(1) Names of the presidential candidates to whom the delegates are pledged.

(2) Names of the chairpersons of unpledged delegations.

(~~c~~) Under the heading, COUNTY COMMITTEE: Members of the County Central Committee.

(~~c~~) (d) Under the heading, STATE:

(1) Governor.

(2) Lieutenant Governor.

(3) Secretary of State.

(4) Controller.

(5) Treasurer.

(6) Attorney General.

(7) Insurance Commissioner.

(8) Member, State Board of Equalization.

(~~d~~) (e) Under the heading, UNITED STATES SENATOR: Candidates or nominees to the United States Senate.

(~~e~~) (f) Under the heading, UNITED STATES REPRESENTATIVE: Candidates or nominees to the House of Representatives of the United States.

(~~f~~) (g) Under the heading, STATE SENATOR: Candidates or nominees to the State Senate.

(~~g~~) (h) Under the heading, MEMBER OF THE STATE ASSEMBLY: Candidates or nominees to the Assembly.

(~~h~~) Under the heading, COUNTY COMMITTEE: Members of the County Central Committee.

(i) Under the heading, JUDICIAL:

(1) Chief Justice of California.

(2) Associate Justice of the Supreme Court.

(3) Presiding Justice, Court of Appeal.

(4) Associate Justice, Court of Appeal.

(5) Judge of the Superior Court.

(6) Marshal.

(j) Under the heading, SCHOOL:

(1) Superintendent of Public Instruction.

(2) County Superintendent of Schools.

(3) County Board of Education Members.

(4) College District Governing Board Members.

(5) Unified District Governing Board Members.

(6) High School District Governing Board Members.

(7) Elementary District Governing Board Members.

(k) Under the heading, COUNTY:

(1) County Supervisor.

(2) Other offices in alphabetical order by the title of the office.

(l) Under the heading, CITY:

(1) Mayor.

(2) Member, City Council.

(3) Other offices in alphabetical order by the title of the office.

(m) Under the heading, DISTRICT: Directors or trustees for each district in alphabetical order according to the name of the district.

(n) Under the heading, MEASURES SUBMITTED TO THE VOTERS and the appropriate heading from subdivisions (a) through (m), above, ballot measures in the order, state through district shown above, and within each jurisdiction, in the order prescribed by the official certifying them for the ballot.

(o) In order to allow for the most efficient use of space on the ballot in counties that use a voting system, as defined in Section 362, the county elections official may vary the order of subdivisions (j), (k), (l), (m),

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and (n) as well as the order of offices within these subdivisions. However, the office of Superintendent of Public Instruction shall always precede any school, county, or city office, and state measures shall always precede local measures.

SEC. 78. Section 13110 of the Elections Code is amended to read:

13110. The group of names of candidates for any ~~partisan voter-nominated~~ office or nonpartisan office shall be the same on the ballots of all voters entitled to vote for candidates for that office, ~~except that in partisan~~. *In direct primary elections involving (a) in any year which is evenly divisible by the number four, delegates to national political party conventions at which a nominee for President is chosen or (b) nominees for the party's county central committee members*, the names of ~~candidates for nomination to partisan office~~ such candidates for President or members, or both, shall appear only on the party ballots of the respective political party, ~~the nomination of which they seek~~.

SEC. 79. Section 13111 of the Elections Code is amended to read:

13111. *Consistent with other provisions of this code that govern the content of ballots*, ~~Candidates~~ candidates for each office and political party position shall be printed on the ballot in accordance with the following rules:

(a) The names of presidential candidates to whom candidates for delegate to the national convention are pledged, and the names of chairpersons of groups of candidates for delegate expressing no preference, shall be arranged on the primary election ballot by the Secretary of State by the names of the candidates in accordance with the randomized alphabet as provided for in Section 13112 in the case of the ballots for the First Assembly District. Thereafter, for each succeeding Assembly district, the name appearing first in the last preceding Assembly district shall be placed last, the order of the other names remaining unchanged.

(b) The names of the pairs of candidates for President and Vice President shall be arranged on the general election ballot by the Secretary of State by the names of the candidates for President in accordance with the randomized alphabet as provided for in Section 13112 in the case of the ballots for the First Assembly District. Thereafter, for each succeeding Assembly district, the pair appearing first in the last preceding Assembly district shall be placed last, the order of the other pairs remaining unchanged.

(c) In the case of all other offices, the candidates for which are to be voted on throughout the state, the Secretary of State shall arrange the names of the candidates for the office in accordance with the randomized alphabet as provided for in Section 13112 for the First Assembly District. Thereafter, for each succeeding Assembly district, the name appearing first in the last preceding Assembly district shall be placed last, the order of the other names remaining unchanged.

(d) If the office is that of Representative in Congress or member of the State Board of Equalization, the Secretary of State shall arrange the names of candidates for the office in accordance with the randomized alphabet as provided for in Section 13112 for that Assembly district that has the lowest number of all the Assembly districts in which candidates are to be voted on. Thereafter, for each succeeding Assembly district in which the candidates are to be voted on, the names appearing first in the last preceding Assembly district shall be placed last, the order of the other names remaining unchanged.

(e) If the office is that of State Senator or Member of the Assembly, the county elections official shall arrange the names of the candidates for the office in accordance with the randomized alphabet as provided for in Section 13112, unless the district encompasses more than one county, in which case the arrangement shall be made pursuant to subdivision (i).

(f) If the office is to be voted upon wholly within, but not throughout, one county, as in the case of municipal, district, county supervisor, and county central committee offices, the official responsible for conducting the election shall determine the order of names in accordance with the randomized alphabet as provided for in Section 13112.

(g) If the office is to be voted on throughout a single county, and there are not more than four Assembly districts wholly or partly in the county, the county elections official shall determine the order of names in accordance with the randomized alphabet as provided for in Section 13112 for the first supervisorial district. Thereafter, for each succeeding supervisorial district, the name appearing first for each office in the last preceding supervisorial district shall be placed last, the order of the other names remaining unchanged.

(h) If there are five or more Assembly districts wholly or partly in the county, an identical procedure shall be followed, except that rotation

shall be by Assembly district, commencing with the Assembly district which has the lowest number.

(i) Except as provided in subdivision (d) of Section 13112, if the office is that of State Senator or Member of the Assembly, and the district includes more than one county, the county elections official in each county shall conduct a drawing of the letters of the alphabet, pursuant to the same procedures specified in Section 13112. The results of the drawing shall be known as a county randomized ballot and shall be used only to arrange the names of the candidates when the district includes more than one county.

(j) If the office is that of Justice of the California Supreme Court or a court of appeal, the appropriate elections officials shall arrange the names of the candidates for the office in accordance with the randomized alphabet as provided for in Section 13112. However, the names of the judicial candidates shall not be rotated among the applicable districts.

(k) *All candidates who are listed on ballots and sample ballots, other than party ballots, shall not be arranged or grouped by political party registration status or any other category, except the office sought, and shall be organized randomly as provided in this section.*

SEC. 80. Section 13203 of the Elections Code is amended to read:

13203. Across the top of the ballot shall be printed in heavy-faced gothic capital type not smaller than 30-point, the words "OFFICIAL BALLOT." However, if the ballot is no wider than a single column, the words "OFFICIAL BALLOT" may be as small as 24-point. Beneath this heading, in the case of a ~~partisan~~ primary election, shall be printed in 18-point boldface gothic capital type the official party designation, *coupled with the word "BALLOT, (e.g., LIBERTARIAN PARTY BALLOT)"* or the words "~~NONPARTISAN~~ VOTER CHOICE OPEN PRIMARY BALLOT" as applicable. Beneath the heading line or lines, there shall be printed, in boldface type as large as the width of the ballot makes possible, the number of the congressional, Senate, and Assembly district, the name of the county in which the ballot is to be voted, and the date of the election. *In the case of a separate ballot printed as provided in subdivision (b) of Section 359.3 and Section 13230, the words "LOCAL ELECTED OFFICES AND MEASURES BALLOT" shall be printed in 18-point boldface gothic capital type beneath the words "OFFICIAL BALLOT" in the heading.*

SEC. 81. Section 13206 of the Elections Code is amended to read:

13206. (a) ~~On the partisan~~ *each* ballot used in a direct primary election, immediately below the instructions to voters, there shall be a box one-half inch high enclosed by a heavy-ruled line the same as the borderline. This box shall be as long as there are columns for the ~~partisan voter choice open primary~~ ballot and shall be set directly above these columns. Within the box shall be printed in 24-point boldface gothic capital type the words "~~Partisan~~ Voter-Nominated Offices."

(b) The same style of box described in subdivision (a) shall also appear over the columns of the nonpartisan part of the ballot and within the box in the same style and point size of type shall be printed "Nonpartisan Offices."

(c) *Any ballot prepared in connection with a direct primary election shall contain the following statement, not smaller than eight-point boldface type, on each page of a ballot on which the political party registration status of any candidate is printed, that: "The designation of the political party registration status on the ballot of a candidate for a voter-nominated office is for the voters' informational purposes only, and does not indicate that the political party with which a candidate may be registered has nominated that candidate or that the party necessarily agrees with or endorses that candidate." In addition, any such ballot shall contain the following statement once in a conspicuous manner, not smaller than eight-point boldface type, that: "Where the registration status of a candidate has been left blank, the party with which the candidate is registered has not consented to use of party registration status on the ballot."*

SEC. 82. Section 13207 of the Elections Code is amended to read:

13207. (a) There shall be printed on the ballot in parallel columns all of the following:

(1) The respective offices.

(2) The names of candidates with sufficient blank spaces to allow the voters to write in names not printed on the ballot.

(3) Whatever measures have been submitted to the voters.

(b) In the case of a party ballot which is intended for use in a ~~party~~ primary ~~and which carries lists both partisan candidates for president and members to be elected to a county central committee offices and~~

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~~nonpartisan offices~~, a vertical solid black line shall divide the columns containing ~~partisan offices~~, candidates for President on the left, from the columns containing ~~nonpartisan offices~~ county central committee member candidates on the right.

(c) *In the case of a voter choice open primary ballot, a vertical solid black line shall divide the columns containing candidates for voter-nominated offices, on the left, from the columns containing candidates for nonpartisan offices, to the right of the columns containing the candidates for voter-nominated offices.*

(d) Any measures that are to be submitted to the voters on a ballot shall be printed in one or more parallel columns to the right of the columns containing the names of candidates and shall be of sufficient width to contain the title and summary of each measure. To the right of each title and summary shall be printed, on separate lines, the words “Yes” and “No.”

(~~e~~) (e) The standard width of columns ~~containing partisan and nonpartisan offices~~ shall be three inches, but ~~a~~ an elections official may vary the width of these columns up to 10 percent more or less than the three-inch standard. However, the column containing presidential and vice presidential candidates may be as wide as four inches.

(f) *Any ballot prepared in connection with a general election shall contain the following statement, not smaller than eight-point boldface type, on each page on which the political party registration status of any candidate is printed, that: “The designation of the political party registration status on the ballot of a candidate for a voter-nominated office is for the voters’ informational purposes only, and does not indicate that the political party with which a candidate may be registered has nominated that candidate or that the party necessarily agrees with or endorses that candidate.” In addition, the ballot shall contain the following statement once in a conspicuous manner; not smaller than eight-point boldface type, that: “Where the registration status of a candidate has been left blank, the party with which the candidate is registered has not consented to use of party registration status on the ballot.”*

SEC. 83. Section 13208 of the Elections Code is amended to read:

13208. (a) In the right-hand margin of each column light vertical lines shall be printed in such a way as to create a voting square after the name of each candidate for ~~partisan voter-nominated office~~, for nonpartisan office (except for justice of the Supreme Court or court of appeal), for President and Vice President, for county central committee member candidates, or for chairman of a group of candidates for delegate to a national convention who express no preference for a presidential candidate. In the case of Supreme Court or appellate justices and in the case of measures submitted to the voters, the lines shall be printed so as to create voting squares to the right of the words “Yes” and “No.” The voting squares shall be used by the voters to express their choices as provided for in the instruction to voters.

(b) The standard voting square shall be at least three-eighths of an inch square but may be up to one-half inch square. Voting squares for measures may be as tall as is required by the space occupied by the title and summary.

SEC. 84. Section 13217 of the Elections Code is amended to read:

13217. The number on each ballot shall be the same as that on the corresponding stub, and the ballots and stubs shall be numbered consecutively in each county, or the ballots and stubs may be numbered consecutively within each combination of congressional, senatorial, and Assembly districts in each county. ~~In a partisan primary election, the sequence of numbers on the official ballots and stubs for each party within each county, or within each political subdivision in each county, shall begin with the number 1.~~

SEC. 85. Section 13230 of the Elections Code is amended to read:

13230. (a) If the county elections official determines that, due to the number of candidates and measures that must be printed on the ballot, the ballot will be larger than may be conveniently handled, the county elections official may provide that a ~~nonpartisan~~ separate ballot, containing non statewide nonpartisan offices and non statewide measures for submission to the voters, shall be given to each ~~partisan~~ voter, together with his or her ~~partisan~~ ballot, and that the material appearing under the heading “Nonpartisan Offices” on partisan ballots, as well as the heading itself, shall be omitted from the partisan ballots. Statewide nonpartisan offices and statewide measures shall at all times be included on the voter choice open primary ballot or general election ballot. The separate ballot, if any, shall be titled with the heading: “LOCAL ELECTED OFFICES AND MEASURES BALLOT.” All material appearing regarding non statewide measures shall be omitted from the voter choice open primary ballots or general election ballots and shall be

placed on separate ballots under the heading of “Non Statewide Measures.” In addition to the voter choice open primary ballots and the separate ballots, a voter shall be given a separate party ballot, as defined in Section 337, which the voter is entitled to receive pursuant to subdivision (b) of Section 13102.

(b) If the county elections official so provides, the procedure prescribed for the handling and canvassing of ballots shall be modified to the extent necessary to permit the use of ~~two~~ three ballots by ~~partisan~~ voters. The county elections official may, in this case, order the ~~second~~ ~~ballot~~ local elected offices and measures ballots to be printed on paper of a different tint, and assign to those ballots numbers higher than those assigned to the party ballots containing political party positions or to the voter choice open primary ballots containing ~~partisan~~ voter-nominated offices.

(c) ~~“Partisan voters,”~~ for For purposes of this section, voters entitled to vote a “Party Ballot” includes persons who have ~~declined to state a party affiliation designated “no party” on their affidavits of registration~~, but who have chosen to vote the ballot of a political party as authorized by that party’s rules duly noticed to the Secretary of State.

SEC. 86. Section 13232 of the Elections Code is repealed:

~~13232. Notwithstanding any other provision of law, for the purpose of conducting the Democratic Party Presidential Primary Election, the Secretary of State may, if it is reasonably necessary to accommodate the limitations of a voter system or vote tabulating device, authorize the county elections officials to do any or all of the following:~~

~~(a) Vary the order of any office or measure listed in Section 13109, with the exception of United States Representative, State Senator, Member of the State Assembly, and judicial offices.~~

~~(b) Place any office listed in Section 13109 on a second ballot, with the exception of United States Representative, State Senator, Member of the State Assembly, judicial offices, County Superintendent of Schools, County Board of Education Members, and county officers.~~

~~(c) Place any ballot measure, other than a state measure, on a separate ballot.~~

SEC. 87. Section 13261 of the Elections Code is amended to read:

13261. (a) Each ballot card shall have two stubs attached. The stubs shall be separated from the ballot card and from each other by perforated lines so that they may be readily detached.

(b) (1) One stub shall have the serial ballot number printed on it, and shall be detached from the remainder of the ballot before it is handed to the voter.

(2) The second stub shall have printed on it all of the following:

(A) The same ballot serial number.

(B) The words “This ballot stub shall be removed and retained by the voter.”

(C) The words “OFFICIAL BALLOT” in uppercase boldface type no smaller than 12 point.

(D) In primary elections, the party name coupled with the word “BALLOT,” e.g., “Democratic Party,” “DEMOCRATIC PARTY BALLOT,” or the words “Nonpartisan Ballot,” “VOTER CHOICE OPEN PRIMARY BALLOT,” or the words “LOCAL ELECTED OFFICES AND MEASURES BALLOT,” as applicable.

(E) The name of the county.

(F) The date of the election.

(G) Where not otherwise provided, instructions to the voter on how to mark the ballot with the marking device, how to vote for a candidate whose name is not printed on the ballot, and how to secure an additional ballot card if the ballot card is spoiled or marked erroneously.

(3) If the information listed in subparagraphs (A) to (G), inclusive, of paragraph (2) must also appear in one or more languages other than English under the provisions of the federal Voting Rights Act of 1965 as extended by Public Law 94-73, and there is insufficient room for all the information to be set forth in all the required languages while at the same time appearing in a type size sufficiently large to be readable, the official in charge of the election may delete information set forth in subparagraphs (E) and (F) of paragraph (2), in the order listed, until there is sufficient room.

(c) In addition to the instructions to voters printed on the ballot or ballot stub, there shall be displayed in each voting booth instructions to voters substantially in the same form and wording as appears on paper ballots.

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(d) Precinct numbers may also be placed on the ballot.

SEC. 88. Section 13262 of the Elections Code is amended to read:

13262. (a) The ballot shall contain the same material as to candidates and measures, and shall be printed in the same order as provided for paper ballots, and may be arranged in parallel columns on one or more ballot cards as required, except that the column in which the voter marks his or her choices may be at the left of the names of candidates and the designation of measures.

(b) If there are a greater number of candidates for an office or for a party nomination by the voters in a voter choice open primary election for an office than the number whose names can be placed on one pair of facing ballot pages, a series of overlaying pages printed only on the same, single side shall be used, and the ballot shall be clearly marked to indicate that the list of candidates for the office is continued on the following page or pages. If the names of candidates for the office are not required to be rotated, they shall be rotated by groups of candidates in a manner so that the name of each candidate shall appear on each page of the ballot in approximately the same number of precincts as the names of all other candidates.

(c) Space shall be provided on the ballot or on a separate write-in ballot to permit voters to write in names not printed on the ballot when authorized by law. The size of the voting square and the spacing of the material may be varied to suit the conditions imposed by the use of ballot cards, provided the size of the type is not reduced below the minimum size requirements set forth in Chapter 2 (commencing with Section 13100).

(d) The statement of measure submitted to the voters may be abbreviated if necessary on the ballot, provided that each and every statement of measures on that ballot is abbreviated. Abbreviation of matters to be voted on throughout the state shall be composed by the Attorney General.

SEC. 89. Section 13300 of the Elections Code is amended to read:

13300. (a) By at least 29 days before the primary, each county elections official shall prepare a separate sample ~~ballots~~ party ballot for each political party, and a separate sample ~~nonpartisan~~ voter choice open primary ballot, and, if applicable, a local elected offices and measures ballot, placing thereon in as applicable for each case respective type of ballot in the order provided in Chapter 2 (commencing with Section 13100), and under the appropriate title of each office, the names of all candidates seeking voter-nominated offices, political party positions, or statewide nonpartisan offices for whom nomination papers have been duly filed with him or her or have been certified to him or her by the Secretary of State to be voted for in his or her county at the primary election, local nonpartisan offices, and measures. The elections official shall list on ballots and sample ballots, for all voter-nominated offices, the names of all candidates organized randomly as provided in Chapter 2 (commencing with Section 13100) of Division 13.

(b) All candidates who are listed on ballots and sample ballots, other than party ballots, shall not be arranged or grouped by political party registration status or any other category, except the office sought, and shall be organized randomly as provided in Chapter 2 (commencing with Section 13100) of Division 13.

~~(b)~~ (c) The sample ~~ballot~~ ballots shall be identical to the official ballots, except as otherwise provided by law. The sample ballots shall be printed on paper of a different texture from the paper to be used for the official ~~ballot~~ ballots.

~~(c)~~ (d) One sample voter choice open primary ballot, one sample party ballot of the political party to which the voter belongs, is registered, and, if applicable, one sample local elected offices and measures ballot, as evidenced by his or her registration, shall be mailed to each voter entitled to vote at the primary, who registered at least 29 days prior to the election, not more than 40 nor less than 10 days before the election. A ~~nonpartisan~~ sample voter choice open primary ballot and if applicable a sample local elected offices and measures ballot, shall be so mailed to each voter who is not registered as intending to affiliate with any of the parties participating in the primary election, provided that on election day any such person may, upon request, vote the party ballot of a political party if authorized by the party's rules, duly noticed to the Secretary of State.

(e) The county elections official may prepare sample ballot pamphlets in a manner that maximizes printing and mailing efficiencies, such as the combining of a separate political party ballot type with a separate voter choice open primary ballot type in one sample ballot pamphlet, provided that the separate nature of each ballot type is clearly delineated and preserved.

(f) Any sample ballot prepared in connection with a direct primary election shall contain the following statement, not smaller than eight-point boldface type, on each page on which the political party registration status of any candidate is printed, that: "The designation of the political party registration status on the ballot of a candidate for a voter-nominated office is for the voters' informational purposes only, and does not indicate that the political party with which a candidate may be registered has nominated that candidate or that the party necessarily agrees with or endorses that candidate." In addition, the sample ballot shall contain the following statement once in a conspicuous manner, not smaller than eight-point boldface type, that: "Where the registration status of a candidate has been left blank, the party with which the candidate is registered has not consented to use of party registration status on the ballot."

SEC. 90. Section 13302 of the Elections Code is amended to read:

13302. The county elections official shall forthwith submit the sample party ballot of each political party to the chairperson of the county central committee of that party, and shall mail a copy of the respective ballot to each candidate for whom nomination papers have been filed in his or her office or whose name has been certified to him or her by the Secretary of State, to the post office address as given in the nomination paper or certification. The county elections official shall post a copy of each sample ballot in a conspicuous place in his or her office.

SEC. 91. Section 13312 of the Elections Code is amended to read:

13312. Each voter's pamphlet prepared pursuant to Section 13307 shall contain a statement in the heading of the first page in heavy-faced gothic type, not smaller than 10-point, that: (a), the pamphlet does not contain a complete list of candidates and that a complete list of candidates appears on the sample ballot (if any candidate is not listed in the pamphlet), ~~and that~~; (b), each candidate's statement in the pamphlet is volunteered by the candidate, and (if printed at the candidate's expense) is printed at his or her expense; (c), explains in a clear manner to the voter the concept of a voter choice open primary involving voter-nominated offices; (d), "The designation of the political party registration status on the ballot of a candidate for a voter-nominated office is for the voters' informational purposes only, and does not indicate that the political party with which a candidate may be registered has nominated that candidate or that the party necessarily agrees with or endorses that candidate;" and (e) "Where the registration status of the candidate has been left blank, the party with which the candidate is registered has not consented to use of party registration status on the ballot."

SEC. 92. Section 14102 of the Elections Code is amended to read:

14102. (a) (1) For each statewide election, the elections official shall provide a sufficient number of official ballots in each precinct to reasonably meet the needs of the voters in that precinct on election day using the precinct's voter turnout history as the criterion, but in no case shall this number be less than 75 percent of registered voters in the precinct, and for absentee and emergency purposes shall provide the additional number of ballots that may be necessary.

(2) The number of party ballots to be furnished to any precinct for a primary election shall be computed from the number of voters registered in that precinct as intending to affiliate with a party, and the number of ~~nonpartisan~~ voter choice open primary ballots to be furnished to any precinct shall be computed from the number of voters registered in that precinct with a party or as "no party," without statement of intention to affiliate with any of the parties participating in the primary election.

(b) For all other elections, the elections official shall provide a sufficient number of official ballots in each precinct to reasonably meet the needs of the voters in that precinct on election day, using the precinct's voter turnout history as the criterion, but in no case shall this number be less than 75 percent of the number of registered voters in the precinct, and for absentee and emergency purposes shall provide the additional number of ballots that may be necessary.

SEC. 93. Section 15104 of the Elections Code is amended to read:

15104. (a) The processing of absentee ballot return envelopes, and the processing and counting of absentee ballots shall be open to the public, both prior to and after the election.

(b) Any member of the county grand jury, and at least one member each of the Republican county central committee, the Democratic county central committee, and of any other party with a candidate registered with the party on the ballot, and any other interested organization, shall be permitted to observe and challenge the manner in which the absentee ballots are handled, from the processing of absentee ballot return envelopes through the counting and disposition of the ballots.

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(c) The elections official shall notify absentee voter observers and the public at least 48 hours in advance of the dates, times, and places where absentee ballots will be processed and counted.

(d) Absentee voter observers shall be allowed sufficiently close access to enable them to observe and challenge whether those individuals handling absentee ballots are following established procedures, including all of the following:

(1) Verifying signatures and addresses by comparing them to voter registration information.

(2) Duplicating accurately any damaged or defective ballots.

(3) Securing absentee ballots to prevent any tampering with them before they are counted on election day.

(e) No absentee voter observer shall interfere with the orderly processing of absentee ballot return envelopes or processing and counting of absentee ballots, including touching or handling of the ballots.

SEC. 94. Section 15151 of the Elections Code is amended to read:

15151. (a) The elections official shall transmit the semifinal official results to the Secretary of State in the manner and according to the schedule prescribed by the Secretary of State prior to each election, for the following:

(1) All candidates voted for statewide office.

(2) All candidates voted for the following offices:

(A) State Assembly.

(B) State Senate.

(C) Member of the United States House of Representatives.

(D) Member of the State Board of Equalization.

(E) Justice of the Court of Appeals.

(3) All persons voted for at the presidential primary or for electors of President and Vice President of the United States. The results at the presidential primary for candidates for President to whom delegates of a political party are pledged shall be reported according to the number of votes each candidate received from all voters and separately according to the number of votes each candidate received from voters ~~affiliated~~ registered with each political party qualified to participate in the presidential primary election, and from voters who have ~~declined to affiliate with~~ designated “no party” instead of a qualified political party on their affidavits of registration. The elections official shall adopt procedures required to tabulate ~~the party~~ ballots separately by party ~~affiliation~~ registration.

(4) Statewide ballot measures.

(b) The elections official shall transmit the results to the Secretary of State at intervals no greater than two hours, following commencement of the semifinal official canvass.

(c) *Except for the results specified in paragraph (3) of subdivision (a), the elections official shall tabulate and transmit all election results specified in this section according to the actual numerical vote count according to the appropriate political subdivision, such as precinct or district, or according to the type of ballot, such as absentee ballot. The elections official shall not, for any purposes whatsoever, otherwise tabulate votes separately by any other categories including party registration.*

SEC. 95. Section 15375 of the Elections Code is amended to read:

15375. (a) The elections official shall send to the Secretary of State within 35 days of the election in the manner requested one complete copy of all results as to all of the following:

~~(1)~~ (1) All candidates voted for statewide office.

~~(2)~~ (2) All candidates voted for the following offices:

~~(A)~~ (A) Member of the Assembly.

~~(B)~~ (B) Member of the Senate.

~~(C)~~ (C) Member of the United States House of Representatives.

~~(D)~~ (D) Member of the State Board of Equalization.

~~(E)~~ (E) Justice of the Court of Appeal.

~~(F)~~ (F) Judge of the superior court.

~~(G)~~ (G) Judge of the municipal court.

~~(3)~~ (3) All persons voted for at the presidential primary. The results for all persons voted for at the presidential primary for delegates to national conventions shall be canvassed and shall be sent within 28 days after the election. The results at the presidential primary for candidates for President to whom delegates of a political party are pledged shall be

reported according to the number of votes each candidate received from all voters and separately according to the number of votes each candidate received from voters ~~affiliated~~ registered with each political party qualified to participate in the presidential primary election, and from voters who have ~~declined to affiliate with~~ designated “no party” instead of a qualified political party on their affidavits of registration.

~~(4)~~ (4) The vote given for persons for electors of President and Vice President of the United States. The results for presidential electors shall be endorsed “Presidential Election Returns.”

~~(5)~~ (5) All statewide measures.

(b) *Except for results specified in paragraphs (3) and (4) of subdivision (a), the elections official shall tabulate and transmit all election results specified in this section according to the actual numerical vote count according to the appropriate political subdivision, such as precinct or district, or according to the type of ballot, such as absentee ballot. The elections official shall not, for any purposes whatsoever, otherwise tabulate votes separately by any other categories including party registration.*

SEC. 96. Section 15450 of the Elections Code is amended to read:

15450. ~~A~~ *Except as provided in Section 15451, a plurality of the votes given at any election shall constitute a choice where not otherwise directed in the California Constitution, provided that it shall be competent in all charters of cities, counties, or cities and counties framed under the authority of the California Constitution to provide the manner in which their respective elective officers may be elected and to prescribe a higher proportion of the vote therefor.*

SEC. 97. Section 15451 of the Elections Code is amended to read:

15451. (a) ~~The person candidates, regardless of party registration, including candidates registered as “no party” who receives the highest number of votes are the top two vote-getters at a direct voter choice open primary election for a voter-nominated office as the candidate of a political party for the nomination to an office is shall be the nominee nominee(s) of that party the voters for that office at the ensuing general election. Under no circumstances shall any candidate be elected outright to any office under this section in a direct voter choice open primary election. In the event that there is only one candidate listed on the direct voter choice open primary election ballot for nomination to any voter-nominated office, then such candidate shall be listed as the nominee of the voters for a vote at the ensuing general election. For purposes of this section, the word “plurality” shall encompass the choice by the voters of the single candidate or the top two vote-getting candidates, regardless of party registration, including candidates registered as “no party,” who are specified as being entitled to be listed on a general election ballot as a result of being nominated by the voters at a direct voter choice open primary election.~~

(b) *The candidate who receives a majority of the votes cast at a special voter choice open primary election, as provided in Section 10705, or the candidate who receives a majority of the votes cast at a special general election, as provided in Section 10706, shall be elected to the particular office at that special election.*

(c) *The candidates who are the top two vote-getters at a special voter choice open primary election, regardless of party registration, including candidates registered as “no party,” where no candidate has received a majority of the votes cast at such election as provided in subdivision (b), shall be the nominees of the voters. These candidates shall be listed on the ballot at the ensuing special general election in accordance with Section 10706.*

SEC. 98. Section 15452 of the Elections Code is amended to read:

15452. ~~The person candidate~~ who receives a plurality of the votes cast for any office is elected or nominated to that office in any election, except:

(a) An election for which different provision is made by any city or county charter.

(b) A municipal election for which different provision is made by the laws under which the city is organized.

(c) The election of local officials in primary elections as specified in Article 8 (commencing with Section 8140) of Part 1 of Division 8.

(d) *The nomination of any candidate by the voters in any direct voter choice open primary election for voter-nominated offices, as provided in subdivision (a) of Section 15451.*

(e) *The election of any candidate by the voters in any special voter choice open election for voter-nominated offices, as provided in subdivision (b) of Section 15451.*

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(f) *The nomination of any candidate by the voters in any special voter choice open primary election for voter-nominated offices, as provided in subdivision (c) of Section 15451.*

SEC. 99. Section 19301 of the Elections Code is amended to read:

19301. A voting machine shall provide in the general election for grouping under the name of the office to be voted on, all the candidates for the office with the designation of the parties, if any, ~~by which they were~~ *each candidate is respectively nominated* registered. The designation may be by usual or reasonable abbreviation of party names *for all candidates for all offices, with the words "Registered as:" also appearing immediately before each party name for all candidates for voter-nominated offices. Any candidate using a political party registration designation must comply with the requirements of subdivision (a) of Section 8001 and is subject to the political party's consent as specified in Section 7031. If a candidate has qualified for the ballot as a voter who designates "no party," the words "Registered as: No Party" shall be printed instead of the name of a political party in accordance with the above rules. Any candidate using a registration designation of "no party" must comply with the requirements of subdivision (c) of Section 8001. If a candidate is registered with a political party and that party does not provide consent as specified in Section 7031, the candidate shall not be permitted to have his or her party registration status printed on the ballot. In this case, the space in which the registration status of a candidate would otherwise be printed shall be left blank.*

SEC. 100. Broad Construction.

This act shall be broadly construed and applied in order to fully promote its underlying purposes and to be consistent with the United States Constitution and the California Constitution. If any provision of this act conflicts directly or indirectly with any other provision of law, or any other statute previously enacted by the Legislature, those other provisions shall be null and void to the extent that they are inconsistent with this act, and are hereby repealed.

SEC. 101. Amendment of Act.

(a) Except as provided in subdivisions (b) and (c), no provision of this act may be amended except by a constitutional amendment or statute, as appropriate, that becomes effective only when approved by the electorate.

(b) The Legislature may amend Section 2150, subdivision (a) of Section 2151, 2152, 2154, 2155, 2185, 2187, 3006, 3007.5, 3205, 5000,

5100, subdivisions (a) and (b) of Section 8001, 8022, 8025, subdivisions (a) and (b) of Section 8040, 8041, subdivision (a) of Section 8062, 8106, 8121, 8124, 8125, 8148, 8150, 8300, 8302, 8400, 8403, 8404, 8409, 8451, 8454, 8811, 12104, 12108, 13103, subdivision (e) of Section 13105, 13109, subdivisions (a) through (j) of Section 13111, 13203, subdivisions (a) and (b) of Section 13206, subdivisions (a) through (e) of Section 13207, 13208, 13217, 13230, 13261, 13262, subdivisions (a), (c), and (d) of Section 13300, 13302, 14102, 15104, subdivisions (a) and (b) of Section 15151, subdivision (a) of Section 15375, and 19301 of the Elections Code, to effect technical changes only and that are not inconsistent with the purposes of this act.

(c) Nothing in this act is intended to and shall not be construed to alter or to limit the existing power of the Legislature to alter existing law governing the means by which political parties either select delegates to national political party conventions at which a party nominee for President is chosen, or elect or select members of political party state and county central committees, or both.

SEC. 102. Conflicting Ballot Measures.

(a) In the event that this measure and another measure or measures relating to direct primary elections, special primary elections, or general elections in this state shall appear on the same statewide election ballot, the provisions of the other measures that would affect in whole or in part the field of such primary elections or general elections, or both, shall be deemed to be in conflict with this measure. In the event that this measure shall receive a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety and the provisions of the other measure or measures shall be null and void in their entirety. In the event that the other measure or measures shall receive a greater number of affirmative votes, the provisions of this measure shall take effect to the extent permitted by law.

(b) If this measure is approved by voters but superseded by any other conflicting ballot measure approved by the voters at the same election, and the conflicting ballot measure is later held invalid, this measure shall be self-executing and given full force of law.

SEC. 103. Severability.

If any provision of this act or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of the act that can be given effect in the absence of the invalid provision or application. To this end, the provisions of this act are severable.

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This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure amends and adds sections to the Revenue and Taxation Code, and adds sections to the Welfare and Institutions Code; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

MENTAL HEALTH SERVICES ACT

SECTION 1. Title.

This act shall be known and may be cited as the "Mental Health Services Act."

SEC. 2. Findings and Declarations.

The people of the State of California hereby find and declare all of the following:

(a) Mental illnesses are extremely common; they affect almost every family in California. They affect people from every background and occur at any age. In any year, between 5 percent and 7 percent of adults have a serious mental illness as do a similar percentage of children—between 5 percent and 9 percent. Therefore, more than two million children, adults and seniors in California are affected by a potentially disabling mental illness every year. People who become disabled by mental illness deserve the same guarantee of care already extended to those who face other kinds of disabilities.

(b) Failure to provide timely treatment can destroy individuals and families. No parent should have to give up custody of a child and no

adult or senior should have to become disabled or homeless to get mental health services as too often happens now. No individual or family should have to suffer inadequate or insufficient treatment due to language or cultural barriers to care. Lives can be devastated and families can be financially ruined by the costs of care. Yet, for too many Californians with mental illness, the mental health services and supports they need remain fragmented, disconnected and often inadequate, frustrating the opportunity for recovery.

(c) Untreated mental illness is the leading cause of disability and suicide and imposes high costs on state and local government. Many people left untreated or with insufficient care see their mental illness worsen. Children left untreated often become unable to learn or participate in a normal school environment. Adults lose their ability to work and be independent; many become homeless and are subject to frequent hospitalizations or jail. State and county governments are forced to pay billions of dollars each year in emergency medical care, long-term nursing home care, unemployment, housing, and law enforcement, including juvenile justice, jail and prison costs.

(d) In a cost cutting move 30 years ago, California drastically cut back its services in state hospitals for people with severe mental illness. Thousands ended up on the streets homeless and incapable of caring for themselves. Today thousands of suffering people remain on our streets because they are afflicted with untreated severe mental illness. We can and should offer these people the care they need to lead more productive lives.

(e) With effective treatment and support, recovery from mental illness is feasible for most people. The State of California has developed effective models of providing services to children, adults and seniors with serious mental illness. A recent innovative approach, begun under

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Assembly Bill 34 in 1999, was recognized in 2003 as a model program by the President's Commission on Mental Health. This program combines prevention services with a full range of integrated services to treat the whole person, with the goal of self-sufficiency for those who may have otherwise faced homelessness or dependence on the state for years to come. Other innovations address services to other underserved populations such as traumatized youth and isolated seniors. These successful programs, including prevention, emphasize client-centered, family focused and community-based services that are culturally and linguistically competent and are provided in an integrated services system.

(f) By expanding programs that have demonstrated their effectiveness, California can save lives and money. Early diagnosis and adequate treatment provided in an integrated service system is very effective; and by preventing disability, it also saves money. Cutting mental health services wastes lives and costs more. California can do a better job saving lives and saving money by making a firm commitment to providing timely, adequate mental health services.

(g) To provide an equitable way to fund these expanded services while protecting other vital state services from being cut, very high-income individuals should pay an additional 1 percent of that portion of their annual income that exceeds one million dollars (\$1,000,000). About one-tenth of 1 percent of Californians have incomes in excess of one million dollars (\$1,000,000). They have an average pre-tax income of nearly five million dollars (\$5,000,000). The additional tax paid pursuant to this represents only a small fraction of the amount of tax reduction they are realizing through recent changes in the federal income tax law and only a small portion of what they save on property taxes by living in California as compared to the property taxes they would be paying on multi-million dollar homes in other states.

SEC. 3. Purpose and Intent.

The people of the State of California hereby declare their purpose and intent in enacting this act to be as follows:

(a) To define serious mental illness among children, adults and seniors as a condition deserving priority attention, including prevention and early intervention services and medical and supportive care.

(b) To reduce the long-term adverse impact on individuals, families and state and local budgets resulting from untreated serious mental illness.

(c) To expand the kinds of successful, innovative service programs for children, adults and seniors begun in California, including culturally and linguistically competent approaches for underserved populations. These programs have already demonstrated their effectiveness in providing outreach and integrated services, including medically necessary psychiatric services, and other services, to individuals most severely affected by or at risk of serious mental illness.

(d) To provide state and local funds to adequately meet the needs of all children and adults who can be identified and enrolled in programs under this measure. State funds shall be available to provide services that are not already covered by federally sponsored programs or by individuals' or families' insurance programs.

(e) To ensure that all funds are expended in the most cost effective manner and services are provided in accordance with recommended best practices subject to local and state oversight to ensure accountability to taxpayers and to the public.

SEC. 4. Part 3.6 (commencing with Section 5840) is added to Division 5 of the Welfare and Institutions Code, to read:

PART 3.6. PREVENTION AND EARLY INTERVENTION PROGRAMS

5840. (a) *The State Department of Mental Health shall establish a program designed to prevent mental illnesses from becoming severe and disabling. The program shall emphasize improving timely access to services for underserved populations.*

(b) *The program shall include the following components:*

(1) *Outreach to families, employers, primary care health care providers, and others to recognize the early signs of potentially severe and disabling mental illnesses.*

(2) *Access and linkage to medically necessary care provided by county mental health programs for children with severe mental illness, as defined in Section 5600.3, and for adults and seniors with severe mental illness, as defined in Section 5600.3, as early in the onset of these conditions as practicable.*

(3) *Reduction in stigma associated with either being diagnosed with a mental illness or seeking mental health services.*

(4) *Reduction in discrimination against people with mental illness.*

(c) *The program shall include mental health services similar to those provided under other programs effective in preventing mental illnesses from becoming severe, and shall also include components similar to programs that have been successful in reducing the duration of untreated severe mental illnesses and assisting people in quickly regaining productive lives.*

(d) *The program shall emphasize strategies to reduce the following negative outcomes that may result from untreated mental illness:*

(1) *Suicide.*

(2) *Incarcerations.*

(3) *School failure or dropout.*

(4) *Unemployment.*

(5) *Prolonged suffering.*

(6) *Homelessness.*

(7) *Removal of children from their homes.*

(e) *In consultation with mental health stakeholders, the department shall revise the program elements in Section 5840 applicable to all county mental health programs in future years to reflect what is learned about the most effective prevention and intervention programs for children, adults, and seniors.*

5840.2. (a) *The department shall contract for the provision of services pursuant to this part with each county mental health program in the manner set forth in Section 5897.*

SEC. 5. Article 11 (commencing with Section 5878.1) is added to Chapter 1 of Part 4 of Division 5 of the Welfare and Institutions Code, to read:

Article 11. Services for Children with Severe Mental Illness

5878.1. (a) *It is the intent of this article to establish programs that assure services will be provided to severely mentally ill children as defined in Section 5878.2 and that they be part of the children's system of care established pursuant to this part. It is the intent of this act that services provided under this chapter to severely mentally ill children are accountable, developed in partnership with youth and their families, culturally competent, and individualized to the strengths and needs of each child and their family.*

(b) *Nothing in this act shall be construed to authorize any services to be provided to a minor without the consent of the child's parent or legal guardian beyond those already authorized by existing statute.*

5878.2. *For purposes of this article, severely mentally ill children means minors under the age of 18 who meet the criteria set forth in subdivision (a) of Section 5600.3.*

5878.3. (a) *Subject to the availability of funds as determined pursuant to Part 4.5 (commencing with Section 5890) of this division, county mental health programs shall offer services to severely mentally ill children for whom services under any other public or private insurance or other mental health or entitlement program is inadequate or unavailable. Other entitlement programs include but are not limited to mental health services available pursuant to Medi-Cal, child welfare, and special education programs. The funding shall cover only those portions of care that cannot be paid for with public or private insurance, other mental health funds or other entitlement programs.*

(b) *Funding shall be at sufficient levels to ensure that counties can provide each child served all of the necessary services set forth in the applicable treatment plan developed in accordance with this part, including services where appropriate and necessary to prevent an out of home placement, such as services pursuant to Chapter 4 (commencing with Section 18250) of Part 6 of Division 9.*

(c) *The State Department of Mental Health shall contract with county mental health programs for the provision of services under this article in the manner set forth in Section 5897.*

SEC. 6. Section 18257 is added to the Welfare and Institutions Code, to read:

18257. (a) *The State Department of Social Services shall seek applicable federal approval to make the maximum number of children being served through such programs eligible for federal financial participation and amend any applicable state regulations to the extent necessary to eliminate any limitations on the numbers of children who can participate in these programs.*

(b) *Funds from the Mental Health Services Fund shall be made available to the State Department of Social Services for technical assistance to counties in establishing and administering projects. Funding*

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shall include reasonable and necessary administrative costs in establishing and administering a project pursuant to this chapter and shall be sufficient to create an incentive for all counties to seek to establish programs pursuant to this chapter.

SEC. 7. Section 5813.5 is added to the Welfare and Institutions Code, to read:

5813.5. Subject to the availability of funds from the Mental Health Services Fund, the State Department of Mental Health shall distribute funds for the provision of services under Sections 5801, 5802 and 5806 to county mental health programs. Services shall be available to adults and seniors with severe illnesses who meet the eligibility criteria in subdivisions (b) and (c) of Section 5600.3 of the Welfare and Institutions Code. For purposes of this act, seniors means older adult persons identified in Part 3 (commencing with Section 5800) of this division.

(a) Funding shall be provided at sufficient levels to ensure that counties can provide each adult and senior served pursuant to this part with the medically necessary mental health services, medications and supportive services set forth in the applicable treatment plan.

(b) The funding shall only cover the portions of those costs of services that cannot be paid for with other funds including other mental health funds, public and private insurance, and other local, state and federal funds.

(c) Each county mental health programs plan shall provide for services in accordance with the system of care for adults and seniors who meet the eligibility criteria in subdivisions (b) and (c) of Section 5600.3.

(d) Planning for services shall be consistent with the philosophy, principles, and practices of the Recovery Vision for mental health consumers:

(1) To promote concepts key to the recovery for individuals who have mental illness: hope, personal empowerment, respect, social connections, self-responsibility, and self-determination.

(2) To promote consumer-operated services as a way to support recovery.

(3) To reflect the cultural, ethnic and racial diversity of mental health consumers.

(4) To plan for each consumer's individual needs.

(e) The plan for each county mental health program shall indicate, subject to the availability of funds as determined by Part 4.5 (commencing with Section 5890) of this division, and other funds available for mental health services, adults and seniors with a severe mental illness being served by this program are either receiving services from this program or have a mental illness that is not sufficiently severe to require the level of services required of this program.

(f) Each county plan and annual update pursuant to Section 5847 shall consider ways to provide services similar to those established pursuant to the Mentally Ill Offender Crime Reduction Grant Program. Funds shall not be used to pay for persons incarcerated in state prison or parolees from state prisons.

(g) The department shall contract for services with county mental health programs pursuant to Section 5897. After the effective date of this section the term grants referred to in Sections 5814 and 5814.5 shall refer to such contracts.

SEC. 8. Part 3.1 (commencing with Section 5820) is added to Division 5 of the Welfare and Institutions Code, to read:

PART 3.1. HUMAN RESOURCES, EDUCATION, AND TRAINING PROGRAMS

5820. (a) It is the intent of this part to establish a program with dedicated funding to remedy the shortage of qualified individuals to provide services to address severe mental illnesses.

(b) Each county mental health program shall submit to the department a needs assessment identifying its shortages in each professional and other occupational category in order to increase the supply of professional staff and other staff that county mental health programs anticipate they will require in order to provide the increase in services projected to serve additional individuals and families pursuant to Part 3 (commencing with Section 5800), Part 3.2 (commencing with Section 5830), Part 3.6 (commencing with Section 5840), and Part 4 (commencing with Section 5850) of this division. For purposes of this part, employment in California's public mental health system includes employment in private organizations providing publicly funded mental health services.

(c) The department shall identify the total statewide needs for each professional and other occupational category and develop a five-year education and training development plan.

(d) Development of the first five-year plan shall commence upon enactment of the initiative. Subsequent plans shall be adopted every five years.

(e) Each five-year plan shall be reviewed and approved by the California Mental Health Planning Council.

5821. (a) The California Mental Health Planning Council shall advise the State Department of Mental Health on education and training policy development and provide oversight for the department's education and training plan development.

(b) The State Department of Mental Health shall work with the California Mental Health Planning Council so that council staff is increased appropriately to fulfill its duties required by Sections 5820 and 5821.

5822. The State Department of Mental Health shall include in the five-year plan:

(a) Expansion plans for the capacity of postsecondary education to meet the needs of identified mental health occupational shortages.

(b) Expansion plans for the forgiveness and scholarship programs offered in return for a commitment to employment in California's public mental health system and make loan forgiveness programs available to current employees of the mental health system who want to obtain Associate of Arts, Bachelor of Arts, master's degrees, or doctoral degrees.

(c) Creation of a stipend program modeled after the federal Title IV-E program for persons enrolled in academic institutions who want to be employed in the mental health system.

(d) Establishment of regional partnerships among the mental health system and the educational system to expand outreach to multicultural communities, increase the diversity of the mental health workforce, to reduce the stigma associated with mental illness, and to promote the use of web-based technologies, and distance learning techniques.

(e) Strategies to recruit high school students for mental health occupations, increasing the prevalence of mental health occupations in high school career development programs such as health science academies, adult schools, and regional occupation centers and programs, and increasing the number of human service academies.

(f) Curriculum to train and retrain staff to provide services in accordance with the provisions and principles of Part 3 (commencing with Section 5800), Part 3.2 (commencing with Section 5830), Part 3.6 (commencing with Section 5840), and Part 4 (commencing with Section 5850) of this division.

(g) Promotion of the employment of mental health consumers and family members in the mental health system.

(h) Promotion of the meaningful inclusion of mental health consumers and family members and incorporating their viewpoint and experiences in the training and education programs in subdivisions (a) through (f).

(i) Promotion of the inclusion of cultural competency in the training and education programs in subdivisions (a) through (f).

SEC. 9. Part 3.2 (commencing with Section 5830) is added to Division 5 of the Welfare and Institutions Code, to read:

PART 3.2. INNOVATIVE PROGRAMS

5830. County mental health programs shall develop plans for innovative programs to be funded pursuant to paragraph (6) of subdivision (a) of Section 5892.

(a) The innovative programs shall have the following purposes:

(1) To increase access to underserved groups.

(2) To increase the quality of services, including better outcomes.

(3) To promote interagency collaboration.

(4) To increase access to services.

(b) County mental health programs shall receive funds for their innovation programs upon approval by the Mental Health Services Oversight and Accountability Commission.

SEC. 10. Part 3.7 (commencing with Section 5845) is added to Division 5 of the Welfare and Institutions Code, to read:

PART 3.7. OVERSIGHT AND ACCOUNTABILITY

5845. (a) The Mental Health Services Oversight and Accountability Commission is hereby established to oversee Part 3 (commencing with Section 5800), the Adult and Older Adult Mental Health System of Care

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Act; Part 3.1 (commencing with Section 5820), Human Resources, Education, and Training Programs; Part 3.2 (commencing with Section 5830), Innovative Programs; Part 3.6 (commencing with Section 5840), Prevention and Early Intervention Programs; and Part 4 (commencing with Section 5850), the Children's Mental Health Services Act. The commission shall replace the advisory committee established pursuant to Section 5814. The commission shall consist of 16 voting members as follows:

- (1) The Attorney General or his or her designee.
- (2) The Superintendent of Public Instruction or his or her designee.
- (3) The Chairperson of the Senate Health and Human Services Committee or another member of the Senate selected by the President pro Tempore of the Senate.
- (4) The Chairperson of the Assembly Health Committee or another member of the Assembly selected by the Speaker of the Assembly.

(5) Two persons with a severe mental illness, a family member of an adult or senior with a severe mental illness, a family member of a child who has or has had a severe mental illness, a physician specializing in alcohol and drug treatment, a mental health professional, a county sheriff, a superintendent of a school district, a representative of a labor organization, a representative of an employer with less than 500 employees and a representative of an employer with more than 500 employees, and a representative of a health care services plan or insurer, all appointed by the Governor. In making appointments, the Governor shall seek individuals who have had personal or family experience with mental illness.

(b) Members shall serve without compensation, but shall be reimbursed for all actual and necessary expenses incurred in the performance of their duties.

(c) The term of each member shall be three years, to be staggered so that approximately one-third of the appointments expire in each year.

(d) In carrying out its duties and responsibilities, the commission may do all of the following:

(1) Meet at least once each quarter at any time and location convenient to the public as it may deem appropriate. All meetings of the commission shall be open to the public.

(2) Within the limit of funds allocated for these purposes, pursuant to the laws and regulations governing state civil service, employ staff, including any clerical, legal, and technical assistance as may appear necessary.

(3) Establish technical advisory committees such as a committee of consumers and family members.

(4) Employ all other appropriate strategies necessary or convenient to enable it to fully and adequately perform its duties and exercise the powers expressly granted, notwithstanding any authority expressly granted to any officer or employee of state government.

(5) Develop strategies to overcome stigma and accomplish all other objectives of Part 3.2 (commencing with Section 5830), 3.6 (commencing with Section 5840), and the other provisions of the act establishing this commission.

(6) At any time, advise the Governor or the Legislature regarding actions the state may take to improve care and services for people with mental illness.

(7) If the commission identifies a critical issue related to the performance of a county mental health program, it may refer the issue to the State Department of Mental Health pursuant to Section 5655.

5846. (a) The commission shall annually review and approve each county mental health program for expenditures pursuant to Part 3.2 (commencing with Section 5830), for innovative programs and Part 3.6 (commencing with Section 5840), for prevention and early intervention.

(b) The department may provide technical assistance to any county mental health plan as needed to address concerns or recommendations of the commission or when local programs could benefit from technical assistance for improvement of their plans submitted pursuant to Section 5847.

(c) The commission shall ensure that the perspective and participation of members and others suffering from severe mental illness and their family members is a significant factor in all of its decisions and recommendations.

5847. Integrated Plans for Prevention, Innovation and System of Care Services.

(a) Each county mental health program shall prepare and submit a three-year plan which shall be updated at least annually and approved by the department after review and comment by the Mental Health Services Oversight and Accountability Commission. The plan and update shall include all of the following:

(1) A program for prevention and early intervention in accordance with Part 3.6 (commencing with Section 5840) of this division.

(2) A program for services to children in accordance with Part 4 (commencing with Section 5850) of this division, to include a program pursuant to Chapter 4 (commencing with Section 18250) of Part 6 of Division 9 or provide substantial evidence that it is not feasible to establish a wrap-around program in that county.

(3) A program for services to adults and seniors in accordance with Part 3 (commencing with Section 5800) of this division.

(4) A program for innovations in accordance with Part 3.2 (commencing with Section 5830) of this division.

(5) A program for technological needs and capital facilities needed to provide services pursuant to Part 3 (commencing with Section 5800), Part 3.6 (commencing with Section 5840), and Part 4 (commencing with Section 5850) of this division. All plans for proposed facilities with restrictive settings shall demonstrate that the needs of the people to be served cannot be met in a less restrictive or more integrated setting.

(6) Identification of shortages in personnel to provide services pursuant to the above programs and the additional assistance needed from the education and training programs established pursuant to Part 3.1 (commencing with Section 5820) of this division.

(7) Establishment and maintenance of a prudent reserve to ensure the county program will continue to be able to serve children, adults and seniors that it is currently serving pursuant to Part 3 (commencing with Section 5800) and Part 4 (commencing with Section 5850) of this division, during years in which revenues for the Mental Health Services Fund are below recent averages adjusted by changes in the state population and the California Consumer Price Index.

(b) The department's review and approval of the programs specified in paragraphs (1) and (4) of subdivision (a) shall be limited to ensuring the consistency of such programs with the other portions of the plan and providing review and comment to the Mental Health Services Oversight and Accountability Commission.

(c) The programs established pursuant to paragraphs (2) and (3) of subdivision (a) shall include services to address the needs of transition age youth ages 16 to 25.

(d) Each year the State Department of Mental Health shall inform counties of the amounts of funds available for services to children pursuant to Part 4 (commencing with Section 5850) of this division, and to adults and seniors pursuant to Part 3 (commencing with Section 5800) of this division. Each county mental health program shall prepare expenditure plans pursuant to Part 3 (commencing with Section 5800), and Part 4 (commencing with Section 5850) of this division, and updates to the plans developed pursuant to this section. Each expenditure update shall indicate the number of children, adults and seniors to be served pursuant to Part 3 (commencing with Section 5800), and Part 4 (commencing with Section 5850) of this division, and the cost per person. The expenditure update shall include utilization of unspent funds allocated in the previous year and the proposed expenditure for the same purpose.

(e) The department shall evaluate each proposed expenditure plan and determine the extent to which each county has the capacity to serve the proposed number of children, adults and seniors pursuant to Part 3 (commencing with Section 5800), and Part 4 (commencing with Section 5850) of this division; the extent to which there is an unmet need to serve that number of children, adults and seniors; and determine the amount of available funds; and provide each county with an allocation from the funds available. The department shall give greater weight for a county or a population which has been significantly underserved for several years.

(f) A county mental health program shall include an allocation of funds from a reserve established pursuant to paragraph (6) of subdivision (a) for services pursuant to paragraphs (2) and (3) of subdivision (a) in years in which the allocation of funds for services pursuant to subdivision (c) are not adequate to continue to serve the same number of individuals as the county had been serving in the previous fiscal year.

5848. (a) Each plan and update shall be developed with local stakeholders including adults and seniors with severe mental illness, families of children, adults and seniors with severe mental illness, providers of services, law enforcement agencies, education, social

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services agencies and other important interests. A draft plan and update shall be prepared and circulated for review and comment for at least 30 days to representatives of stakeholder interests and any interested party who has requested a copy of such plans.

(b) The mental health board established pursuant to Section 5604 shall conduct a public hearing on the draft plan and annual updates at the close of the 30-day comment period required by subdivision (a). Each adopted plan and update shall include any substantive written recommendations for revisions. The adopted plan or update shall summarize and analyze the recommended revisions. The mental health board shall review the adopted plan or update and make recommendations to the county mental health department for revisions.

(c) The department shall establish requirements for the content of the plans. The plans shall include reports on the achievement of performance outcomes for services pursuant to Part 3 (commencing with Section 5800), Part 3.6 (commencing with Section 5840), and Part 4 (commencing with Section 5850) of this division funded by the Mental Health Services Fund and established by the department.

(d) Mental health services provided pursuant to Part 3 (commencing with Section 5800), and Part 4 (commencing with Section 5850) of this division, shall be included in the review of program performance by the California Mental Health Planning Council required by paragraph (2) of subdivision (c) of Section 5772 and in the local mental health board's review and comment on the performance outcome data required by paragraph (7) of subdivision (a) of Section 5604.2.

SEC. 11. Section 5771.1 is added to the Welfare and Institutions Code, to read:

5771.1. The members of the Mental Health Services Oversight and Accountability Commission established pursuant to Section 5845 are members of the California Mental Health Planning Council. They serve in an ex officio capacity when the council is performing its statutory duties pursuant to Section 5772. Such membership shall not affect the composition requirements for the council specified in Section 5771.

SEC. 12. Section 17043 is added to the Revenue and Taxation Code, to read:

17043. (a) For each taxable year beginning on or after January 1, 2005, in addition to any other taxes imposed by this part, an additional tax shall be imposed at the rate of 1 percent on that portion of a taxpayer's taxable income in excess of one million dollars (\$1,000,000).

(b) For purposes of applying Part 10.2 (commencing with Section 18401) of Division 2, the tax imposed under this section shall be treated as if imposed under Section 17041.

(c) The following shall not apply to the tax imposed by this section:

(1) The provisions of Section 17039, relating to the allowance of credits.

(2) The provisions of Section 17041, relating to filing status and recomputation of the income tax brackets.

(3) The provisions of Section 17045, relating to joint returns.

SEC. 13. Section 19602 of the Revenue and Taxation Code is amended to read:

19602. Except for amounts collected or accrued under Sections 17935, 17941, 17948, 19532, and 19561, and revenues deposited pursuant to Section 19602.5, all moneys and remittances received by the Franchise Tax Board as amounts imposed under Part 10 (commencing with Section 17001), and related penalties, additions to tax, and interest imposed under this part, shall be deposited, after clearance of remittances, in the State Treasury and credited to the Personal Income Tax Fund.

SEC. 14. Section 19602.5 is added to the Revenue and Taxation Code, to read:

19602.5. (a) There is in the State Treasury the Mental Health Services Fund (MHS Fund). The estimated revenue from the additional tax imposed under Section 17043 for the applicable fiscal year, as determined under subparagraph (B) of paragraph (3) of subdivision (c), shall be deposited to the MHS Fund on a monthly basis, subject to an annual adjustment as described in this section.

(b) (1) Beginning with fiscal year 2004–2005 and for each fiscal year thereafter, the Controller shall deposit on a monthly basis in the MHS Fund an amount equal to the applicable percentage of net personal income tax receipts as defined in paragraph (4).

(2) (A) Except as provided in subparagraph (B), the applicable percentage referred to in paragraph (1) shall be 1.76 percent.

(B) For fiscal year 2004–2005, the applicable percentage shall be 0.70 percent.

(3) Beginning with fiscal year 2006–2007, monthly deposits to the MHS Fund pursuant to this subdivision are subject to suspension pursuant to subdivision (f).

(4) For purposes of this subdivision, "net personal income tax receipts" refers to amounts received by the Franchise Tax Board and the Employment Development Department under the Personal Income Tax Law, as reported by the Franchise Tax Board to the Department of Finance pursuant to law, regulation, procedure, and practice (commonly referred to as the "102 Report") in effect on the effective date of the act establishing this section.

(c) No later than March 1, 2006, and each March 1 thereafter, the Department of Finance, in consultation with the Franchise Tax Board, shall determine the annual adjustment amount for the following fiscal year.

(1) The "annual adjustment amount" for any fiscal year shall be an amount equal to the amount determined by subtracting the "revenue adjustment amount" for the applicable revenue adjustment fiscal year, as determined by the Franchise Tax Board under paragraph (3), from the "tax liability adjustment amount" for applicable tax liability adjustment tax year, as determined by the Franchise Tax Board under paragraph (2).

(2) (A) (i) The "tax liability adjustment amount" for a tax year is equal to the amount determined by subtracting the estimated tax liability increase from the additional tax imposed under Section 17043 for the applicable year under subparagraph (B) from the amount of the actual tax liability increase from the additional tax imposed under Section 17043 for the applicable tax year, based on the returns filed for that tax year.

(ii) For purposes of the determinations required under this paragraph, actual tax liability increase from the additional tax means the increase in tax liability resulting from the tax of 1 percent imposed under Section 17043, as reflected on the original returns filed by October 15 of the year after the close of the applicable tax year.

(iii) The applicable tax year referred to in this paragraph means the 12-calendar month taxable year beginning on January 1 of the year that is two years before the beginning of the fiscal year for which an annual adjustment amount is calculated.

(B) (i) The estimated tax liability increase from the additional tax for the following tax years is:

<u>Tax Year</u>	<u>Estimated Tax Liability Increase from the Additional Tax</u>
2005	\$634 million
2006	\$672 million
2007	\$713 million
2008	\$758 million

(ii) The "estimated tax liability increase from the additional tax" for the tax year beginning in 2009 and each tax year thereafter shall be determined by applying an annual growth rate of 7 percent to the "estimated tax liability increase from additional tax" of the immediately preceding tax year.

(3) (A) The "revenue adjustment amount" is equal to the amount determined by subtracting the "estimated revenue from the additional tax" for the applicable fiscal year, as determined under subparagraph (B), from the actual amount transferred for the applicable fiscal year.

(B) (i) The "estimated revenue from the additional tax" for the following applicable fiscal years is:

<u>Applicable Fiscal Year</u>	<u>Estimated Revenue from Additional Tax</u>
2004–05	\$254 million
2005–06	\$683 million
2006–07	\$690 million
2007–08	\$733 million

(ii) The "estimated revenue from the additional tax" for applicable fiscal year 2007–08 and each applicable fiscal year thereafter shall be determined by applying an annual growth rate of 7 percent to the "estimated revenue from the additional tax" of the immediately preceding applicable fiscal year.

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(iii) The applicable fiscal year referred to in this paragraph means the fiscal year that is two years before the fiscal year for which an annual adjustment amount is calculated.

(d) The Department of Finance shall notify the Legislature and the Controller of the results of the determinations required under subdivision (c) no later than 10 business days after the determinations are final.

(e) If the annual adjustment amount for a fiscal year is a positive number, the Controller shall transfer that amount from the General Fund to the MHS Fund on July 1 of that fiscal year.

(f) If the annual adjustment amount for a fiscal year is a negative number, the Controller shall suspend monthly transfers to the MHS Fund for that fiscal year, as otherwise required by paragraph (1) of subdivision (b), until the total amount of suspended deposits for that fiscal year equals the amount of the negative annual adjustment amount for that fiscal year.

SEC. 15. Part 4.5 (commencing with Section 5890) is added to Division 5 of the Welfare and Institutions Code, to read:

PART 4.5. MENTAL HEALTH SERVICES FUND

5890. (a) The Mental Health Services Fund is hereby created in the State Treasury. The fund shall be administered by the State Department of Mental Health. Notwithstanding Section 13340 of the Government Code, all moneys in the fund are continuously appropriated to the department, without regard to fiscal years, for the purpose of funding the following programs and other related activities as designated by other provisions of this division:

(1) Part 3 (commencing with Section 5800), the Adult and Older Adult System of Care Act.

(2) Part 3.6 (commencing with Section 5840), Prevention and Early Intervention Programs.

(3) Part 4 (commencing with Section 5850), the Children's Mental Health Services Act.

(b) Nothing in the establishment of this fund, nor any other provisions of the act establishing it or the programs funded shall be construed to modify the obligation of health care service plans and disability insurance policies to provide coverage for mental health services, including those services required under Section 1374.72 of the Health and Safety Code and Section 10144.5 of the Insurance Code, related to mental health parity. Nothing in this act shall be construed to modify the oversight duties of the Department of Managed Health Care or the duties of the Department of Insurance with respect to enforcing such obligations of plans and insurance policies.

(c) Nothing in this act shall be construed to modify or reduce the existing authority or responsibility of the State Department of Mental Health.

(d) The State Department of Health Services, in consultation with the State Department of Mental Health, shall seek approval of all applicable federal Medicaid approvals to maximize the availability of federal funds and eligibility of participating children, adults and seniors for medically necessary care.

(e) Share of costs for services pursuant to Part 3 (commencing with Section 5800), and Part 4 (commencing with Section 5850) of this division, shall be determined in accordance with the Uniform Method for Determining Ability to Pay applicable to other publicly funded mental health services, unless such Uniform Method is replaced by another method of determining co-payments, in which case the new method applicable to other mental health services shall be applicable to services pursuant to Part 3 (commencing with Section 5800), and Part 4 (commencing with Section 5850) of this division.

5891. The funding established pursuant to this act shall be utilized to expand mental health services. These funds shall not be used to supplant existing state or county funds utilized to provide mental health services. The state shall continue to provide financial support for mental health programs with not less than the same entitlements, amounts of allocations from the General Fund and formula distributions of dedicated funds as provided in the last fiscal year which ended prior to the effective date of this act. The state shall not make any change to the structure of financing mental health services, which increases a county's share of costs or financial risk for mental health services unless the state includes adequate funding to fully compensate for such increased costs or financial risk. These funds shall only be used to pay for the programs authorized in Section 5892. These funds may not be used to pay for any other program. These funds may not be loaned to the state

General Fund or any other fund of the state, or a county general fund or any other county fund for any purpose other than those authorized by Section 5892.

5892. (a) In order to promote efficient implementation of this act allocate the following portions of funds available in the Mental Health Services Fund in 2005–06 and each year thereafter:

(1) In 2005–06, 2006–07, and in 2007–08 10 percent shall be placed in a trust fund to be expended for education and training programs pursuant to Part 3.1.

(2) In 2005–06, 2006–07 and in 2007–08 10 percent for capital facilities and technological needs distributed to counties in accordance with a formula developed in consultation with the California Mental Health Directors Association to implement plans developed pursuant to Section 5847.

(3) Twenty percent for prevention and early intervention programs distributed to counties in accordance with a formula developed in consultation with the California Mental Health Directors Association pursuant to Part 3.6 (commencing with Section 5840) of this division. Each county's allocation of funds shall be distributed only after its annual program for expenditure of such funds has been approved by the Mental Health Services Oversight and Accountability Commission established pursuant to Section 5845.

(4) The allocation for prevention and early intervention may be increased in any county which the department determines that such increase will decrease the need and cost for additional services to severely mentally ill persons in that county by an amount at least commensurate with the proposed increase. The statewide allocation for prevention and early intervention may be increased whenever the Mental Health Services Oversight and Accountability Commission determines that all counties are receiving all necessary funds for services to severely mentally ill persons and have established prudent reserves and there are additional revenues available in the fund.

(5) The balance of funds shall be distributed to county mental health programs for services to persons with severe mental illnesses pursuant to Part 4 (commencing with Section 5850), for the children's system of care and Part 3 (commencing with Section 5800), for the adult and older adult system of care.

(6) Five percent of the total funding for each county mental health program for Part 3 (commencing with Section 5800), Part 3.6 (commencing with Section 5840), and Part 4 (commencing with Section 5850) of this division, shall be utilized for innovative programs pursuant to an approved plan required by Section 5830 and such funds may be distributed by the department only after such programs have been approved by the Mental Health Services Oversight and Accountability Commission established pursuant to Section 5845.

(b) In any year after 2007–08, programs for services pursuant to Part 3 (commencing with Section 5800), and Part 4 (commencing with Section 5850) of this division may include funds for technological needs and capital facilities, human resource needs, and a prudent reserve to ensure services do not have to be significantly reduced in years in which revenues are below the average of previous years. The total allocation for purposes authorized by this subdivision shall not exceed 20 percent of the average amount of funds allocated to that county for the previous five years pursuant to this section.

(c) The allocations pursuant to subdivisions (a) and (b) shall include funding for annual planning costs pursuant to Section 5848. The total of such costs shall not exceed 5 percent of the total of annual revenues received for the fund. The planning costs shall include funds for county mental health programs to pay for the costs of consumers, family members and other stakeholders to participate in the planning process and for the planning and implementation required for private provider contracts to be significantly expanded to provide additional services pursuant to Part 3 (commencing with Section 5800), and Part 4 (commencing with Section 5850) of this division.

(d) Prior to making the allocations pursuant to subdivisions (a), (b) and (c), the department shall also provide funds for the costs for itself, the California Mental Health Planning Council and the Mental Health Services Oversight and Accountability Commission to implement all duties pursuant to the programs set forth in this section. Such costs shall not exceed 5 percent of the total of annual revenues received for the fund. The administrative costs shall include funds to assist consumers and family members to ensure the appropriate state and county agencies give full consideration to concerns about quality, structure of service delivery or access to services. The amounts allocated for administration shall include amounts sufficient to ensure adequate research and evaluation regarding the effectiveness of services being provided and

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achievement of the outcome measures set forth in Part 3 (commencing with Section 5800), Part 3.6 (commencing with Section 5840), and Part 4 (commencing with Section 5850) of this division.

(e) In 2004–05 funds shall be allocated as follows:

(1) 45 percent for education and training pursuant to Part 3.1 (commencing with Section 5820) of this division.

(2) 45 percent for capital facilities and technology needs in the manner specified by paragraph (2) of subdivision (a).

(3) 5 percent for local planning in the manner specified in subdivision (c) and

(4) 5 percent for state implementation in the manner specified in subdivision (d).

(f) Each county shall place all funds received from the State Mental Health Services Fund in a local Mental Health Services Fund. The Local Mental Health Services Fund balance shall be invested consistent with other county funds and the interest earned on such investments shall be transferred into the fund. The earnings on investment of these funds shall be available for distribution from the fund in future years.

(g) All expenditures for county mental health programs shall be consistent with a currently approved plan or update pursuant to Section 5847.

(h) Other than funds placed in a reserve in accordance with an approved plan, any funds allocated to a county which have not been spent for their authorized purpose within three years shall revert to the state to be deposited into the fund and available for other counties in future years, provided however, that funds for capital facilities, technological needs or education and training may be retained for up to 10 years before reverting to the fund.

(i) If there are still additional revenues available in the fund after the Mental Health Services Oversight and Accountability Commission has determined there are prudent reserves and no unmet needs for any of the programs funded pursuant to this section, including all purposes of the Prevention and Early Intervention Program, the commission shall develop a plan for expenditures of such revenues to further the purposes of this act and the Legislature may appropriate such funds for any purpose consistent with the commission's adopted plan which furthers the purposes of this act.

5893. (a) In any year in which the funds available exceed the amount allocated to counties, such funds shall be carried forward to the next fiscal year to be available for distribution to counties in accordance with Section 5892 in that fiscal year.

(b) All funds deposited into the Mental Health Services Fund shall be invested in the same manner in which other state funds are invested. The fund shall be increased by its share of the amount earned on investments.

5894. In the event that Part 3 (commencing with Section 5800) or Part 4 (commencing with Section 5850) of this division, are restructured by legislation signed into law before the adoption of this measure, the funding provided by this measure shall be distributed in accordance with such legislation; provided, however, that nothing herein shall be construed to reduce the categories of persons entitled to receive services.

5895. In the event any provisions of Part 3 (commencing with Section 5800), or Part 4 (commencing with Section 5850) of this division, are repealed or modified so the purposes of this act cannot be accomplished, the funds in the Mental Health Services Fund shall be administered in accordance with those sections as they read on January 1, 2004.

5897. (a) Notwithstanding any other provision of state law, the State Department of Mental Health shall implement the mental health services provided by Part 3 (commencing with Section 5800), Part 3.6 (commencing with Section 5840), and Part 4 (commencing with Section 5850) of this division through contracts with county mental health programs or counties acting jointly. A contract may be exclusive and may be awarded on a geographic basis. As used herein in a county mental health program includes a city receiving funds pursuant to Section 5701.5.

(b) Two or more counties acting jointly may agree to deliver or subcontract for the delivery of such mental health services. The agreement may encompass all or any part of the mental health services provided

pursuant to these parts. Any agreement between counties shall delineate each county's responsibilities and fiscal liability.

(c) The department shall implement the provisions of Part 3 (commencing with Section 5800), Part 3.2 (commencing with Section 5830), Part 3.6 (commencing with Section 5840), and Part 4 (commencing with Section 5850) of this division through the annual county mental health services performance contract, as specified in Chapter 2 (commencing with Section 5650) of Part 2 of Division 5.

(d) When a county mental health program is not in compliance with its performance contract, the department may request a plan of correction with a specific timeline to achieve improvements.

(e) Contracts awarded by the State Department of Mental Health, the California Mental Health Planning Council, and the Mental Health Services Oversight and Accountability Commission pursuant to Part 3 (commencing with Section 5800), Part 3.1 (commencing with Section 5820), Part 3.2 (commencing with Section 5830), Part 3.6 (commencing with Section 5840), Part 3.7 (commencing with Section 5845), Part 4 (commencing with Section 5850), and Part 4.5 (commencing with Section 5890) of this division, may be awarded in the same manner in which contracts are awarded pursuant to Section 5814 and the provisions of subdivisions (g) and (h) of Section 5814 shall apply to such contracts.

(f) For purposes of Section 5775, the allocation of funds pursuant to Section 5892 which are used to provide services to Medi-Cal beneficiaries shall be included in calculating anticipated county matching funds and the transfer to the department of the anticipated county matching funds needed for community mental health programs.

5898. The department shall develop regulations, as necessary, for the department or designated local agencies to implement this act. In 2005, the director may adopt all regulations pursuant to this act as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For the purpose of the Administrative Procedure Act, the adoption of regulations, in 2005, shall be deemed an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. These regulations shall not be subject to the review and approval of the Office of Administrative Law and shall not be subject to automatic repeal until final regulations take effect. Emergency regulations adopted in accordance with this provision shall not remain in effect for more than a year. The final regulations shall become effective upon filing with the Secretary of State. Regulations adopted pursuant to this section shall be developed with the maximum feasible opportunity for public participation and comments.

SEC. 16.

The provisions of this act shall become effective January 1 of the year following passage of the act, and its provisions shall be applied prospectively.

The provisions of this act are written with the expectation that it will be enacted in November of 2004. In the event that it is approved by the voters at an election other than one which occurs during the 2004–05 fiscal year, the provisions of this act which refer to fiscal year 2005–06 shall be deemed to refer to the first fiscal year which begins after the effective date of this act and the provisions of this act which refer to other fiscal years shall refer to the year that is the same number of years after the first fiscal year as that year is in relationship to 2005–06.

SEC. 17.

Notwithstanding any other provision of law to the contrary, the department shall begin implementing the provisions of this act immediately upon its effective date and shall have the authority to immediately make any necessary expenditures and to hire staff for that purpose.

SEC. 18.

This act shall be broadly construed to accomplish its purposes. All of the provisions of this act may be amended by a two-thirds vote of the Legislature so long as such amendments are consistent with and further the intent of this act. The Legislature may by majority vote add provisions to clarify procedures and terms including the procedures for the collection of the tax surcharge imposed by Section 12 of this act.

SEC. 19.

If any provision of this act is held to be unconstitutional or invalid for any reason, such unconstitutionality or invalidity shall not affect the validity of any other provision.

Proposition 64

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure amends sections of the Business and Professions Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

SECTION 1. Findings and Declarations of Purpose

The people of the State of California find and declare that:

(a) This state's unfair competition laws set forth in Sections 17200 and 17500 of the Business and Professions Code are intended to protect California businesses and consumers from unlawful, unfair, and fraudulent business practices.

(b) These unfair competition laws are being misused by some private attorneys who:

(1) File frivolous lawsuits as a means of generating attorney's fees without creating a corresponding public benefit.

(2) File lawsuits where no client has been injured in fact.

(3) File lawsuits for clients who have not used the defendant's product or service, viewed the defendant's advertising, or had any other business dealing with the defendant.

(4) File lawsuits on behalf of the general public without any accountability to the public and without adequate court supervision.

(c) Frivolous unfair competition lawsuits clog our courts and cost taxpayers. Such lawsuits cost California jobs and economic prosperity, threatening the survival of small businesses and forcing businesses to raise their prices or to lay off employees to pay lawsuit settlement costs or to relocate to states that do not permit such lawsuits.

(d) It is the intent of California voters in enacting this act to eliminate frivolous unfair competition lawsuits while protecting the right of individuals to retain an attorney and file an action for relief pursuant to Chapter 5 (commencing with Section 17200) of Division 7 of the Business and Professions Code.

(e) It is the intent of the California voters in enacting this act to prohibit private attorneys from filing lawsuits for unfair competition where they have no client who has been injured in fact under the standing requirements of the United States Constitution.

(f) It is the intent of California voters in enacting this act that only the California Attorney General and local public officials be authorized to file and prosecute actions on behalf of the general public.

(g) It is the intent of California voters in enacting this act that the Attorney General, district attorneys, county counsels, and city attorneys maintain their public protection authority and capability under the unfair competition laws.

(h) It is the intent of California voters in enacting this act to require that civil penalty payments be used by the Attorney General, district attorneys, county counsels, and city attorneys to strengthen the enforcement of California's unfair competition and consumer protection laws.

SEC. 2. Section 17203 of the Business and Professions Code is amended to read:

17203. *Injunctive Relief—Court Orders*

Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition. *Any person may pursue representative claims or relief on behalf of others only if the claimant meets the standing requirements of Section 17204 and complies with Section 382 of the Code of Civil Procedure, but these limitations do not apply to claims brought under this chapter by the Attorney General, or any district attorney, county counsel, city attorney, or city prosecutor in this state.*

SEC. 3. Section 17204 of the Business and Professions Code is amended to read:

17204. *Actions for Injunctions by Attorney General, District Attorney, County Counsel, and City Attorneys*

Actions for any relief pursuant to this chapter shall be prosecuted exclu-

sively in a court of competent jurisdiction by the Attorney General or any district attorney or by any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance, or any city attorney of a city, or city and county, having a population in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor or, with the consent of the district attorney, by a city attorney in any city and county in the name of the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by any person ~~acting for the interests of itself, its members or the general public who has suffered injury in fact and has lost money or property as a result of such unfair competition.~~

SEC. 4. Section 17206 of the Business and Professions Code is amended to read:

17206. *Civil Penalty for Violation of Chapter*

(a) Any person who engages, has engaged, or proposes to engage in unfair competition shall be liable for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General, by any district attorney, by any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance, by any city attorney of a city, or city and county, having a population in excess of 750,000, with the consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor, or, with the consent of the district attorney, by a city attorney in any city and county, in any court of competent jurisdiction.

(b) The court shall impose a civil penalty for each violation of this chapter. In assessing the amount of the civil penalty, the court shall consider any one or more of the relevant circumstances presented by any of the parties to the case, including, but not limited to, the following: the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth.

(c) If the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State General Fund. If the action is brought by a district attorney or county counsel, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. Except as provided in subdivision (d), if the action is brought by a city attorney or city prosecutor, one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered, and one-half to the treasurer of the county in which the judgment was entered. *The aforementioned funds shall be for the exclusive use by the Attorney General, the district attorney, the county counsel, and the city attorney for the enforcement of consumer protection laws.*

(d) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (c), the amount of any reasonable expenses incurred by the board shall be paid to the state Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund, the moneys shall be paid to the state Treasurer. The amount of any reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality or county that funds the local agency.

(e) If the action is brought by a city attorney of a city and county, the entire amount of the penalty collected shall be paid to the treasurer of the city and county in which the judgment was entered *for the exclusive use by the city attorney for the enforcement of consumer protection laws.* However, if the action is brought by a city attorney of a city and county for the purposes of civil enforcement pursuant to Section 17980 of the Health and Safety Code or Article 3 (commencing with Section 11570) of Chapter 10 of Division 10 of the Health and Safety Code, either the penalty collected shall be paid entirely to the treasurer of the city and county in which the judgment was entered or, upon the request of the city attorney, the court may order that up to one-half of the penalty, under court supervision and approval, be paid for the purpose of restoring, maintaining, or enhancing the premises that were the subject of the action, and that the balance of the penalty be paid to the treasurer of the city and county.

SEC. 5. Section 17535 of the Business and Professions Code is amended to read:

17535. *Obtaining Injunctive Relief*

TEXT OF PROPOSED LAWS

Proposition 64 (cont.)

Any person, corporation, firm, partnership, joint stock company, or any other association or organization which violates or proposes to violate this chapter may be enjoined by any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person, corporation, firm, partnership, joint stock company, or any other association or organization of any practices which violate this chapter, or which may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of any practice in this chapter declared to be unlawful.

Actions for injunction under this section may be prosecuted by the Attorney General or any district attorney, county counsel, city attorney, or city prosecutor in this state in the name of the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by any person ~~acting for the interests of itself, its members or the general public~~ *who has suffered injury in fact and has lost money or property as a result of a violation of this chapter. Any person may pursue representative claims or relief on behalf of others only if the claimant meets the standing requirements of this section and complies with Section 382 of the Code of Civil Procedure, but these limitations do not apply to claims brought under this chapter by the Attorney General, or any district attorney, county counsel, city attorney, or city prosecutor in this state.*

SEC. 6. Section 17536 of the Business and Professions Code is amended to read:

17536. *Penalty for Violations of Chapter; Proceedings; Disposition of Proceeds*

(a) Any person who violates any provision of this chapter shall be liable for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney, county counsel, or city attorney in any court of competent jurisdiction.

(b) The court shall impose a civil penalty for each violation of this chapter. In assessing the amount of the civil penalty, the court shall consider any one or more of the relevant circumstances presented by any of the parties to the case, including, but not limited to, the following: the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth.

(c) If the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State Treasurer.

If brought by a district attorney or county counsel, the entire amount of penalty collected shall be paid to the treasurer of the county in which the judgment was entered. If brought by a city attorney or city prosecutor, one-half of the penalty shall be paid to the treasurer of the county and one-half to the city. *The aforementioned funds shall be for the exclusive use by the Attorney General, district attorney, county counsel, and city attorney for the enforcement of consumer protection laws.*

(d) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (c), the amount of such reasonable expenses incurred by the board shall be paid to the State Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund the monies shall be paid to the State Treasurer. The amount of such reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality which funds the local agency.

(e) As applied to the penalties for acts in violation of Section 17530, the remedies provided by this section and Section 17534 are mutually exclusive.

SEC. 7. In the event that between July 1, 2003, and the effective date of this measure, legislation is enacted that is inconsistent with this measure, said legislation is void and repealed irrespective of the code in which it appears.

SEC. 8. In the event that this measure and another measure or measures relating to unfair competition law shall appear on the same statewide election ballot, the provisions of the other measures shall be deemed to be in conflict with this measure. In the event that this measure shall receive a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and the provisions of the other measure relating to unfair competition law shall be null and void.

SEC. 9. If any provision of this act, or part thereof, is for any reason held to be invalid or unconstitutional, the remaining provisions shall not be affected, but shall remain in full force and effect, and to this end the provisions of this act are severable.

Proposition 65

Pursuant to statute, Proposition 65 will appear in a Supplemental Voter Information Guide.

Proposition 66

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure amends sections of the Penal Code and amends a section of the Welfare and Institutions Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

THE THREE STRIKES AND CHILD PROTECTION ACT OF 2004

SECTION 1. Title

This initiative shall be known and may be cited as the Three Strikes and Child Protection Act of 2004.

SEC. 2. Findings and Declarations

The people of the State of California do hereby find and declare that:

(a) Proposition 184 (the "Three Strikes" law) was overwhelmingly approved in 1994 with the intent of protecting law-abiding citizens by enhancing the sentences of repeat offenders who commit serious and/or violent felonies;

(b) Proposition 184 did not set reasonable limits to determine what criminal acts to prosecute as a second and/or third strike; and

(c) Since its enactment, Proposition 184 has been used to enhance the sentences of more than 35,000 persons who did not commit a serious and/or violent crime against another person, at a cost to taxpayers of more than eight hundred million dollars (\$800,000,000) per year.

SEC. 3. Purposes

The people do hereby enact this measure to:

(a) Continue to protect the people from criminals who commit serious and/or violent crimes;

(b) Ensure greater punishment and longer prison sentences for those who have been previously convicted of serious and/or violent felonies, and who commit another serious and/or violent felony;

(c) Require that no more than one strike be prosecuted for each criminal act and to conform the burglary and arson statutes; and

(d) Protect children from dangerous sex offenders and reduce the cost to taxpayers for warehousing offenders who commit crimes that do not qualify for increased punishment according to this act.

Proposition 66 (cont.)

SEC. 4. Sex Offenders of Children

Section 289 of the Penal Code is amended to read:

289. (a) (1) Any person who commits an act of sexual penetration when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person shall be punished by imprisonment in the state prison for three, six, or eight years.

(2) Any person who commits an act of sexual penetration when the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat, shall be punished by imprisonment in the state prison for three, six, or eight years.

(b) Except as provided in subdivision (c), any person who commits an act of sexual penetration, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act or causing the act to be committed, shall be punished by imprisonment in the state prison for three, six, or eight years. Notwithstanding the appointment of a conservator with respect to the victim pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving legal consent.

(c) Any person who commits an act of sexual penetration, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act or causing the act to be committed and both the defendant and the victim are at the time confined in a state hospital for the care and treatment of the mentally disordered or in any other public or private facility for the care and treatment of the mentally disordered approved by a county mental health director, shall be punished by imprisonment in the state prison, or in a county jail for a period of not more than one year. Notwithstanding the existence of a conservatorship pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving legal consent.

(d) Any person who commits an act of sexual penetration, and the victim is at the time unconscious of the nature of the act and this is known to the person committing the act or causing the act to be committed, shall be punished by imprisonment in the state prison for three, six, or eight years. As used in this subdivision, "unconscious of the nature of the act" means incapable of resisting because the victim meets one of the following conditions:

- (1) Was unconscious or asleep.
- (2) Was not aware, knowing, perceiving, or cognizant that the act occurred.
- (3) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact.
- (4) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraudulent representation that the sexual penetration served a professional purpose when it served no professional purpose.
- (e) Any person who commits an act of sexual penetration when the victim is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known by the accused, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

(f) Any person who commits an act of sexual penetration when the victim submits under the belief that the person committing the act or causing the act to be committed is the victim's spouse, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce the belief, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

(g) Any person who commits an act of sexual penetration when the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

As used in this subdivision, "public official" means a person employed

by a governmental agency who has the authority, as part of that position, to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official.

(h) Except as provided in Section 288, any person who participates in an act of sexual penetration with another person who is under 18 years of age shall be punished by imprisonment in the state prison or in the county jail for a period of not more than one year.

(i) Except as provided in Section 288, any person over the age of 21 years who participates in an act of sexual penetration with another person who is under 16 years of age shall be guilty of a felony.

(j) (1) Any person who participates in an act of sexual penetration *or oral copulation* with another person who is under 14 years of age and who is more than 10 years younger than he or she shall be punished by imprisonment in the state prison for ~~three, six, or eight years~~, *or twelve years and receive counseling during the imprisonment and for a period of at least one year following release. This counseling shall be structured in a way so that it does not endanger the prisoner's life or safety.*

(2) *A second conviction of this offense, pled and proved separately, will result in imprisonment in the state prison for 25 years to life. If the victim is under the age of 10 on the first offense the prosecution may seek a sentence of 25 years to life, but the court retains discretion to sentence under paragraph (1).*

(k) As used in this section:

(1) "Sexual penetration" is the act of causing the penetration, however slight, of the genital or anal opening of any person or causing another person to so penetrate the defendant's or another person's genital or anal opening for the purpose of sexual arousal, gratification, or abuse by any foreign object, substance, instrument, or device, or by any unknown object.

(2) "Foreign object, substance, instrument, or device" shall include any part of the body, except a sexual organ.

(3) "Unknown object" shall include any foreign object, substance, instrument, or device, or any part of the body, including a penis, when it is not known whether penetration was by a penis or by a foreign object, substance, instrument, or device, or by any other part of the body.

(l) As used in subdivision (a), "threatening to retaliate" means a threat to kidnap or falsely imprison, or inflict extreme pain, serious bodily injury or death.

(m) As used in this section, "victim" includes any person who the defendant causes to penetrate the genital or anal opening of the defendant or another person or whose genital or anal opening is caused to be penetrated by the defendant or another person and who otherwise qualifies as a victim under the requirements of this section.

SEC. 5. Amendments to Section 667 of the Penal Code

Section 667 of the Penal Code is amended to read:

667. (a) (1) In compliance with subdivision (b) of Section 1385, any person convicted of a serious felony who previously has been convicted of a serious felony in this state or of any offense committed in another jurisdiction which includes all of the elements of any serious felony, shall receive, in addition to the sentence imposed by the court for the present offense, a five-year enhancement for each such prior conviction on charges brought and tried separately. The terms of the present offense and each enhancement shall run consecutively.

(2) This subdivision shall not be applied when the punishment imposed under other provisions of law would result in a longer term of imprisonment. There is no requirement of prior incarceration or commitment for this subdivision to apply.

(3) The Legislature may increase the length of the enhancement of sentence provided in this subdivision by a statute passed by majority vote of each house thereof.

(4) As used in this subdivision, "serious felony" means ~~a~~ *any* serious felony listed in subdivision (c) of Section 1192.7 - *as amended by the Three Strikes and Child Protection Act of 2004.*

(5) This subdivision shall not apply to a person convicted of selling, furnishing, administering, or giving, or offering to sell, furnish, administer, or give to a minor any methamphetamine-related drug or any precursors of methamphetamine unless the prior conviction was for a serious felony described in subparagraph (24) of subdivision (c) of Section 1192.7.

(b) It is the intent of the ~~Legislature~~ *people of the State of California* in enacting subdivisions (b) to (i), inclusive, to ensure longer prison sentences and greater punishment for those who commit a *serious and/or violent* felony and have been previously convicted of serious and/or violent felony offenses.

Proposition 66 (cont.)

(c) Notwithstanding any other *provision of law*, if a defendant has been convicted of a *serious and/or violent felony* and it has been pled and proved that the defendant has one or more prior *serious and/or violent felony convictions that were brought and tried separately* as defined in subdivision (d), the court shall adhere to each of the following:

(1) There shall not be an aggregate term limitation for purposes of consecutive sentencing for any subsequent *serious and/or violent felony conviction*.

(2) Probation for the current offense shall not be granted, nor shall execution or imposition of the sentence be suspended for any prior offense.

(3) The length of time between the prior *serious and/or violent felony conviction* and the current *serious and/or violent felony conviction* shall not affect the imposition of the sentence.

(4) There shall not be a commitment to any other facility other than the state prison. Diversion shall not be granted nor shall the defendant be eligible for commitment to the California Rehabilitation Center as provided in Article 2 (commencing with Section 3050) of Chapter 1 of Division 3 of the Welfare and Institutions Code.

(5) The total amount of credits awarded pursuant to Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall not exceed one-fifth of the total term of imprisonment imposed and shall not accrue until the defendant is physically placed in the state prison.

(6) If there is a current conviction for more than one *serious and/or violent felony* count not committed on the same occasion, and not arising from the same set of operative facts, the court shall sentence the defendant consecutively on each count pursuant to subdivision (e).

(7) If there is a current conviction for more than one *serious and/or violent felony* as described in paragraph (6), the court shall impose the sentence for each conviction consecutive to the sentence for any other conviction for which the defendant may be consecutively sentenced in the manner prescribed by law.

(8) Any sentence imposed pursuant to subdivision (e) will be imposed consecutive to any other sentence which the defendant is already serving, unless otherwise provided by law.

(d) Notwithstanding any other law and for the purposes of subdivisions (b) to (i), inclusive, a prior conviction of a *serious and/or violent felony* shall be defined as *any of the following* :

(1) Any offense defined in subdivision (c) of Section 667.5 *as amended by the Three Strikes and Child Protection Act of 2004* as a violent felony or any offense defined in subdivision (c) of Section 1192.7 *as amended by the Three Strikes and Child Protection Act of 2004* as a serious felony in this state and the conviction(s) were brought and tried separately . The determination of whether a prior conviction is a prior *serious and/or violent felony conviction* for purposes of subdivisions (b) to (i), inclusive, shall be made upon the date of that prior conviction and is not affected by the sentence imposed unless the sentence automatically, upon the initial sentencing, converts the felony to a misdemeanor. None of the following dispositions shall affect the determination that a prior conviction is a prior *serious and/or violent felony* for purposes of subdivisions (b) to (i), inclusive:

(A) The suspension of imposition of judgment or sentence.

(B) The stay of execution of sentence.

(C) The commitment to the State Department of Health Services as a mentally disordered sex offender following a conviction of a felony.

(D) The commitment to the California Rehabilitation Center or any other facility whose function is rehabilitative diversion from the state prison.

(2) A conviction in another jurisdiction for an offense that, if committed in California, is punishable by imprisonment in the state prison. A prior conviction of a particular felony shall include a conviction in another jurisdiction for an offense that includes all of the elements of the particular felony as defined in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7 *as amended by the Three Strikes and Child Protection Act of 2004 and the conviction(s) were brought and tried separately* .

(3) A prior juvenile adjudication shall constitute a prior *serious and/or violent felony conviction* for purposes of sentence enhancement if all of the following are true :

(A) The juvenile was 16 years of age or older at the time he or she committed the prior offense.

(B) The prior offense is described in subdivision (c) of Section 667.5 or described in subdivision (c) of Section 1192.7 *as amended by the Three Strikes and Child Protection Act of 2004 or is one of the following offenses*

es listed in subdivision (b) of Section 707 of the Welfare and Institutions Code ~~or described in paragraph (1) or (2) as a felony as amended by the Three Strikes and Child Protection Act of 2004 .~~

(C) The juvenile was found to be a fit and proper subject to be dealt with under the juvenile court law.

(D) The juvenile was adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code *as amended by the Three Strikes and Child Protection Act of 2004* .

(e) For purposes of subdivisions (b) to (i), inclusive, and in addition to any other enhancement or punishment provisions which may apply, the following shall apply where a defendant has a prior *serious and/or violent felony conviction*:

(1) If a defendant has one prior *serious and/or violent felony conviction* that has been pled and proved, the determinate term or minimum term for an indeterminate term shall be twice the term otherwise provided as punishment for the current *serious and/or violent felony conviction*.

(2) (A) If a defendant has *been convicted of a serious and/or violent felony, as defined in Section 667.5 or 1192.7, or Section 707 of the Welfare and Institutions Code, as amended by the Three Strikes and Child Protection Act of 2004, and has two or more prior serious and/or violent felony convictions as defined in subdivision (d) that have been pled and proved and that were brought and tried separately* , the term for the current *serious and/or violent felony conviction* shall be an indeterminate term of life imprisonment with a minimum term of the indeterminate sentence calculated as the ~~greater~~ greatest of the following :

(i) Three times the term otherwise provided as punishment for each current *serious and/or violent felony conviction* subsequent to the two or more prior *serious and/or violent felony convictions*.

(ii) Imprisonment in the state prison for 25 years.

(iii) The term determined by the court pursuant to Section 1170 for the underlying conviction, including any enhancement applicable under Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2, or any period prescribed by Section 190 or 3046.

(B) The indeterminate term described in subparagraph (A) shall be served consecutive to any other term of imprisonment for which a consecutive term may be imposed by law. Any other term imposed subsequent to any indeterminate term described in subparagraph (A) shall not be merged therein but shall commence at the time the person would otherwise have been released from prison.

(f) (1) Notwithstanding any other law, subdivisions (b) to (i), inclusive, shall be applied in every case in which a defendant has a prior *serious and/or violent felony conviction* as defined in subdivision (d). The prosecuting attorney shall plead and prove each prior *serious and/or violent felony conviction* except as provided in paragraph (2).

(2) The prosecuting attorney may move to dismiss or strike a prior felony conviction allegation in the furtherance of justice pursuant to Section 1385, or if there is insufficient evidence to prove the prior conviction. If upon the satisfaction of the court that there is insufficient evidence to prove the prior felony conviction, the court may dismiss or strike the allegation.

(g) Prior felony convictions shall not be used in plea bargaining as defined in subdivision (b) of Section 1192.7. The prosecution shall plead and prove all known prior felony convictions and shall not enter into any agreement to strike or seek the dismissal of any prior felony conviction allegation except as provided in paragraph (2) of subdivision (f).

(h) All references to existing statutes in subdivisions (c) to (g), inclusive, are to statutes as ~~they existed on June 30, 1993~~ *as amended by the Three Strikes and Child Protection Act of 2004* .

(i) If any provision of subdivisions (b) to (h), inclusive, or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of those subdivisions which can be given effect without the invalid provision or application, and to this end the provisions of those subdivisions are severable.

(j) The provisions of this section shall not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

SEC. 6. Amendments to Section 667.1 of the Penal Code

Section 667.1 of the Penal Code is amended to read:

667.1. Notwithstanding subdivision (h) of Section 667, for all

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offenses committed on or after the effective date of ~~this act~~ the *Three Strikes and Child Protection Act of 2004*, all references to existing statutes in subdivisions (c) to (g), inclusive, of Section 667, are to those statutes as they ~~existed on the effective date of this act, including amendments made to those statutes by this act~~ are amended by that act.

SEC. 7. Amendments to Section 667.5 of the Penal Code

Section 667.5 of the Penal Code is amended to read:

667.5. Enhancement of prison terms for new offenses because of prior prison terms shall be imposed as follows:

(a) Where one of the new offenses is one of the violent felonies specified in subdivision (c), in addition to and consecutive to any other prison terms therefor, the court shall impose a three-year term for each prior separate prison term served by the defendant where the prior offense was one of the violent felonies specified in subdivision (c). However, no additional term shall be imposed under this subdivision for any prison term served prior to a period of 10 years in which the defendant remained free of both prison custody and the commission of an offense which results in a felony conviction.

(b) Except where subdivision (a) applies, where the new offense is any felony for which a prison sentence is imposed, in addition and consecutive to any other prison terms therefor, the court shall impose a one-year term for each prior separate prison term served for any felony; provided that no additional term shall be imposed under this subdivision for any prison term served prior to a period of five years in which the defendant remained free of both prison custody and the commission of an offense which results in a felony conviction.

(c) For the purpose of this section, “violent felony” shall mean any of the following:

(1) Murder or voluntary manslaughter.

(2) Mayhem.

(3) 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.

(4) Sodomy by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(5) Oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(6) Lewd acts on a child under the age of 14 years as defined in Section 288.

(7) Any felony punishable on the first conviction by death or imprisonment in the state prison for life.

(8) Any felony in which the defendant ~~inflicts~~ specifically intends to personally inflict great bodily injury on any person other than an accomplice and in which the defendant acts to personally inflict great bodily injury on any person other than an accomplice and which has been charged and proved as provided for in Section 12022.7 or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the defendant personally uses a firearm which use has been charged and proved as provided in Section 12022.5 or 12022.55.

(9) Any robbery.

(10) Arson, in violation of subdivision (a) or (b) of Section 451.

(11) The offense defined in subdivision (a) of Section 289 where the act is 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.

(12) Attempted murder.

(13) A violation of Section 12308, 12309, or 12310.

(14) Kidnapping.

(15) Assault with the intent to commit mayhem, rape, sodomy, or oral copulation, in violation of Section 220.

(16) Continuous sexual abuse of a child, in violation of Section 288.5.

(17) Carjacking, as defined in subdivision (a) of Section 215.

(18) A violation of Section 264.1.

(19) Extortion, as defined in Section 518, which would constitute a felony violation of Section 186.22 of the Penal Code.

(20) Threats to victims or witnesses, as defined in Section 136.1 (c), which would constitute a felony violation of Section 186.22 of the Penal Code.

(21) Any burglary of the first degree, as defined in subdivision (a) of

Section 460, wherein it is charged and proved that another person, other than an accomplice, was present in the residence during the commission of the burglary.

(22) Any violation of Section 12022.53.

(23) A violation of subdivision (b) or (c) of Section 11418.

The Legislature finds and declares that these specified crimes merit special consideration when imposing a sentence to display society’s condemnation for these extraordinary crimes of violence against the person.

(d) For the purposes of this section, the defendant shall be deemed to remain in prison custody for an offense until the official discharge from custody or until release on parole, whichever first occurs, including any time during which the defendant remains subject to reimprisonment for escape from custody or is reimprisoned on revocation of parole. The additional penalties provided for prior prison terms shall not be imposed unless they are charged and admitted or found true in the action for the new offense.

(e) The additional penalties provided for prior prison terms shall not be imposed for any felony for which the defendant did not serve a prior separate term in state prison.

(f) A prior conviction of a felony shall include a conviction in another jurisdiction for an offense which, if committed in California, is punishable by imprisonment in the state prison if the defendant served one year or more in prison for the offense in the other jurisdiction. A prior conviction of a particular felony shall include a conviction in another jurisdiction for an offense which includes all of the elements of the particular felony as defined under California law if the defendant served one year or more in prison for the offense in the other jurisdiction.

(g) A prior separate prison term for the purposes of this section shall mean a continuous completed period of prison incarceration imposed for the particular offense alone or in combination with concurrent or consecutive sentences for other crimes, including any reimprisonment on revocation of parole which is not accompanied by a new commitment to prison, and including any reimprisonment after an escape from incarceration.

(h) Serving a prison term includes any confinement time in any state prison or federal penal institution as punishment for commission of an offense, including confinement in a hospital or other institution or facility credited as service of prison time in the jurisdiction of the confinement.

(i) For the purposes of this section, a commitment to the State Department of Mental Health as a mentally disordered sex offender following a conviction of a felony, which commitment exceeds one year in duration, shall be deemed a prior prison term.

(j) For the purposes of this section, when a person subject to the custody, control, and discipline of the Director of Corrections is incarcerated at a facility operated by the Department of the Youth Authority, that incarceration shall be deemed to be a term served in state prison.

(k) Notwithstanding subdivisions (d) and (g) or any other provision of law, where one of the new offenses is committed while the defendant is temporarily removed from prison pursuant to Section 2690 or while the defendant is transferred to a community facility pursuant to Section 3416, 6253, or 6263, or while the defendant is on furlough pursuant to Section 6254, the defendant shall be subject to the full enhancements provided for in this section.

This subdivision shall not apply when a full, separate, and consecutive term is imposed pursuant to any other provision of law.

SEC. 8. Amendments to Section 1170.12 of the Penal Code

Section 1170.12 of the Penal Code is amended to read:

1170.12. (a) *It is the intent of the people of the State of California, in amending this section pursuant to the Three Strikes and Child Protection Act of 2004, to ensure longer prison sentences and greater punishment for those who commit a serious and/or violent felony and have been previously convicted of serious and/or violent felony offenses.*

(b) Notwithstanding any other provision of law, if a defendant has been convicted of a serious and/or violent felony and it has been pled, ~~and~~ proved and that were brought and tried separately that the defendant has been convicted of one or more prior serious and/or violent felony convictions, as defined in subdivision (b), the court shall adhere to each of the following:

(1) There shall not be an aggregate term limitation for purposes of consecutive sentencing for any subsequent felony conviction.

(2) Probation for the current offense shall not be granted, nor shall

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execution or imposition of the sentence be suspended for any prior offense.

(3) The length of time between the prior *serious and/or violent* felony conviction and the current *serious and/or violent* felony conviction shall not affect the imposition of sentence.

(4) There shall not be a commitment to any other facility other than the state prison. Diversion shall not be granted nor shall the defendant be eligible for commitment to the California Rehabilitation Center as provided in Article 2 (commencing with Section 3050) of Chapter 1 of Division 3 of the Welfare and Institutions Code.

(5) The total amount of credits awarded pursuant to Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall not exceed one-fifth of the total term of imprisonment imposed and shall not accrue until the defendant is physically placed in the state prison.

(6) If there is a current conviction for more than one *serious and/or violent* felony count not committed on the same occasion, and not arising from the same set of operative facts, the court shall sentence the defendant consecutively on each count pursuant to this section , and

(7) If there is a current conviction for more than one *serious or violent* felony as described in paragraph (6) of this subdivision, the court shall impose the sentence for each conviction consecutive to the sentence for any other conviction for which the defendant may be consecutively sentenced in the manner prescribed by law.

(8) Any sentence imposed pursuant to this section will be imposed consecutive to any other sentence which the defendant is already serving, unless otherwise provided by law.

~~(b)~~ (c) Notwithstanding any other provision of law and for the purposes of this section, a prior conviction of a *serious and/or violent* felony shall be defined as ~~any offense defined in subdivision (c) of Section 667.5 or in subdivision (c) of Section 1192.7, as amended by the Three Strikes and Child Protection Act of 2004.~~

~~(1) Any offense defined in subdivision (c) of Section 667.5 as a violent felony or any offense defined in subdivision (c) of Section 1192.7 as a serious felony in this state.~~ The determination of whether a prior conviction is a prior *serious and/or violent* felony conviction for purposes of this section shall be made upon the date of that prior conviction and is not affected by the sentence imposed unless the sentence automatically, upon the initial sentencing, converts the felony to a misdemeanor. None of the following dispositions shall affect the determination that a prior conviction is a prior *serious and/or violent* felony for purposes of this section:

(A) The suspension of imposition of judgment or sentence.

(B) The stay of execution of sentence.

(C) The commitment to the State Department of Health Services as a mentally disordered sex offender following a conviction of a felony.

(D) The commitment to the California Rehabilitation Center or any other facility whose function is rehabilitative diversion from the state prison.

~~(2)~~ (3) A conviction in another jurisdiction for an offense that, if committed in California, is punishable by imprisonment in the state prison. A prior conviction of a particular *serious and/or violent* felony shall include a conviction in another jurisdiction for an offense that includes all of the elements of the particular *serious and/or violent* felony as defined ~~in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7 by the Three Strikes and Child Protection Act of 2004 and that was brought and tried separately.~~

~~(3)~~ (4) A prior juvenile adjudication shall constitute a prior *serious and/or violent* felony conviction for purposes of sentence enhancement if all of the following are true :

(A) The juvenile was sixteen years of age or older at the time he or she committed the prior offense ~~and.~~

(B) The prior offense is

~~(i) listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, or~~

~~(ii) listed in this subdivision as a felony, and described in paragraph (1) or (2) as a serious and/or violent felony as amended by the Three Strikes and Child Protection Act of 2004, or is one of the following offenses listed in subdivision (b) of Section 707 of the Welfare and Institutions Code as amended by the Three Strikes and Child Protection Act of 2004:~~

(C) The juvenile was found to be a fit and proper subject to be dealt with under the juvenile court law ~~and.~~

(D) The juvenile was adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the

person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code.

~~(d)~~ (d) For purposes of this section, and in addition to any other enhancements or punishment provisions which may apply, the following shall apply where a defendant has a prior *serious and/or violent* felony conviction:

(1) If a defendant has one prior *serious and/or violent* felony conviction that has been pled and proved, the determinate term or minimum term for an indeterminate term shall be twice the term otherwise provided as punishment for the current *serious and/or violent* felony conviction.

(2) (A) If a defendant has *been convicted of a serious felony, as defined in Section 1192.7 as amended by the Three Strikes and Child Protection Act of 2004, or a violent felony, as defined in Section 667.5, as amended by the Three Strikes and Child Protection Act of 2004, and has two or more prior serious and/or violent felony convictions, as defined in paragraph (1) of subdivision (b), Sections 667.5, 1192.7 or Section 707 of the Welfare and Institutions Code, as amended by the Three Strikes and Child Protection Act of 2004, that have been pled , and proved, and that were brought and tried separately* the term for the current *serious and/or violent* felony conviction shall be an indeterminate term of life imprisonment with a minimum term of the indeterminate sentence calculated as the ~~greater~~ greatest of the following:

(i) ~~three~~ Three times the term otherwise provided as punishment for each current *serious and/or violent* felony conviction subsequent to the two or more prior *serious and/or violent* felony convictions ~~or.~~

(ii) ~~twenty five years or~~ Imprisonment in the state prison for 25 years.

(iii) ~~the~~ The term determined by the court pursuant to Section 1170 for the underlying conviction, including any enhancement applicable under Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2, or any period prescribed by Section 190 or 3046.

(B) The indeterminate term described in subparagraph (A) of paragraph (2) of this subdivision shall be served consecutive to any other term of imprisonment for which a consecutive term may be imposed by law. Any other term imposed subsequent to any indeterminate term described in subparagraph (A) of paragraph (2) of this subdivision shall not be merged therein but shall commence at the time the person would otherwise have been released from prison.

~~(e)~~ (e) (1) Notwithstanding any other provision of law, this section shall be applied in every case in which a defendant has a prior *serious and/or violent* felony conviction as ~~defined in this amended section~~ by the *Three Strikes and Child Protection Act of 2004* . The prosecuting attorney shall plead and prove each prior *serious and/or violent* felony conviction except as provided in paragraph (2).

(2) The prosecuting attorney may move to dismiss or strike a prior felony conviction allegation in the furtherance of justice pursuant to Section 1385, or if there is insufficient evidence to prove the prior conviction. If upon the satisfaction of the court that there is insufficient evidence to prove the prior felony conviction, the court may dismiss or strike the allegation.

~~(f)~~ (f) Prior felony convictions shall not be used in plea bargaining, as defined in subdivision (b) of Section 1192.7. The prosecution shall plead and prove all known prior felony convictions and shall not enter into any agreement to strike or seek the dismissal of any prior felony conviction allegation except as provided in paragraph (2) of subdivision (d).

(g) All references to existing statutes in subdivisions (b) to (f), inclusive, are to statutes as amended by the *Three Strikes and Child Protection Act of 2004*.

(h) If any provision of subdivisions (a) to (g), inclusive, or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of those subdivisions which can be given effect without the invalid provision or application, and to this end the provisions of those subdivisions are severable.

SEC. 9. Amendments to 1192.7 of the Penal Code

Section 1192.7 of the Penal Code is amended to read:

1192.7. (a) Plea bargaining in any case in which the indictment or information charges any serious felony, any felony in which it is alleged that a firearm was personally used by the defendant, or any offense of driving while under the influence of alcohol, drugs, narcotics, or any other intoxicating substance, or any combination thereof, is prohibited, unless there is insufficient evidence to prove the people's case, or testimony of a material witness cannot be obtained, or a reduction or dismissal would not result in a substantial change in sentence.

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(b) As used in this section “plea bargaining” means any bargaining, negotiation, or discussion between a criminal defendant, or his or her counsel, and a prosecuting attorney or judge, whereby the defendant agrees to plead guilty or nolo contendere, in exchange for any promises, commitments, concessions, assurances, or consideration by the prosecuting attorney or judge relating to any charge against the defendant or to the sentencing of the defendant.

(c) As used in this section, “serious felony” means any of the following:

- (1) Murder or voluntary manslaughter;
- (2) mayhem;
- (3) rape;
- (4) sodomy by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person;
- (5) oral copulation by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person;
- (6) lewd or lascivious act on a child under the age of 14 years;
- (7) any felony *which on the first offense is punishable by death or imprisonment in the state prison for life*;
- (8) any felony in which the defendant *specifically intends to personally inflict great bodily injury on any person, other than an accomplice, and in which the defendant acts to personally inflict great bodily injury on any person other than an accomplice or any felony in which the defendant personally uses a firearm*;
- (9) attempted murder;
- (10) assault with intent to commit rape or robbery;
- (11) assault with a deadly weapon or instrument on a peace officer;
- (12) assault by a life prisoner on a noninmate;
- (13) assault with a deadly weapon by an inmate;
- (14) arson *as provided in subdivision (a) or (b) of Section 451* ;
- (15) exploding a destructive device or any explosive with intent to injure;
- (16) exploding a destructive device or any explosive causing bodily injury, great bodily injury, or mayhem;
- (17) exploding a destructive device or any explosive with intent to murder;
- (18) any burglary of the first degree *as defined in subdivision (a) of Section 460, wherein it is charged and proved that another person, other than an accomplice, was present in the residence during the commission of the burglary* ;
- (19) *armed* robbery or bank robbery;
- (20) kidnapping;
- (21) holding of a hostage by a person confined in a state prison;
- (22) attempt to commit a felony punishable by death or imprisonment in the state prison for life;
- (23) any felony in which the defendant personally used a dangerous or deadly weapon;
- (24) selling, furnishing, administering, giving, or offering to sell, furnish, administer, or give to a minor any heroin, cocaine, phencyclidine (PCP), or any methamphetamine-related drug, as described in paragraph (2) of subdivision (d) of Section 11055 of the Health and Safety Code, or any of the precursors of methamphetamines, as described in subparagraph (A) of paragraph (1) of subdivision (f) of Section 11055 or subdivision (a) of Section 11100 of the Health and Safety Code;
- (25) any violation of subdivision (a) of Section 289 where the act is 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;
- (26) grand theft involving a firearm;
- (27) carjacking;
- ~~(28) Any felony offense, which would also constitute a felony violation of Section 186.22;~~
- ~~(29)~~ (28) assault with the intent to commit mayhem, rape, sodomy, or oral copulation, in violation of Section 220;
- ~~(30)~~ (29) throwing acid or flammable substances, in violation of Section 244;
- ~~(31)~~ (30) assault with a deadly weapon, firearm, machinegun, assault

weapon, or semiautomatic firearm or assault on a peace officer or firefighter, in violation of Section 245;

~~(32)~~ (31) assault with a deadly weapon against a public transit employee, custodial officer, or school employee, in violation of Sections 245.2, 245.3, or 245.5;

~~(33)~~ (32) discharge of a firearm at an inhabited dwelling, vehicle, or aircraft, in violation of Section 246;

~~(34)~~ (33) commission of rape or sexual penetration in concert with another person, in violation of Section 264.1;

~~(35)~~ (34) continuous sexual abuse of a child, in violation of Section 288.5;

~~(36)~~ (35) shooting from a vehicle, in violation of subdivision (c) or (d) of Section 12034;

~~(37)~~ (36) intimidation of victims or witnesses, in violation of *subdivision (c) of* Section 136.1;

~~(38)~~ (37) ~~criminal threats in violation of Section 422;~~

~~(39)~~ (38) any attempt to commit a crime listed in this subdivision other than an assault or burglary ;

~~(40)~~ (39) any violation of Section 12022.53;

~~(41)~~ (40) a violation of subdivision (b) or (c) of Section 11418; ~~and~~

~~(42)~~ (41) any conspiracy to commit an offense described in this subdivision , *other than assault* .

(d) As used in this section, “bank robbery” means to take or attempt to take, by force or violence, or by intimidation from the person or presence of another any property or money or any other thing of value belonging to, or in the care, custody, control, management, or possession of, any bank, credit union, or any savings and loan association.

As used in this subdivision, the following terms have the following meanings:

(1) “Bank” means any member of the Federal Reserve System, and any bank, banking association, trust company, savings bank, or other banking institution organized or operating under the laws of the United States, and any bank the deposits of which are insured by the Federal Deposit Insurance Corporation.

(2) “Savings and loan association” means any federal savings and loan association and any “insured institution” as defined in Section 401 of the National Housing Act, as amended, and any federal credit union as defined in Section 2 of the Federal Credit Union Act.

(3) “Credit union” means any federal credit union and any state-chartered credit union the accounts of which are insured by the Administrator of the National Credit Union administration.

(e) The provisions of this section shall not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

SEC. 10. Amendments to Section 707 of the Welfare and Institutions Code

Section 707 of the Welfare and Institutions Code is amended to read:

707. (a) (1) In any case in which a minor is alleged to be a person described in Section 602 (a) by reason of the violation, when he or she was 16 years of age or older, of any criminal statute or ordinance except those listed in subdivision (b), upon motion of the petitioner made prior to the attachment of jeopardy the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence which the petitioner or the minor may wish to submit, the juvenile court may find that the minor is not a fit and proper subject to be dealt with under the juvenile court law if it concludes that the minor would not be amenable to the care, treatment, and training program available through the facilities of the juvenile court, based upon an evaluation of the following criteria:

- (1) The degree of criminal sophistication exhibited by the minor.
- (2) Whether the minor can be rehabilitated prior to the expiration of the juvenile court’s jurisdiction.
- (3) The minor’s previous delinquent history.
- (4) Success of previous attempts by the juvenile court to rehabilitate the minor.
- (5) The circumstances and gravity of the offense alleged in the petition to have been committed by the minor.

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A determination that the minor is not a fit and proper subject to be dealt with under the juvenile court law may be based on any one or a combination of the factors set forth above, which shall be recited in the order of unfitness. In any case in which a hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing, and no plea which may already have been entered shall constitute evidence at the hearing.

(2) This paragraph shall apply to a minor alleged to be a person described in Section 602 by reason of the violation, when he or she has attained the age of 16 years, of any felony offense when the minor has been declared to be a ward of the court pursuant to Section 602 on one or more prior occasions if both of the following apply:

(A) The minor has previously been found to have committed two or more felony offenses.

(B) The offenses upon which the prior petition or petitions were based were committed when the minor had attained the age of 14 years.

Upon motion of the petitioner made prior to the attachment of jeopardy the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence that the petitioner or the minor may wish to submit, the minor shall be presumed to be not a fit and proper subject to be dealt with under the juvenile court law unless the juvenile court concludes, based upon evidence, which evidence may be of extenuating or mitigating circumstances that the minor would be amenable to the care, treatment, and training program available through the facilities of the juvenile court, based upon an evaluation of the following criteria:

(A) The degree of criminal sophistication exhibited by the minor.

(B) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.

(C) The minor's previous delinquent history.

(D) Success of previous attempts by the juvenile court to rehabilitate the minor.

(E) The circumstances and gravity of the offense alleged in the petition to have been committed by the minor.

A determination that the minor is a fit and proper subject to be dealt with under the juvenile court law shall be based on a finding of amenability after consideration of the criteria set forth above, and findings therefor recited in the order as to each of the above criteria that the minor is fit and proper under each and every one of the above criteria. In making a finding of fitness, the court may consider extenuating and mitigating circumstances in evaluating each of the above criteria. In any case in which the hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing and no plea which may already have been entered shall constitute evidence at the hearing. If the minor is found to be a fit and proper subject to be dealt with under the juvenile court law pursuant to this subdivision, the minor shall be committed to placement in a juvenile hall, ranch camp, forestry camp, boot camp, or secure juvenile home pursuant to Section 730, or in any institution operated by the Youth Authority.

(3) If, pursuant to this subdivision, the minor is found to be not a fit and proper subject for juvenile court treatment and is tried in a court of criminal jurisdiction and found guilty by the trier of fact, the judge may commit the minor to the Youth Authority in lieu of sentencing the minor to the state prison, unless the limitations specified in Section 1732.6 apply.

(b) Subdivision (c) shall be applicable in any case in which a minor is alleged to be a person described in Section 602 by reason of the violation, when he or she was 16 years of age or older, of one of the following offenses:

(1) Murder.

(2) Arson, as provided in subdivision (a) or (b) of Section 451 of the Penal Code.

(3) Robbery.

(4) Rape with force or violence or threat of great bodily harm.

(5) Sodomy by force, violence, duress, menace, or threat of great bodily harm.

(6) Lewd or lascivious act as provided in subdivision (b) of Section 288 of the Penal Code.

(7) Oral copulation by force, violence, duress, menace, or threat of great bodily harm.

(8) Any offense specified in subdivision (a) of Section 289 of the Penal Code.

(9) Kidnapping for ransom.

(10) Kidnapping for purpose of robbery.

(11) Kidnapping with bodily harm.

(12) Attempted murder.

(13) Assault with a firearm or destructive device.

(14) Assault by any means of force likely to produce great bodily injury.

(15) Discharge of a firearm into an inhabited or occupied building.

~~(16) Any offense described in Section 1203.09 of the Penal Code.~~

~~(17) (16) Any offense described in Section 12022.5 or 12022.53 of the Penal Code.~~

~~(18) (17) Any felony offense in which the minor personally used a weapon listed in subdivision (a) of Section 12020 of the Penal Code.~~

~~(19) (18) Any felony offense described in subdivision (c) of Section 136.1 or subdivision (b) of Section 137 of the Penal Code.~~

~~(20) (19) Manufacturing, compounding, or selling one-half ounce or more of any salt or solution of a controlled substance specified in subdivision (e) of Section 11055 of the Health and Safety Code.~~

~~(21) (20) Any violent felony, as defined in subdivision (c) of Section 667.5 of the Penal Code, which would also constitute a felony violation of subdivision (b) of Section 186.22 of the Penal Code.~~

~~(22) (21) Escape, by the use of force or violence, from any county juvenile hall, home, ranch, camp, or forestry camp in violation of subdivision (b) of Section 871 where great bodily injury is intentionally inflicted upon an employee of the juvenile facility during the commission of the escape.~~

~~(23) (22) Torture as described in Sections 206 and 206.1 of the Penal Code.~~

~~(24) (23) Aggravated mayhem, as described in Section 205 of the Penal Code.~~

~~(25) (24) Carjacking, as described in Section 215 of the Penal Code, while armed with a dangerous or deadly weapon.~~

~~(26) (25) Kidnapping, as punishable in subdivision (d) of Section 208 of the Penal Code.~~

~~(27) (26) Kidnapping, as punishable in Section 209.5 of the Penal Code.~~

~~(28) (27) The offense described in subdivision (c) of Section 12034 of the Penal Code.~~

~~(29) (28) The offense described in Section 12308 of the Penal Code.~~

~~(30) (29) Voluntary manslaughter, as described in subdivision (a) of Section 192 of the Penal Code.~~

(c) With regard to a minor alleged to be a person described in Section 602 by reason of the violation, when he or she was 14 years of age or older, of any of the offenses listed in subdivision (b), upon motion of the petitioner made prior to the attachment of jeopardy the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence which the petitioner or the minor may wish to submit the minor shall be presumed to be not a fit and proper subject to be dealt with under the juvenile court law unless the juvenile court concludes, based upon evidence, which evidence may be of extenuating or mitigating circumstances, that the minor would be amenable to the care, treatment, and training program available through the facilities of the juvenile court based upon an evaluation of each of the following criteria:

(1) The degree of criminal sophistication exhibited by the minor.

(2) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.

(3) The minor's previous delinquent history.

(4) Success of previous attempts by the juvenile court to rehabilitate the minor.

(5) The circumstances and gravity of the offenses alleged in the petition to have been committed by the minor.

A determination that the minor is a fit and proper subject to be dealt with under the juvenile court law shall be based on a finding of amenability after consideration of the criteria set forth above, and findings therefor recited in the order as to each of the above criteria that the minor is fit and proper under each and every one of the above criteria. In making a finding of fitness, the court may consider extenuating or mitigating cir-

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circumstances in evaluating each of the above criteria. In any case in which a hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing and no plea which may already have been entered shall constitute evidence at the hearing. If, pursuant to this subdivision, the minor is found to be not a fit and proper subject for juvenile court treatment and is tried in a court of criminal jurisdiction and found guilty by the trier of fact, the judge may commit the minor to the Youth Authority in lieu of sentencing the minor to the state prison, unless the limitations specified in Section 1732.6 apply.

(d) (1) Except as provided in subdivision (b) of Section 602, the district attorney or other appropriate prosecuting officer may file an accusatory pleading in a court of criminal jurisdiction against any minor 16 years of age or older who is accused of committing an offense enumerated in subdivision (b).

(2) Except as provided in subdivision (b) of Section 602, the district attorney or other appropriate prosecuting officer may file an accusatory pleading against a minor 14 years of age or older in a court of criminal jurisdiction in any case in which any one or more of the following circumstances apply:

(A) The minor is alleged to have committed an offense which if committed by an adult would be punishable by death or imprisonment in the state prison for life.

(B) The minor is alleged to have personally used a firearm during the commission or attempted commission of a felony, as described in Section 12022.5 of the Penal Code.

(C) The minor is alleged to have committed an offense listed in subdivision (b) in which any one or more of the following circumstances apply:

(i) The minor has previously been found to be a person described in Section 602 by reason of the commission of an offense listed in subdivision (b).

(ii) The offense was committed for the benefit of, at the direction of, or in association with any criminal street gang, as defined in subdivision (f) of Section 186.22 of the Penal Code, with the specific intent to promote, further, or assist in any criminal conduct by gang members.

(iii) The offense was committed for the purpose of intimidating or interfering with any other person's free exercise or enjoyment of any right secured to him or her by the Constitution or laws of this state or by the Constitution or laws of the United States and because of the other person's race, color, religion, ancestry, national origin, disability, gender, or sexual orientation, or because the minor perceives that the other person has one or more of those characteristics, as described in Title 11.6 (commencing with Section 422.6) of Part 1 of the Penal Code.

(iv) The victim of the offense was 65 years of age or older, or blind, deaf, quadriplegic, paraplegic, developmentally disabled, or confined to a wheelchair, and that disability was known or reasonably should have been known to the minor at the time of the commission of the offense.

(3) Except as provided in subdivision (b) of Section 602, the district attorney or other appropriate prosecuting officer may file an accusatory pleading in a court of criminal jurisdiction against any minor 16 years of age or older who is accused of committing one of the following offenses, if the minor has previously been found to be a person described in Section 602 by reason of the violation of any felony offense, when he or she was 14 years of age or older:

(A) Any felony offense in which it is alleged that the victim of the offense was 65 years of age or older, or blind, deaf, quadriplegic, paraplegic, developmentally disabled, or confined to a wheelchair, and that disability was known or reasonably should have been known to the minor at the time of the commission of the offense;

(B) Any felony offense committed for the purposes of intimidating or interfering with any other person's free exercise or enjoyment of any right secured to him or her by the Constitution or laws of this state or by the Constitution or laws of the United States and because of the other person's race, color, religion, ancestry, national origin, disability, gender, or sexual orientation, or because the minor perceived that the other person had one or more of those characteristics, as described in Title 11.6 (commencing with Section 422.6) of Part 1 of the Penal Code; or

(C) The offense was committed for the benefit of, at the direction of, or in association with any criminal street gang as prohibited by Section 186.22 of the Penal Code.

(4) In any case in which the district attorney or other appropriate prosecuting officer has filed an accusatory pleading against a minor in a court

of criminal jurisdiction pursuant to the provisions of this subdivision, the case shall then proceed according to the laws applicable to a criminal case. In conjunction with the preliminary hearing as provided for in Section 738 of the Penal Code, the magistrate shall make a finding that reasonable cause exists to believe that the minor comes within the provisions of this subdivision. If reasonable cause is not established, the criminal court shall transfer the case to the juvenile court having jurisdiction over the matter.

(5) For any offense for which the prosecutor may file the accusatory pleading in a court of criminal jurisdiction pursuant to this subdivision, but elects instead to file a petition in the juvenile court, if the minor is subsequently found to be a person described in subdivision (a) of Section 602, the minor shall be committed to placement in a juvenile hall, ranch camp, forestry camp, boot camp, or secure juvenile home pursuant to Section 730, or in any institution operated by the Youth Authority.

(6) If, pursuant to this subdivision, the minor is found to be not a fit and proper subject for juvenile court treatment and is tried in a court of criminal jurisdiction and found guilty by the trier of fact, the judge may commit the minor to the Youth Authority in lieu of sentencing the minor to the state prison, unless the limitations specified in Section 1732.6 apply.

(e) Any report submitted by a probation officer pursuant to this section regarding the behavioral patterns and social history of the minor being considered for a determination of unfitness shall include any written or oral statement offered by the victim, the victim's parent or guardian if the victim is a minor, or if the victim has died, the victim's next of kin, as authorized by subdivision (b) of Section 656.2. Victims' statements shall be considered by the court to the extent they are relevant to the court's determination of unfitness.

SEC. 11. Release of Qualified Individuals

Any individual sentenced under the prior Three Strikes law, including, but not limited to, paragraph (2) of subdivision (e) of Section 667 of the Penal Code, paragraph (2) of subdivision (c) of Section 1170.12 of the Penal Code, and/or Section 707 of the Welfare and Institutions Code, for an enhanced conviction that would not qualify for enhancement under this statute, shall qualify for resentencing and be remanded to the court of origin for resentencing, subject to the following conditions:

(a) A person who was convicted of a felony and is currently serving an indeterminate term of life in prison for a felony, if the following apply:

(1) The person was sentenced pursuant to Section 667 or 1170.12, or both, of the Penal Code and/or Section 707 of the Welfare and Institutions Code prior to those sections being amended by this act.

(2) The currently charged felony resulting in the imposition of an indeterminate term of life in prison was not described as a violent or serious felony pursuant to this act.

(b) A person who is currently serving an indeterminate term of life in prison for a felony by virtue of a plea, if the following apply:

(1) The person was sentenced pursuant to Section 667 or 1170.12, or both, of the Penal Code, and/or Section 707 of the Welfare and Institutions Code, prior to those sections being amended by this act.

(2) The currently charged felony resulting in the imposition of an indeterminate term of life in prison was not described as a violent or serious felony pursuant to this act.

(c) The person agrees before the court pursuant to subdivision (b) shall, in the written motion, expressly waive double jeopardy for purposes of resentencing, in regard to any charges arising out of the same set of operative facts resulting in the plea, for charges that were not filed, or were dismissed pursuant to the plea.

(d) If the court determines that the person was sentenced pursuant to the Three Strikes statutes prior to their amendment by this act, and the person meets the requirements of either subdivision (a) or (b), the court shall order that person to be resentenced, subject to subdivision (f), and in compliance with the sentencing laws as amended by this act.

(1) If the court grants resentencing for a person meeting the requirements of subdivision (a), the district attorney may also file any charges based on the same set of operative facts that resulted in the conviction, that were not filed in connection with the conviction, and for which the statute of limitations has not expired.

(2) If the court grants resentencing for a person meeting the requirements of subdivision (b), a district attorney seeking to file or refile charges arising out of the same set of operative facts resulting in the plea that were not filed or were dismissed pursuant to the plea shall obtain the court's permission to file or refile those charges. The district attorney shall have to show by a preponderance of the evidence that the charges would have been filed, or would not have been dismissed, but for the plea.

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(f) A person who meets the requirements of subdivision (a) or (b) shall be entitled to representation by counsel under this section, and for the purposes of resentencing, trial, or retrial. The person may request appointment of counsel by sending a written request to the court.

(j) The case shall be heard by the judge who conducted the trial, or accepted the convicted person's plea of guilty or nolo contendere, unless the presiding judge determines that judge is unavailable. Upon request of either party, the court may order, in the interest of justice, that the convicted person be present at the hearing of the motion.

(k) Notwithstanding any other provision of law, the right to resentencing pursuant to this act is absolute and shall not be waived. This prohibition applies to, but is not limited to, a waiver that is given as part of an agreement resulting in a plea of guilty or nolo contendere.

(l) Those qualifying individuals shall be remanded to court and re-sentenced within no less than 30 days, and no more than 180 days, of this act becoming effective, unless the qualifying individual personally waives this right during the 180-day time period.

(m) Nothing in this section shall be construed as limiting the grounds for a writ of habeas corpus, or as precluding any other remedy.

(n) Under no circumstances may the resentencing, trial, or retrial of any individual pursuant to this section result in a sentence that is longer than the current sentence.

(o) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 12. Liberal Construction

This act is an exercise of the public power of the state for the protection of the health, safety, and welfare of the people of the State of California, and shall be liberally construed to effectuate these purposes.

SEC. 13. Severability

The provisions of this act are severable. If any provision of this act, or the application thereof to any person or circumstance, is held invalid, that invalidity shall not affect any other provision or application of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

SEC. 14. Conflicting Measures

If this measure is approved by the voters, but superseded by any other conflicting ballot measure approved by more voters at the same election, and the conflicting ballot measure is later held invalid, it is the intent of the voters that this act shall be self-executing and given the full force of law.

SEC. 15. Effective Date

This act shall become effective immediately upon its approval by the voters.

SEC. 16. Self-Execution

This act shall be self-executing.

SEC. 17. Amendment

This act shall not be altered or amended except by one of the following:

(a) By statute passed in each house of the Legislature, by rollcall vote entered in the journal, with two-thirds of the membership and the Governor concurring, or

(b) By statute passed in each house of the Legislature, by rollcall vote entered in the journal, with a majority of the membership concurring, to be placed on the next general ballot, and with the majority of the electors concurring, or

(c) By statute that becomes effective when approved by a majority of the electors.

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This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure amends, repeals, and adds sections to the Health and Safety Code, the Revenue and Taxation Code and the Welfare and Institutions Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

SECTION 1. Findings and Declaration of Purposes

(a) Access to hospital trauma and emergency medical services in California is in critical condition. The ability of hospitals and physicians to meet the demand for trauma and emergency services, including necessary follow-up hospital care to patients admitted through emergency rooms, is strained to the breaking point. The lack of adequate urgent care alternatives, particularly for those without insurance or the ability to pay for medical services, puts added stress on hospital emergency departments. Patients often wait for hours in overcrowded emergency rooms for treatment, and seriously injured patients are increasingly being diverted past the nearest hospitals.

(b) The 911 emergency telephone system serves as a lifeline for countless Californians each year. Californians deserve a high quality system that ensures that each emergency call is answered immediately.

(c) Firefighters and paramedics are the first on the scene to provide medical care to accident or disaster victims. The medical care they provide can mean the difference between life and death. They must be appropriately trained and equipped to respond to medical emergencies.

(d) Emergency physicians and on-call physician specialists provide hundreds of millions of dollars of uncompensated medical care annually. As a consequence, fewer doctors are available to provide emergency medical services.

(e) The operation of emergency departments and the provision of emergency and related services costs hospitals many hundreds of millions of dollars annually. These losses have contributed to the closure of 26 hospitals between 1995 and 2003 with a corresponding reduction in emergency care. Other hospitals are threatened with closure or reductions in emergency care. The people intend, by adopting this act, to allocate funds to all hospitals operating licensed emergency departments

in the manner specified in order to support and augment hospital emergency services and to help prevent the further erosion of such services. Because all hospitals with emergency rooms have a legal obligation to provide emergency services, all hospitals operating emergency rooms should share state funds available under this act based upon their relative emergency department volume, uncompensated care, provision of charity care, and provision of care to county indigent patients, as specified.

(f) Community clinics are an important part of the emergency medical system and the continuum of emergency care. Community clinics provide services that prevent emergent conditions from developing; reduce unnecessary emergency room use; and also provide follow-up care for patients discharged from the emergency room. This keeps patients from unnecessarily using or returning to the emergency room. However, community clinics are financially threatened by the growing number of uninsured patients they must treat.

(g) Emergency medical care is a vital public service, similar to fire and police services, and is the back-bone of the health care safety net for our communities. By providing high quality trauma and emergency care, lives will be saved and taxpayer costs for healthcare will be reduced.

(h) Currently the state funds the 911 emergency telephone system with a surcharge on telephone calls made within California. A small increase in the existing emergency telephone surcharge, no more than 50 cents per month for households, is appropriate to enhance the delivery of emergency medical care and to help offset the costs of uncompensated emergency medical care in California.

(i) The people of the State of California hereby enact the 911 Emergency and Trauma Care Act to create an ongoing fund to improve the 911 emergency telephone system; to improve the training and equipment of firefighters and paramedics; and to improve, and to preserve and expand access to, trauma and emergency medical care.

(j) The intent of this act is to provide additional funding for emergency medical services for the health and welfare of our residents. Further, existing funding, although inadequate, must be protected and maintained so that the intent of this act is realized.

SECTION 2. Supplemental Funding for Emergency and Trauma Services

SEC. 2.1. Section 41020.5 is added to the Revenue and Taxation Code, to read:

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41020.5. (a) The surcharge imposed pursuant to Section 41020 shall be increased at a rate of 3 percent on amounts paid by every person in the state on intrastate telephone communication service of the charges made for such services. The increase in surcharge shall be paid by the service user and shall be billed and collected in the same manner as the surcharge imposed pursuant to Section 41020.

(b) Notwithstanding subdivision (a), the surcharge shall not be imposed on residential service users of lifeline telephone services pursuant to Article 8 (commencing with Section 871) of Chapter 4 of Part 1 of Division 1 of the Public Utilities Code.

(c) Notwithstanding subdivision (a), no service provider shall bill a surcharge to, or collect a surcharge from, a residential service user that exceeds 50 cents (\$0.50) per month. For purposes of this section, the term "residential service user" does not include mobile telecommunication services.

SEC. 2.2. Section 41135 of the Revenue and Taxation Code is amended to read:

41135. All amounts required to be paid to the state under this part shall be paid to the board in the form of remittances payable to the State Board of Equalization of the State of California. The board shall, on a quarterly basis, transmit the payments to the State Treasurer to be deposited in the State Treasury ~~to the credit of the State Emergency Telephone Number Account in the General Fund, which is hereby created, and credited to the 911 Emergency and Trauma Care Fund and the following accounts within that fund, which are hereby created:~~

(a) To the State Emergency Telephone Number Account, all of the amounts collected pursuant to Section 41020.

(b) To the State Emergency Telephone Number Account, three-fourths of 1 percent of the amounts collected pursuant to Section 41020.5.

(c) To the Emergency and Trauma First Responders Account, 3 and three-fourths percent of the amounts collected pursuant to Section 41020.5.

(d) To the Community Clinics Urgent Care Account, 5 percent of the amounts collected pursuant to Section 41020.5.

(e) To the Emergency and Trauma Physician Uninsured Account, 30 and one-half percent of the amounts collected pursuant to Section 41020.5; and

(f) To the Emergency and Trauma Hospital Services Account, 60 percent of the amounts collected pursuant to Section 41020.5.

(g) There is also hereby created in the fund the Emergency and Trauma Physician Unpaid Claims Account to receive funds pursuant to Section 1797.99a of the Health and Safety Code and subdivision (c) of Section 16950 and Section 16950.2 of the Welfare and Institutions Code.

SECTION 3. Administration of the State Emergency Telephone Number Account

SEC. 3.1. Section 41136.5 is added to the Revenue and Taxation Code, to read:

41136.5. Funds in the State Emergency Telephone Number Account credited pursuant to subdivision (b) of Section 41135 shall be continuously appropriated to and administered by the Department of General Services solely for technological and service improvements to the basic emergency phone number system. Appropriations are made without regard to fiscal years and all interest earned in the account shall remain in the account for allocation pursuant to this section. The Department of General Services shall establish criteria for disbursing funds to state or local agencies pursuant to this section.

SEC. 3.2. Section 41136.6 is added to the Revenue and Taxation Code, to read:

41136.6. Funds in the State Emergency Telephone Number Account credited pursuant to subdivision (a) of Section 41135 may not be used to satisfy any debt, obligation, lien, pledge, or any other encumbrance, except as provided in Section 41136.

SECTION 4. Administration of Emergency and Trauma First-Responders Account

SEC. 4.1. Section 1797.117 is added to the Health and Safety Code, to read:

1797.117. Funds in the state Emergency and Trauma First-Responders Account shall be continuously appropriated to and administered by the Office of the State Fire Marshal. The Office of the State Fire Marshal shall allocate those funds solely to the California Firefighter Joint Apprenticeship Training Program, for training and related equip-

ment for firefighters and pre-hospital emergency medical workers. The California Firefighter Joint Apprenticeship Training Program shall deliver the training as required by subdivision (c) of Section 8588.11 of the Government Code. Appropriations are made without regard to fiscal years and all interest earned in the account shall remain in the account for allocation pursuant to this section.

SECTION 5. Administration of Community Clinics Urgent Care Account

SEC. 5.1. Article 6 (commencing with Section 1246) is added to Chapter 1 of Division 2 of the Health and Safety Code, to read:

Article 6. Administration of Community Clinics Urgent Care Account

1246. (a) There is hereby established the Community Clinics Urgent Care Account in the 911 Emergency and Trauma Care Fund. Funds in the Community Clinics Urgent Care Account shall be continuously appropriated to and administered by the Office of Statewide Health Planning and Development solely for the purposes of this section. The office shall allocate the funds for eligible nonprofit clinic corporations providing vital urgent care services to the uninsured. The funds shall be allocated by the office pursuant to the provisions of subdivisions (b) and (c). Appropriations are made without regard to fiscal years and all interest earned in the account shall remain in the account for allocation pursuant to this section.

(b) Annually, commencing August 1, 2005, the office shall allocate to each eligible nonprofit clinic corporation a percentage of the balance present in the Community Clinics Urgent Care Account as of July 1 of the year the allocations are made and subject to subdivision (d), based on the formula provided for in subdivision (c).

(c) Funds in the Community Clinics Urgent Care Account shall be allocated only to eligible nonprofit clinic corporations. Funds in the Community Clinics Urgent Care Account shall be allocated to eligible nonprofit clinic corporations on a percentage basis based on the total number of uninsured patient encounters.

(1) For purposes of this section, an "eligible nonprofit clinic corporation" shall meet the following requirements:

(A) The corporation shall consist of nonprofit free and community clinics licensed pursuant to subdivision (a) of Section 1204 or of clinics operated by a federally recognized Indian tribe or tribal organization and exempt from licensure pursuant to subdivision (c) of Section 1206.

(B) The corporation must provide at least 1,000 uninsured patient encounters based on data submitted to the office for the year the allocations are made.

(2) The total number of uninsured patient encounters shall be based on data submitted by each eligible nonprofit clinic corporation to the office pursuant to the reporting procedures established by the office under Section 1216 of the Health and Safety Code. Beginning August 1, 2005, and every year thereafter, the allocations shall be made by the office based on data submitted by each eligible nonprofit clinic corporation to the office by February 15 of the year the allocations are made.

(3) For purposes of this section, except as otherwise provided in paragraph (4), an uninsured patient encounter shall be defined as an encounter for which the patient has no public or private third party coverage. An uninsured patient encounter shall also include encounters involving patients in programs operated by counties pursuant to Part 4.7 (commencing with Section 16900) of Division 9, and Section 17000 of the Welfare and Institutions Code.

(4) Each uninsured patient encounter shall count as one encounter, except that the encounters involving patients in programs operated pursuant to subdivision (aa) of Section 14132 and Division 24 (commencing with Section 24000) of the Welfare and Institutions Code, and pursuant to Article 6 (commencing with Section 124025) of Chapter 3 of Part 2 of Division 106 of the Health and Safety Code, shall count as 0.15 encounter for purposes of determining the total number of uninsured patient encounters for each eligible nonprofit clinic corporation.

(5) The office shall compute each eligible nonprofit clinic corporation's percentage of total uninsured patient encounters for all eligible nonprofit clinic corporations and shall apply the percentages to the available funds in the account to compute a preliminary allocation amount for each eligible nonprofit clinic corporation. If the preliminary allocation for an eligible nonprofit clinic corporation is equal to or less than twenty-five thousand dollars (\$25,000), the allocation for that eligible nonprofit corporation shall be twenty-five thousand dollars (\$25,000).

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(6) For the remaining eligible nonprofit clinic corporations, the office shall compute each remaining eligible nonprofit clinic corporation's percentage of total uninsured patient encounters for the remaining eligible clinic corporations and shall apply the percentage to the remaining funds available to determine the allocation amount for each remaining eligible nonprofit clinic corporation, subject to paragraph (7).

(7) No eligible nonprofit clinic corporation shall receive an allocation in excess of 2 percent of the total moneys distributed to all eligible nonprofit clinic corporations in that year.

(d) The Office of Statewide Health Planning and Development shall be reimbursed from the Community Clinics Urgent Care Account for the office's actual cost of administration. The total amount available for reimbursement of the office's administrative costs shall not exceed 1 percent of the moneys credited to the account during the fiscal year.

SECTION 6. Administration of Emergency and Trauma Physician Uninsured and Unpaid Claims Accounts

SEC. 6.1. Chapter 2.5 (commencing with Section 1797.98a) of Division 2.5 of the Health and Safety Code is repealed.

CHAPTER 2.5. THE MADDY EMERGENCY MEDICAL SERVICES FUND

~~1797.98a. (a) The fund provided for in this chapter shall be known as the Maddy Emergency Medical Services (EMS) Fund.~~

~~(b) (1) Each county may establish an emergency medical services fund, upon adoption of a resolution by the board of supervisors. The moneys in the fund shall be available for the reimbursements required by this chapter. The fund shall be administered by each county, except that a county electing to have the state administer its medically indigent services program may also elect to have its emergency medical services fund administered by the state.~~

~~(2) Costs of administering the fund shall be reimbursed by the fund, up to 10 percent of the amount of the fund.~~

~~(3) All interest earned on moneys in the fund shall be deposited in the fund for disbursement as specified in this section.~~

~~(4) Each administering agency may maintain a reserve of up to 15 percent of the amount in the portions of the fund reimbursable to physicians and surgeons, pursuant to subparagraph (A) of, and to hospitals, pursuant to subparagraph (B) of, paragraph (5). Each administering agency may maintain a reserve of any amount in the portion of the fund that is distributed for other emergency medical services purposes as determined by each county, pursuant to subparagraph (C) of paragraph (5).~~

~~(5) The amount in the fund, reduced by the amount for administration and the reserve, shall be utilized to reimburse physicians and surgeons and hospitals for patients who do not make payment for emergency medical services and for other emergency medical services purposes as determined by each county according to the following schedule:~~

~~(A) Fifty-eight percent of the balance of the fund shall be distributed to physicians and surgeons for emergency services provided by all physicians and surgeons, except those physicians and surgeons employed by county hospitals, in general acute care hospitals that provide basic or comprehensive emergency services up to the time the patient is stabilized.~~

~~(B) Twenty-five percent of the fund shall be distributed only to hospitals providing disproportionate trauma and emergency medical care services.~~

~~(C) Seventeen percent of the fund shall be distributed for other emergency medical services purposes as determined by each county, including, but not limited to, the funding of regional poison control centers. Funding may be used for purchasing equipment and for capital projects only to the extent that these expenditures support the provision of emergency services and are consistent with the intent of this chapter.~~

~~(e) The source of the moneys in the fund shall be the penalty assessment made for this purpose, as provided in Section 76000 of the Government Code.~~

~~(d) Any physician and surgeon may be reimbursed for up to 50 percent of the amount claimed pursuant to subdivision (a) of Section 1797.98e for the initial cycle of reimbursements made by the administering agency in a given year, pursuant to Section 1797.98e. All funds remaining at the end of the fiscal year in excess of any reserve held and rolled over to the next year pursuant to paragraph (4) of subdivision (b) shall be distributed proportionally, based on the dollar amount of claims submitted and paid to all physicians and surgeons who submitted qualify-~~

~~ing claims during that year.~~

~~1797.98b. (a) Each county establishing a fund, on January 1, 1989, and on each April 15 thereafter, shall report to the Legislature on the implementation and status of the Emergency Medical Services Fund.~~

~~The report shall cover the preceding fiscal year, and shall include, but not be limited to, all of the following:~~

~~(1) The total amount of fines and forfeitures collected, the total amount of penalty assessments collected, and the total amount of penalty assessments deposited into the Emergency Medical Services Fund.~~

~~(2) The fund balance and the amount of moneys disbursed under the program to physicians and surgeons, for hospitals, and for other emergency medical services purposes.~~

~~(3) The number of claims paid to physicians and surgeons, and the percentage of claims paid, based on the uniform fee schedule, as adopted by the county.~~

~~(4) The amount of moneys available to be disbursed to physicians and surgeons, descriptions of the physician and surgeon and hospital claims payment methodologies, the dollar amount of the total allowable claims submitted, and the percentage at which those claims were reimbursed.~~

~~(5) A statement of the policies, procedures, and regulatory action taken to implement and run the program under this chapter.~~

~~(6) The name of the physician and surgeon and hospital administrator organization, or names of specific physicians and surgeons and hospital administrators, contracted to review claims payment methodologies.~~

~~(b) (1) Each county, upon request, shall make available to any member of the public the report required under subdivision (a).~~

~~(2) Each county, upon request, shall make available to any member of the public a listing of physicians and surgeons and hospitals that have received reimbursement from the Emergency Medical Services Fund and the amount of the reimbursement they have received. This listing shall be compiled on a semiannual basis.~~

~~1797.98c. (a) Physicians and surgeons wishing to be reimbursed shall submit their claims for emergency services provided to patients who do not make any payment for services and for whom no responsible third party makes any payment.~~

~~(b) If, after receiving payment from the fund, a physician and surgeon is reimbursed by a patient or a responsible third party, the physician and surgeon shall do one of the following:~~

~~(1) Notify the administering agency, and, after notification, the administering agency shall reduce the physician and surgeon's future payment of claims from the fund. In the event there is not a subsequent submission of a claim for reimbursement within one year, the physician and surgeon shall reimburse the fund in an amount equal to the amount collected from the patient or third-party payer, but not more than the amount of reimbursement received from the fund.~~

~~(2) Notify the administering agency of the payment and reimburse the fund in an amount equal to the amount collected from the patient or third-party payer, but not more than the amount of the reimbursement received from the fund for that patient's care.~~

~~(c) Reimbursement of claims for emergency services provided to patients by any physician and surgeon shall be limited to services provided to a patient who cannot afford to pay for those services, and for whom payment will not be made through any private coverage or by any program funded in whole or in part by the federal government, and where all of the following conditions have been met:~~

~~(1) The physician and surgeon has inquired if there is a responsible third-party source of payment.~~

~~(2) The physician and surgeon has billed for payment of services.~~

~~(3) Either of the following:~~

~~(A) At least three months have passed from the date the physician and surgeon billed the patient or responsible third party, during which time the physician and surgeon has made two attempts to obtain reimbursement and has not received reimbursement for any portion of the amount billed.~~

~~(B) The physician and surgeon has received actual notification from the patient or responsible third party that no payment will be made for the services rendered by the physician and surgeon.~~

~~(4) The physician and surgeon has stopped any current, and waives any future, collection efforts to obtain reimbursement from the patient, upon receipt of moneys from the fund.~~

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(d) A listing of patient names shall accompany a physician and surgeon's submission, and those names shall be given full confidentiality protections by the administering agency.

(e) Notwithstanding any other restriction on reimbursement, a county shall adopt a fee schedule and reimbursement methodology to establish a uniform reasonable level of reimbursement from the county's emergency medical services fund for reimbursable services.

(f) For the purposes of submission and reimbursement of physician and surgeon claims, the administering agency shall adopt and use the current version of the Physicians' Current Procedural Terminology, published by the American Medical Association, or a similar procedural terminology reference.

(g) Each administering agency of a fund under this chapter shall make all reasonable efforts to notify physicians and surgeons who provide, or are likely to provide, emergency services in the county as to the availability of the fund and the process by which to submit a claim against the fund. The administering agency may satisfy this requirement by sending materials that provide information about the fund and the process to submit a claim against the fund to local medical societies, hospitals, emergency rooms, or other organizations, including materials that are prepared to be posted in visible locations.

1797.98e. (a) It is the intent of the Legislature that a simplified, cost efficient system of administration of this chapter be developed so that the maximum amount of funds may be utilized to reimburse physicians and surgeons and for other emergency medical services purposes. The administering agency shall select an administering officer and shall establish procedures and time schedules for the submission and processing of proposed reimbursement requests submitted by physicians and surgeons. The schedule shall provide for disbursements of moneys in the Emergency Medical Services Fund on at least a quarterly basis to applicants who have submitted accurate and complete data for payment. When the administering agency determines that claims for payment for physician and surgeon services are of sufficient numbers and amounts that, if paid, the claims would exceed the total amount of funds available for payment, the administering agency shall fairly prorate, without preference, payments to each claimant at a level less than the maximum payment level. Each administering agency may encumber sufficient funds during one fiscal year to reimburse claimants for losses incurred during that fiscal year for which claims will not be received until after the fiscal year. The administering agency may, as necessary, request records and documentation to support the amounts of reimbursement requested by physicians and surgeons and the administering agency may review and audit the records for accuracy. Reimbursements requested and reimbursements made that are not supported by records may be denied to, and recouped from, physicians and surgeons. Physicians and surgeons found to submit requests for reimbursement that are inaccurate or unsupported by records may be excluded from submitting future requests for reimbursement. The administering officer shall not give preferential treatment to any facility, physician and surgeon, or category of physician and surgeon and shall not engage in practices that constitute a conflict of interest by favoring a facility or physician and surgeon with which the administering officer has an operational or financial relationship. A hospital administrator of a hospital owned or operated by a county of a population of 250,000 or more as of January 1, 1991, or a person under the direct supervision of that person, shall not be the administering officer. The board of supervisors of a county or any other county agency may serve as the administering officer. The administering officer shall solicit input from physicians and surgeons and hospitals to review payment distribution methodologies to ensure fair and timely payments. This requirement may be fulfilled through the establishment of an advisory committee with representatives comprised of local physicians and surgeons and hospital administrators. In order to reduce the county's administrative burden, the administering officer may instead request an existing board, commission, or local medical society, or physicians and surgeons and hospital administrators, representative of the local community, to provide input and make recommendations on payment distribution methodologies.

(b) Each provider of health services that receives payment under this chapter shall keep and maintain records of the services rendered, the person to whom rendered, the date, and any additional information the administering agency may, by regulation, require, for a period of three years from the date the service was provided. The administering agency shall not require any additional information from a physician and surgeon providing emergency medical services that is not available in the patient record maintained by the entity listed in subdivision (f) where the medical services are provided, nor shall the administer-

ing agency require a physician and surgeon to make eligibility determinations.

(c) During normal working hours, the administering agency may make any inspection and examination of a hospital's or physician and surgeon's books and records needed to carry out the provisions of this chapter. A provider who has knowingly submitted a false request for reimbursement shall be guilty of civil fraud.

(d) Nothing in this chapter shall prevent a physician and surgeon from utilizing an agent who furnishes billing and collection services to the physician and surgeon to submit claims or receive payment for claims.

(e) All payments from the fund pursuant to Section 1797.98e to physicians and surgeons shall be limited to physicians and surgeons who, in person, provide onsite services in a clinical setting, including, but not limited to, radiology and pathology settings.

(f) All payments from the fund shall be limited to claims for care rendered by physicians and surgeons to patients who are initially medically screened, evaluated, treated, or stabilized in any of the following:

(1) A basic or comprehensive emergency department of a licensed general acute care hospital.

(2) A site that was approved by a county prior to January 1, 1990, as a paramedic receiving station for the treatment of emergency patients.

(3) A standby emergency department that was in existence on January 1, 1989, in a hospital specified in Section 124840.

(4) For the 1991-92 fiscal year and each fiscal year thereafter, a facility which contracted prior to January 1, 1990, with the National Park Service to provide emergency medical services.

(g) Payments shall be made only for emergency services provided on the calendar day on which emergency medical services are first provided and on the immediately following two calendar days, however, payments may not be made for services provided beyond a 48-hour period of continuous service to the patient.

(h) Notwithstanding subdivision (g), if it is necessary to transfer the patient to a second facility providing a higher level of care for the treatment of the emergency condition, reimbursement shall be available for services provided at the facility to which the patient was transferred on the calendar day of transfer and on the immediately following two calendar days, however, payments may not be made for services provided beyond a 48-hour period of continuous service to the patient.

(i) Payment shall be made for medical screening examinations required by law to determine whether an emergency condition exists, notwithstanding the determination after the examination that a medical emergency does not exist. Payment shall not be denied solely because a patient was not admitted to an acute care facility. Payment shall be made for services to an inpatient only when the inpatient has been admitted to a hospital from an entity specified in subdivision (f).

(j) The administering agency shall compile a quarterly and year-end summary of reimbursements paid to facilities and physicians and surgeons. The summary shall include, but shall not be limited to, the total number of claims submitted by physicians and surgeons in aggregate from each facility and the amount paid to each physician and surgeon. The administering agency shall provide copies of the summary and forms and instructions relating to making claims for reimbursement to the public, and may charge a fee not to exceed the reasonable costs of duplication.

(k) Each county shall establish an equitable and efficient mechanism for resolving disputes relating to claims for reimbursements from the fund. The mechanism shall include a requirement that disputes be submitted either to binding arbitration conducted pursuant to arbitration procedures set forth in Chapter 3 (commencing with Section 1282) and Chapter 4 (commencing with Section 1285) of Part 3 of Title 9 of the Code of Civil Procedure, or to a local medical society for resolution by neutral parties.

1797.98f. Notwithstanding any other provision of this chapter, an emergency physician and surgeon, or an emergency physician group, with a gross billings arrangement with a hospital shall be entitled to receive reimbursement from the Emergency Medical Services Fund for services provided in that hospital, if all of the following conditions are met:

(a) The services are provided in a basic or comprehensive general acute care hospital emergency department, or in a standby emergency department in a small and rural hospital as defined in Section 124840.

(b) The physician and surgeon is not an employee of the hospital.

(c) All provisions of Section 1797.98e are satisfied, except that pay-

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ment to the emergency physician and surgeon, or an emergency physician group, by a hospital pursuant to a gross billings arrangement shall not be interpreted to mean that payment for a patient is made by a responsible third party.

(d) ~~Reimbursement from the Emergency Medical Services Fund is sought by the hospital or the hospital's designee, as the billing and collection agent for the emergency physician and surgeon, or an emergency physician group.~~

For purposes of this section, a "gross billings arrangement" is an arrangement whereby a hospital serves as the billing and collection agent for the emergency physician and surgeon, or an emergency physician group, and pays the emergency physician and surgeon, or emergency physician group, a percentage of the emergency physician and surgeon's or group's gross billings for all patients.

~~1797.98g. The moneys contained in an Emergency Medical Services Fund, other than moneys contained in a Physician Services Account within the fund pursuant to Section 16952 of the Welfare and Institutions Code, shall not be subject to Article 3.5 (commencing with Section 16951) of Chapter 5 of Part 4.7 of Division 9 of the Welfare and Institutions Code.~~

SEC. 6.2. Chapter 2.5 (commencing with Section 1797.98a) is added to Division 2.5 of the Health and Safety Code, to read:

CHAPTER 2.5. EMERGENCY AND TRAUMA PHYSICIAN SERVICES COMMISSION

Article 1. General Provisions

1797.98a. (a) There is hereby created the Emergency and Trauma Physician Services Commission in the Department of Health Services.

(b) The commission shall consist of 10 members, appointed as follows:

(1) Three full-time physicians and surgeons who are board certified in emergency medicine and who are members of a professional medical association and are in a position to represent the interests of emergency physicians generally, appointed by the Governor of California; and

(2) Three full-time physicians and surgeons who provide on-call specialty services to hospital emergency departments and who are members of a professional medical association and are in a position to represent the interests of on-call physician specialists generally, appointed by the Governor of California; and

(3) One full-time physician and surgeon who is board certified in emergency medicine and who is a member of a professional medical association and is in a position to represent the interests of emergency physicians generally, appointed by the Senate Rules Committee; and

(4) One full-time physician and surgeon who provides on-call specialty services to hospital emergency departments and is a member of a professional medical association and is in a position to represent the interests of on-call physician specialists generally, appointed by the Senate Rules Committee; and

(5) One full-time physician and surgeon who is board certified in emergency medicine and who is a member of a professional medical association and is in a position to represent the interests of emergency physicians generally, appointed by the Speaker of the California State Assembly; and

(6) One full-time physician and surgeon who provides on-call specialty services to hospital emergency departments and who is a member of a professional medical association and is in a position to represent the interests of on-call physician specialists generally, appointed by the Speaker of the California State Assembly.

(c) The term of the members of the commission shall be three calendar years, commencing January 1 of the year of appointment, provided that the initial terms of the members shall be staggered.

(d) The members of the commission shall receive no compensation for their services to the commission, but shall be reimbursed for their actual and necessary travel and other expenses incurred in the discharge of their duties.

(e) The commission shall select a chairperson from its members, and shall meet at least quarterly on the call of the director, the chairperson, or two members of the commission.

(f) The commission shall advise the director on all aspects of the Emergency and Trauma Physician Services Accounts, including both the Emergency and Trauma Physician Unpaid Claims Account and the Emergency and Trauma Physician Uninsured Account.

(g) A majority of both the emergency physician members and the on-call physician specialist members shall constitute a quorum, and no

recommendation or action will be effective in the absence of a majority vote of emergency physician members and a majority vote of on-call physician specialist members.

(h) The commission shall review and approve the forms, guidelines, and regulations implementing the Emergency and Trauma Physician Uninsured and Unpaid Claims Accounts.

(i) The commission shall review and approve applications by counties to administer their own Emergency and Trauma Physician Uninsured and Unpaid Claims Accounts.

(j) For each calendar quarter and at the end of each calendar year, the State Department of Health Services or, where applicable, the administering agency for each county shall report to the Legislature and the Emergency and Trauma Physician Services Commission on the implementation and status of the Maddy Emergency Medical Services Fund, Emergency and Trauma Physician Unpaid Claims Account and the Emergency and Trauma Physician Uninsured Account. These reports and the underlying data supporting these reports shall be publicly available. These reports shall, for the department and each county, include, but not be limited to, all of the following:

(1) The total amount of fines and forfeitures collected, the total amount of penalty assessments collected, and the total amount of penalty assessments deposited into the Maddy Emergency Medical Services Fund ("fund").

(2) The total amount of funds allocated to each county administering the account from the Emergency and Trauma Physician Unpaid Claims Account ("Unpaid Claims Account").

(3) The total amount of funds allocated to each county administering the account from the Emergency and Trauma Physician Uninsured Account ("Uninsured Account").

(4) The fund and account balances and the amount of moneys disbursed from the fund and accounts to physicians.

(5) For both the fund and accounts, the pattern and distribution of claims, including but not limited to the total number of claims submitted by physicians and surgeons in aggregate from each facility.

(6) For both the fund and the accounts, the amount of moneys available to be disbursed to physicians, the dollar value of the total allowable claims submitted, and the percentage of such claims which were reimbursed.

(7) A statement of the policies, procedures, and regulatory action taken to implement and run the program under this chapter.

(8) The actual administrative costs of the administering agency incurred in administering the program.

(k) (1) The State Board of Equalization shall, on a quarterly basis, report to the Legislature and the Emergency and Trauma Physician Services Commission and make publicly available, amounts required to be paid to the 911 Emergency and Trauma Care Fund pursuant to Section 41135 of the Revenue and Taxation Code and amounts credited to each of the accounts created within that fund.

(2) The administering agency, upon request, shall make available to any member of the public a listing of physicians and hospitals that have received reimbursement from the Unpaid Claims Account, the Uninsured Account and the Emergency and Trauma Hospital Services Account and the amount of the reimbursement they have received. This listing shall be compiled on a semi-annual basis.

(l) Each administering agency of an account under this chapter shall make all reasonable efforts to notify physicians and surgeons who provide, or are likely to provide, emergency services in each county as to the availability of the accounts and the process by which to submit a claim against the accounts. The administering agency may satisfy this requirement by sending materials that provide information about the fund and the process to submit a claim against the fund to local medical societies, hospitals, emergency rooms, or other organizations, including materials that are prepared to be posted in visible locations.

(m) The department may issue forms, guidelines or regulations to implement this chapter pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of the Government Code.

1797.98b. (a) For purposes of this chapter, the department shall be the administering agency unless delegated to a county pursuant to subdivision (c).

(b) The department shall be reimbursed from the state Emergency and Trauma Physician Uninsured and Unpaid Claims Accounts for its actual costs of administration not to exceed 4 percent of the moneys credited to these accounts during the fiscal year, unless a different per-

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centage is approved by the Emergency and Trauma Physician Services Commission as necessary for the efficient administration of the accounts.

(c) The department may delegate to a county, upon application, the administration of its own County Emergency and Trauma Physician Uninsured and Unpaid Claims Accounts. The department shall establish terms and conditions for the delegation of a county to administer the accounts, which shall include, but not be limited to all of the following:

(1) The County Board of Supervisors shall request, by resolution, to be the administering agency and shall have established accounts within the Maddy Emergency Medical Services Fund;

(2) The resolution shall specify any delegation of this authority proposed by the County Board of Supervisors, and shall specify who will serve as the administering officer;

(3) The county is of sufficient size to justify such delegation as cost effective;

(4) The county has demonstrated its commitment to maintaining a stable and high quality emergency medical services system. An example of such commitment is a county's augmentation of funding for emergency medical services;

(5) The county will accept both paper and electronic claims;

(6) Administration by the county is supported by local physician organizations;

(7) The costs of administration will not exceed 4 percent of the money credited to these accounts during the fiscal year, or the amount authorized by the Emergency and Trauma Physician Services Commission as necessary for the efficient administration of the accounts;

(8) The department may approve an application by a county for a period not more than three years. A county may thereafter reapply for delegation;

(9) The department shall give great weight to the recommendations of the Emergency and Trauma Physician Services Commission during the application and review process and the commission shall have final authority to approve applications pursuant to subdivision (i) of Section 1797.98a.

(d) If a county is delegated by the department to be the administering agency, claims for emergency medical services provided at facilities within that county may only be submitted to that county, and may not be submitted to the department.

(e) If a county is delegated by the department to be the administering agency, the department shall do all of the following:

(1) authorize a county to keep moneys deposited into that county's Emergency and Trauma Physician Unpaid Claims Account for reimbursements pursuant to this chapter;

(2) each calendar quarter, transfer to the County Emergency and Trauma Physician Services Unpaid Claims Account in that county funds deposited into the State Emergency and Trauma Physician Services Unpaid Claims Account pursuant to Sections 16950 and 16950.2 of the Welfare and Institutions Code and allocated to that county by the department based on the total population of that county to the total population of the state,

(3) each calendar quarter, transfer funds from the State Emergency and Trauma Physician Uninsured Account to that county's Emergency and Trauma Physician Uninsured Account, based on the total population of that county to the total population of the state, and

(4) authorize the county to deduct its actual costs of administration, not to exceed the amount authorized pursuant to paragraph (7) of subdivision (c).

1797.98c. (a) It is the intent of the people that a simplified, cost-efficient system of administration of this chapter be developed so that the maximum amount of funds may be utilized to reimburse physicians and surgeons and for other emergency medical services purposes. The administering agency shall select an administering officer and shall establish procedures and time schedules for the submission and processing of claims submitted by physicians and surgeons. The schedule shall provide for disbursements of moneys in the Emergency and Trauma Physicians Unpaid Claims Account and the Emergency and Trauma Physicians Uninsured Account on a quarterly basis to applicants who have submitted accurate and complete data for payment. The administering agency may, as necessary, request records and documentation to support the claims requested by physicians and surgeons and

the administering agency may review and audit the records for accuracy. Claims submitted and reimbursements made that are not supported by records may be denied to, and recouped from, physicians and surgeons. Physicians and surgeons found to submit claims that are inaccurate or unsupported by records may be excluded from submitting future claims. The administering officer shall not give preferential treatment to any facility, physician and surgeon, or category of physician and surgeon and shall not engage in practices that constitute a conflict of interest by favoring a facility or physician and surgeon with which the administering officer has an operational or financial relationship. A hospital administrator of a hospital owned or operated by a county of a population of 250,000 or more as of January 1, 1991, or a person under the supervision of that person, shall not be the administering officer.

(b) Each provider of health services that receives payment under this chapter shall keep and maintain records of the services rendered, the person to whom rendered, the date, and any additional information the department may, by regulation, require, for a period of three years from the date the service was provided. The administering agency shall not require any additional information from a physician and surgeon providing emergency medical services that is not available in the patient record maintained by the entity listed in subdivision (f) where the medical services are provided, nor shall the administering agency require a physician and surgeon to make eligibility determinations.

(c) During normal working hours, the administering agency may make any inspection and examination of a hospital's or physician and surgeon's books and records needed to carry out the provisions of this chapter. A provider who has knowingly submitted a false request for reimbursement shall be guilty of civil fraud.

(d) Nothing in this chapter shall prevent a physician and surgeon from utilizing an agent who furnishes billing and collection services to the physician and surgeon to submit claims or receive payment for claims.

(e) All payments from the accounts to eligible physicians and surgeons shall be limited to physicians and surgeons who, in person, provide onsite services in a clinical setting, including, but not limited to, radiology and pathology settings.

(f) All payments from the accounts shall be limited to claims for care rendered by physicians and surgeons to patients who are initially medically screened, evaluated, treated, or stabilized in any of the following:

(1) A standby, basic, or comprehensive emergency department of a licensed general acute care hospital.

(2) A site that was approved by a county prior to January 1, 1990, as a paramedic receiving station for the treatment of emergency patients.

(3) For the 1991-92 fiscal year and each fiscal year thereafter, a facility which contracted prior to January 1, 1990, with the National Park Service to provide emergency medical services.

(g) Reimbursement for emergency services rendered under this chapter shall be limited to emergency services provided on the calendar day on which emergency medical services are first provided and on the immediately following two calendar days, however reimbursement for surgery for emergency services is permitted for up to seven calendar days if such surgery is necessary to stabilize the patient's emergency medical condition and could not be performed during the first three calendar days due to the patient's condition. Notwithstanding this subdivision, if it is necessary to transfer the patient to a second facility providing a higher level of care for the treatment of the emergency condition, reimbursement shall be available for services provided at the facility to which the patient was transferred on the calendar day of transfer and on the immediately following two calendar days.

(h) Payment shall be made for medical screening examinations required by law to determine whether an emergency condition exists, notwithstanding the determination after the examination that a medical emergency does not exist. Payment shall not be denied solely because a patient was not admitted to an acute care facility. Payment shall be made for services to an inpatient only when the inpatient has been admitted to a hospital from an entity specified in subdivision (f).

(i) The department shall establish an equitable and efficient mechanism for resolving disputes relating to claims for reimbursements from the accounts. The mechanism shall include a requirement that disputes be submitted either to binding arbitration conducted pursuant to arbitration procedures set forth in Chapter 3 (commencing with Section 1282) and Chapter 4 (commencing with Section 1285) of Title 9 of Part 3 of the Code of Civil Procedure, or to a local medical

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society for resolution by neutral parties.

1797.98d. Notwithstanding any other provision of this chapter, an emergency physician and surgeon, or an emergency physician group, with a gross billings arrangement with a hospital shall be entitled to receive reimbursement from the Emergency and Trauma Physician Uninsured and Unpaid Claims Accounts for services provided in that hospital, if all of the following conditions are met:

(a) The services are provided in a basic or comprehensive general acute care hospital emergency department, or in a standby emergency department in a small and rural hospital as defined in Section 124840.

(b) The physician and surgeon is not an employee of the hospital.

(c) All provisions of Section 1797.99b are satisfied for reimbursement from the Unpaid Claims Account, and all provisions of Section 1797.98c are satisfied for reimbursement from the Uninsured Claims Account, except that payment to the emergency physician and surgeon, or an emergency physician group, by a hospital pursuant to a gross billings arrangement shall not be interpreted to mean that payment for a patient is made by a responsible third party.

(d) Reimbursement from the Uninsured and Unpaid Claims Accounts is sought by the hospital, or the hospital's designee, as the billing and collection agent for the emergency physician and surgeon or an emergency physician group.

For purposes of this section, a "gross billings arrangement" is an arrangement whereby a hospital serves as the billing and collection agent for the emergency physician and surgeon, or an emergency physician group, and pays the emergency physician and surgeon, or emergency physician group, a percentage of the emergency physician and surgeon's or group's gross billings for all patients.

Article 2. Emergency and Trauma Physician Unpaid Claims Account

1797.99a. (a) The fund provided for in this chapter shall be known as the Maddy Emergency Medical Services (EMS) Fund.

(b) Each county shall establish a Maddy EMS Fund. Within the Maddy EMS Fund, each county shall establish a County Emergency and Trauma Physician Unpaid Claims Account and a County Emergency and Trauma Hospital Services Account. A county that has been designated as an administering agency pursuant to subdivision (c) of Section 1797.98b, shall also establish a county Emergency and Trauma Physician Uninsured Account to receive funds transferred from the state Emergency and Trauma Physician Uninsured Account pursuant to paragraph (3) of subdivision (e) of Section 1797.98b and Section 1797.99c.

(c) The source of the money in each Maddy EMS Fund shall be the penalty assessments made for this purpose, as provided in Section 76000 of the Government Code, and allocated pursuant to subdivision (d). Other money, which may be transferred from the state to accounts within the Maddy EMS Fund pursuant to this chapter, is not subject to allocation pursuant to subdivision (d).

(d) 58 percent of the money in the Maddy EMS Fund derived pursuant to subdivision (c) shall be deposited into the County Emergency and Trauma Physician Unpaid Claims Account. Each calendar quarter, the County Treasurer shall transfer the funds in the account to the State Treasurer for credit to the State Emergency and Trauma Physician Unpaid Claims Account created pursuant to subdivision (g) of Section 41135 of the Revenue and Taxation Code; 25 percent shall be deposited into the County Emergency and Trauma Hospital Services Account for distribution by the county only to hospitals providing disproportionate trauma and emergency medical care services. The remaining money derived pursuant to subdivision (c) shall remain in each county and shall be used to reimburse the county for actual costs of administration and for other emergency medical services purposes as determined by each county, including, but not limited to, the funding of regional poison control centers. All interest earned on moneys in each account within the Maddy EMS Fund shall be deposited in the same account for disbursement as specified in this chapter.

(e) Funds in the State Emergency and Trauma Physician Unpaid Claims Account shall be continuously appropriated to and administered by the State Department of Health Services. The department shall transfer funds, as necessary, to a county that has been delegated the role of administering agency pursuant to subdivision (c) of Section 1797.98b. Such funds shall be continuously appropriated and allocated to and by the county pursuant to this chapter. The administering agency shall allocate the funds solely for the reimbursement of

physicians and surgeons providing uncompensated emergency services and care up to the time the patient is stabilized, except those physicians and surgeons employed by hospitals, pursuant to this chapter. Appropriations are made without regard to fiscal years and all interest earned in the account shall remain in the account for allocation pursuant to this section.

(f) Any physician and surgeon may be reimbursed from the Emergency and Trauma Physician Unpaid Claims Account up to 50 percent of the amount claimed pursuant to subdivision (a) of Section 1797.99b for the initial cycle of reimbursements made by the administering agency in a given year, pursuant to subdivision (d) of Section 1797.99b. All funds remaining at the end of the fiscal year, in excess of any reserve held and rolled-over to the next year pursuant to subdivision (g), shall be distributed proportionally based on the dollar amount of claims paid to all physicians and surgeons who submitted qualifying claims during that year.

(g) Each administering agency may hold in reserve and roll-over to the following year up to 15 percent of the funds in the Emergency and Trauma Physician Unpaid Claims Account.

1797.99b. (a) Physicians and surgeons wishing to be reimbursed from the Emergency and Trauma Physician Unpaid Claims Account shall submit their claims for services provided to patients who do not make any payment for services and for whom no responsible third party makes any payment. If the services were provided in a county in which the county is the administering agency, the physician and surgeon shall submit the claim to that county and may not submit a claim to the department. The administering agency shall accept both paper and electronic claims. Claims shall conform to the CMS 1500 forms, or in whatever format is mandated by the Health Insurance Portability and Accountability Act of 1996 for physician claims. Payments from the Emergency and Trauma Physician Services Uninsured Account shall not constitute payment for services.

(b) If, after receiving payment from the fund, a physician and surgeon is reimbursed by a patient or a responsible third party, the physician and surgeon shall do one of the following:

(1) Notify the administering agency, and, after notification, the administering agency shall reduce the physician and surgeon's future payment of claims from the fund. In the event there is not a subsequent submission of a claim for reimbursement within one year, the physician and surgeon shall reimburse the fund in an amount equal to the amount collected from the patient or third-party payer, but not more than the amount of reimbursement received from the fund.

(2) Notify the administering agency of the payment and reimburse the fund in an amount equal to the amount collected from the patient or third-party payer, but not more than the amount of the reimbursement received from the fund for that patient's care.

(c) Reimbursement for claims submitted by any physician and surgeon shall be limited to services provided to a patient who cannot afford to pay for those services, and for whom payment will not be made through any private coverage or by any program funded in whole or in part by the federal government, and where all of the following conditions have been met:

(1) The physician and surgeon has inquired if there is a responsible third-party source of payment.

(2) The physician and surgeon has billed for payment of services.

(3) Either of the following:

(A) At least three months have passed from the date the physician and surgeon billed the patient or responsible third party, during which time the physician and surgeon has made two attempts to obtain reimbursement and has not received reimbursement for any portion of the amount billed.

(B) The physician and surgeon has received actual notification from the patient or responsible third party that no payment will be made for the services rendered by the physician and surgeon.

(4) The physician and surgeon has stopped any current, and waives any future, collection efforts to obtain reimbursement from the patient, upon receipt of funds from the fund.

(5) The claim has been received by the administering agency within one year of the date of service.

(d) Notwithstanding any other restriction on reimbursement, the administering agency shall adopt a reimbursement methodology to establish a uniform reasonable level of reimbursement from the Unpaid Claims Account for reimbursable services using the Relative Value

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Units (RVUs) established by the Resource Based Relative Value Scale (RBRVS). When the administering agency determines that claims for payment for physician and surgeon services are of sufficient numbers and amounts that, if paid, the claims would exceed the total amount of funds available for payment, the administering agency shall fairly prorate, without preference, payments to each claimant at a level less than the maximum payment level. The administering agency, upon approval by the Emergency and Trauma Physician Services Commission, may adopt a different reimbursement methodology to promote equitable compensation to the physician community as a whole for uncompensated emergency services and care. For the purpose of submission and reimbursement of claims, the administering agency shall adopt and use the current version of the Physician's Current Procedural Terminology, published by the American Medical Association, or whatever coding set is mandated by the Health Insurance Portability and Accountability Act of 1996 for physician claims.

Article 3. Emergency and Trauma Physician
Uninsured Account

1797.99c. (a) Funds in the State Emergency and Trauma Physician Uninsured Account shall be continuously appropriated to and administered by the State Department of Health Services. The department shall transfer funds, as necessary, to a county that has been delegated the role of administering agency pursuant to subdivision (c) of Section 1797.98b. Such funds shall be continuously appropriated and allocated to and by the county pursuant to this chapter. The administering agency shall allocate the funds solely for the reimbursement of physicians and surgeons providing uncompensated emergency services and care up to the time the patient is stabilized, except those physicians and surgeons employed by hospitals, pursuant to this chapter. Appropriations are made without regard to fiscal years and all interest earned in the account shall remain in the account for allocation pursuant to this section.

(b) Physicians and surgeons providing emergency services and care to an uninsured patient shall be entitled to receive reimbursement for services rendered to such patients, on a quarterly basis, from the account. For each such patient, a physician and surgeon shall bill the patient unless the physician and surgeon reasonably believes that the patient will not make payment. Physicians and surgeons shall submit a claim to the administering agency for reimbursement within one year of the day the services were rendered. If the services were provided in a county in which the county is the administering agency, the physician and surgeon shall submit the claim to that county and may not submit a claim to the department. The administering agency shall accept both paper and electronic claims. Claims shall conform to the CMS 1500 forms, or in whatever format is mandated by the Health Insurance Portability and Accountability Act of 1996 for physician claims.

(c) For purposes of this chapter, the term "uninsured patient" means a patient that a physician and surgeon has determined after reasonable and prudent inquiry is without public or private third party health coverage. Payments by hospitals to physicians and surgeons to help assure the availability of physicians and surgeons to an emergency department or trauma center shall not be considered third party health coverage.

(d) The amount of reimbursement paid shall be based on the value of claims received by the administering agency during the calendar quarter for services rendered to uninsured patients, using the Relative Value Units (RVUs) established by the Resource Based Relative Value Scale (RBRVS) as the reimbursement methodology. For each calendar quarter, the administering agency will determine the total number of RVUs of services submitted, and shall pay each physician and surgeon submitting claims that physician's percentage of the total funds in the account attributed to claims received for that calendar quarter, based on that physician's percentage of the total RVU pool. The administering agency, upon approval by the Emergency and Trauma Physician Services Commission, may adopt a different reimbursement methodology to promote equitable compensation to the physician community as a whole for uncompensated emergency services and care. For the purpose of submission and reimbursement of claims, the administering agency shall adopt and use the current version of the Physician's Current Procedural Terminology, published by the American Medical Association, or whatever coding set is mandated by the Health Insurance Portability and Accountability Act of 1996 for physician claims. No physician shall be reimbursed in an amount greater than the total the physician has billed for the services claimed. The administering agency shall issue such reimbursements within 90 days following the end of each calendar quarter. Undisbursed funds, if any, shall remain in the account, and be rolled over to the following quarter.

(e) Within 30 days following the end of each calendar quarter, physicians and surgeons shall provide the administering agency with:

(1) a list of all claims for which reimbursement is received within one year of the date of service from any public or private third party health coverage and the amount which was received from the Uninsured Claims Account for each of these claims; and

(2) a list of all claims reimbursed by the Uninsured Claims Account for which the total reimbursement from all sources exceeds the physician's billed charges, and the amount of that excess reimbursement for each of these claims.

After such notification, the administering agency shall reduce the physician and surgeon's future payment of claims from the account by the amount the physician received for claims reported pursuant to paragraph (1), and by the amount of the excess payment for those claims reported pursuant to paragraph (2). In lieu of a reduction in future payments from the account, the physician and surgeon shall refund excess payments to the account with the lists referred to in paragraphs (1) and (2) described above. Physicians and surgeons who receive reimbursement from the Uninsured Account shall agree to stop any current, and waive any future, collection efforts to obtain additional reimbursement from the patient should the total reimbursement from all sources reach or exceed the physician's or surgeon's billed charges.

SECTION 7. Administration of The Emergency and Trauma
Hospital Services Account

SEC. 7.1. Chapter 2.6 (commencing with Section 1797.99h) is added to Division 2.5 of the Health and Safety Code, to read:

CHAPTER 2.6. THE EMERGENCY AND TRAUMA HOSPITAL
SERVICES ACCOUNT

1797.99h. The following definitions shall apply to terms utilized in this chapter:

(a) "Bad debt cost" means the aggregate amount of accounts and notes receivable during a calendar year by an eligible hospital as credit losses, using any method generally accepted for estimating such amounts that on the date this act became effective, based on a patient's unwillingness to pay, and multiplied by the eligible hospital's cost to charges ratio.

(b) "County indigent program effort cost" means the amount of care during a calendar year by an eligible hospital, expressed in dollars and based upon the hospital's full established rates, provided to indigent patients for whom the county is responsible, whether the hospital is a county hospital or a non-county hospital providing services to indigent patients under arrangements with a county, multiplied by the eligible hospital's cost to charges ratio.

(c) "Charity care cost" means amounts actually written off, using any method generally accepted for determining such amounts on the date this act became effective, by an eligible hospital during a calendar year for that portion of care provided to a patient for whom a third party payer is not responsible and the patient is unable to pay, multiplied by the hospital's cost to charges ratio.

(d) "Cost to charges ratio" means a ratio determined by dividing an eligible hospital's operating expenses less other operating revenue by gross patient revenue for its most recent reporting period.

(e) "Operating expenses" means the total direct expenses incurred for providing patient care by the hospital. Direct expenses include (without limitation) salaries and wages, employee benefits, professional fees, supplies, purchased services, and other expenses.

(f) "Other operating revenue" means revenue generated by health care operations from non-patient care services to patients and others.

(g) "Gross patient revenue" means the total charges at the hospital's full established rates for the provision of patient care services and includes charges related to hospital-based physician professional services.

(h) "Emergency department" means, in a hospital licensed to provide emergency medical services, the location in which those services are delivered.

(i) "Eligible hospital" means a hospital licensed under Section 1250 of the Health and Safety Code that operates an Emergency Department or a children's hospital as defined in Section 10727 of the Welfare and Institutions Code.

(j) "Emergency department encounter" or "emergency department visit" each means a face to face contact between a patient and the provider who has primary responsibility for assessing and treating the patient in an emergency department and exercises independent judgment in the care of the patient. An emergency department

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encounter or visit is counted for each patient of the emergency department, regardless of whether the patient is admitted as an inpatient or treated and released as an outpatient. An emergency department encounter or visit shall not be counted where a patient receives triage services only.

(k) “Emergency and disaster management plan” means a plan developed to provide appropriate response to emergencies and disasters, including preparedness activities, response activities, recovery activities, and mitigation activities.

(l) “Office” means the Office of Statewide Health Planning and Development.

(m) “Disaster” means a natural or man-made event that significantly: (1) disrupts the environment of care, such as damage to buildings and grounds due to severe wind storms, tornadoes, hurricanes, or earthquakes; (2) disrupts care and treatment due to: (A) loss of utilities including, but not limited to, power, water, and telephones, or (B) floods, civil disturbances, accidents or emergencies in the surrounding community; or (3) changes or increases demand for the organization’s services such as a terrorist attack, building collapse, or airplane crash in the organization’s community.

(n) “Department” means the State Department of Health Services.

(o) “Funding percentage” means the sum of (1) an eligible hospital’s percentage of hospital emergency care (as defined in subdivision (s) below) multiplied by a factor of .80, added to (2) such hospital’s percentage of effort (as defined in subdivision (r) below) multiplied by a factor of .20, the sum to be expressed as a percentage.

(p) “Hospital Account” means the Emergency and Trauma Hospital Services Account of the 911 Fund established pursuant to subdivision (f) of Section 41135 of the Revenue and Taxation Code.

(q) “911 Fund” means the 911 Emergency and Trauma Care Fund established pursuant to Section 41135 of the Revenue and Taxation Code.

(r) “Percentage of effort” means the sum of an eligible hospital’s total amount of charity care cost plus that hospital’s total amount of bad debt cost plus that hospital’s county indigent program effort cost, as a percentage of the sum of the total amount of charity care cost plus the total amount of bad debt cost plus the total county indigent program effort cost reported in final form to the department by all eligible hospitals for the same calendar year.

(s) “Percentage of hospital emergency care” means an eligible hospital’s total emergency department encounters for the most recent calendar year for which such data has been reported to the department in final form, as a percentage of all emergency department encounters reported in final form by all eligible hospitals for the same calendar year. In the case of a children’s hospital which does not operate an emergency department and provides emergency treatment to a patient under eighteen years of age under arrangements with an emergency department of a hospital that is: (1) located within 1,000 yards of the children’s hospital, and (2) is either (A) under common ownership or control with the children’s hospital or, (B) has contracted with the children’s hospital to provide emergency services to its patients under eighteen years of age, the children’s hospital providing emergency services to such patient shall receive credit for the emergency department encounter, and not the hospital operating the emergency department.

(t) “Joint Commission on Accreditation of Healthcare Organizations” means that certain independent, nonprofit organization that evaluates and accredits nearly 18,000 health care organizations and programs in the United States, including hospitals, home care agencies, nursing facilities, ambulatory care facilities, clinical laboratories, behavioral health care organizations, HMOs, and PPOs.

(u) “American Osteopathic Association” means that certain nonprofit national association representing osteopathic physicians which accredits hospitals, and whose accreditation of hospitals is accepted for participation in the federal Medicare program.

1797.99i. (a) The department shall calculate each eligible hospital’s funding percentage to be used for the next calendar year and notify each eligible hospital of its proposed funding percentage and that for all hospitals by no later than September 30 of each year.

(b) The department shall receive and review the accuracy and completeness of information submitted by eligible hospitals pursuant to Section 1797.99j. The department shall develop a standard form to be utilized for reporting such information by eligible hospitals, but shall accept information from eligible hospitals which is not reported on such

standard form.

(c) The department shall notify each hospital submitting the information specified under subdivision (a) of Section 1797.99j in writing through a communication delivered by no later than April 30 of each year confirming the information it has from such hospital and of any apparent discrepancies in the accuracy, completeness, or legibility of information submitted by such eligible hospital pursuant to Section 1797.99j. Unless such written notice is timely delivered to an eligible hospital, the information it reports pursuant to Section 1797.99j shall be deemed to be complete and accurate, but it shall be subject to audit under subdivision (f).

(d) A hospital which receives notice from the department that the information it reported was not accurate, complete, or legible shall have 30 days from the date notice is received to provide the department with corrected, completed, and legible information. Such corrected or supplemental information shall be used by the department to make the calculation required by subdivision (a), but shall be subject to audit under subdivision (f). A hospital that does not provide sufficient legible information to establish that it qualifies as an eligible hospital or to allow the commission to make the calculation required under subdivision (a) shall be deemed to not be an eligible hospital.

(e) The department may enter into an agreement with the Office of Statewide Health Planning and Development or another state agency or private party to assist it in analyzing information reported by eligible hospitals and making the hospital funding allocation computations as provided under this chapter.

(f) The department may conduct audits of the use by eligible hospitals of any funds received pursuant to Section 1797.99l, and the accuracy of emergency department patient encounters and other information reported by eligible hospitals. If the department determines upon audit that any funds received were improperly used, or that inaccurate data reported by the eligible hospital resulted in an allocation of excess funds to the eligible hospital, it shall recover any excess amounts allocated to, or any funds improperly used by, an eligible hospital. The department may impose a fine of not more than 25 percent of any funds received by the eligible hospital that were improperly used, or the department may impose a fine of not more than two times any amounts improperly used or received by an eligible hospital if it finds such amounts were the result of gross negligence or intentional misconduct in reporting data or improperly using allocated funds under this chapter on the part of the hospital subject to determination of a court of final jurisdiction. In no event shall a hospital be subject to multiple penalties for both improperly using and receiving the same funds.

(g) (1) A licensed hospital owner shall have the right to appeal the imposition of any fine by the department, or a determination by the department that its hospital is not an eligible hospital, for any reason, or an alleged computational or typographical error by the department resulting in an incorrect allocation of funds to its hospital under Section 1797.99l. A hospital shall not be entitled to be reclassified as an eligible hospital or to have an increase in funds received under this chapter based upon subsequent corrections to its own final reporting of incorrect data used to determine funding allocations under this chapter.

(2) Any such appeal shall be before an administrative law judge employed by the Office of Administrative Hearings. The hearing shall be held in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The decision of the administrative law judge shall be in writing; shall include findings of fact and conclusions of law; and shall be final. The decision of the administrative law judge shall be made within 60 days after the conclusion of the hearing and shall be effective upon filing and service upon the petitioner.

(3) The appeal rights of hospitals under this subdivision (g) shall not be interpreted to preclude any other legal or equitable relief that may be available.

(h) Any fines collected by the department shall be deposited in the Hospital Account within the 911 Fund for allocation to eligible hospitals in accordance with the provisions of Section 1797.99l. Such funds shall not be used for administrative costs, and shall be supplemental to, and shall not supplant, any other funds available to be allocated from such account to eligible hospitals.

(i) In the event it is determined upon a final adjudicatory decision that is no longer subject to appeal that a hospital has been incorrectly determined to not qualify as an eligible hospital, or was allocated an amount less than the amount to which it is entitled under Section 1797.99l, the department shall, from the next allocation of

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funds to hospitals under Section 1797.99l, allocate to such hospital the additional amount to which it is entitled, and reduce the allocation to all other eligible hospitals pro rata.

1797.99j. (a) Each hospital seeking designation as an eligible hospital shall submit the following information to the department by no later than March 15 of each year, commencing the first March 15 following the operative date of this act:

(1) The number of emergency department encounters taking place in its emergency department for the preceding calendar year;

(2) The total amount of charity care costs of the hospital for the preceding calendar year;

(3) The total amount of bad debt costs for the hospital for the preceding calendar year;

(4) The total amount of county indigent program effort cost for the hospital for the prior calendar year;

(5) A photocopy of its operating license from the State Department of Health Services or equivalent documentation establishing that it operates a licensed emergency department;

(6) A declaration of commitment to provide emergency services as required by paragraph (2) of subdivision (a) of Section 1797.99k.

(b) Both pediatric and adult patients shall be included in the data submitted. The accuracy of the data shall be attested to in writing by an authorized senior hospital official. No other data or information, other than identifying information, shall be required by the department to be reported by eligible hospitals.

(c) Each hospital which receives a preponderance of its revenue from a single associated comprehensive group practice prepayment health care service plan shall report information required by this section for all patients, and not just for patients who are not enrolled in an associated health care service plan.

1797.99k. An eligible hospital shall do all of the following throughout each calendar quarter in which it receives an allocation pursuant to Section 1797.99l:

(1) Maintain an operational emergency department available within its capabilities and licensure to provide emergency care and treatment, as required by law, to any pediatric or adult member of the public who has an emergency medical condition.

(2) On an annual basis, file with the department a declaration stating the hospital's commitment to provide emergency services to victims of any terrorist act or any other disaster, within its capability, and to assist both the state and county in meeting the needs of their residents with emergency medical conditions.

(3) Either be accredited to operate an emergency department by the Joint Commission on Accreditation of Healthcare Organizations or the American Osteopathic Association, or do all of the following:

(A) Participate in a minimum of two disaster training exercises annually.

(B) Provide training and information as appropriate to the hospital's medical staff, nurses, technicians, and administrative personnel regarding the identification, management, and reporting of emergency medical conditions and communicable diseases, as well as triage procedures in cases of mass casualties; and

(C) Collaborate with state and local emergency medical services agencies and public health authorities in establishing communications procedures in preparation for and during a disaster situation.

(4) Establish or maintain an emergency and disaster management plan. This plan shall include response preparations to care for victims of terrorist attacks and other disasters. The plan shall be made available by the hospital for public inspection.

(5) Each hospital shall annually prepare and issue a written report summarizing its compliance with this section.

1797.99l. (a) Funds deposited in the Hospital Account, together with all interest and investment income earned thereon, shall be continuously appropriated without regard to fiscal years to and administered by the State Department of Health Services. The department shall allocate the funds solely to eligible hospitals as provided by this chapter.

(b) Quarterly, commencing June 30 following the operative date of this chapter, the department shall allocate to each eligible hospital a percentage of the balance of the Hospital Account equal to such hospital's funding percentage, as determined by the department pursuant to Section 1797.99i. Notwithstanding:

(1) The annual aggregate allocation to all hospitals that receive a preponderance of their revenue from the same associated comprehensive group practice prepayment health care service plan shall not exceed twenty-five million dollars (\$25,000,000) during any calendar year, and the department shall reduce the quarterly allocation to each such hospital pro rata, if and to the extent necessary, to contain the aggregate allocation to all such hospitals within any calendar year to a maximum of twenty-five million dollars (\$25,000,000). The maximum annual aggregate allocation shall be applied by the department in increments of six million two hundred and fifty thousand dollars (\$6,250,000) to the first two quarterly distributions of each calendar year, but no specific portion of the limit on maximum annual aggregate distributions provided by this subsection shall apply to other quarterly distributions to such hospitals.

(2) The maximum aggregate annual allocation of twenty-five million dollars (\$25,000,000) to all hospitals that receive a preponderance of their revenue from the same associated comprehensive group practice prepayment health care service plan set forth in paragraph (1) above shall be adjusted upward or downward annually, together with corresponding changes in any quarterly limits, commencing on January 1, 2006, by the same percentage increase or decrease in the aggregate amount deposited in the Hospital Account for the immediate prior calendar year against the aggregate amount deposited in the Hospital Account during the 2004 calendar year. Any adjustment that increases or decreases the maximum aggregate annual allocation to such hospitals shall be applied only to the then current calendar year.

(3) After making the adjustment to the maximum aggregate annual allocation to hospitals that receive a preponderance of their revenue from the same associated comprehensive group practice prepayment health care service plan provided by paragraph (2) above, the department shall further adjust such maximum aggregate annual allocation by increasing or decreasing it by a percentage factor equal to the percentage increase or decrease in the aggregate funding percentage by all hospitals receiving a preponderance of their revenue from the same associated comprehensive group practice prepayment health care service plan in 2004 against the aggregate funding percentage of all hospitals associated with the same health care service plan for the most recent calendar year.

(4) After making the adjustments to the allocation of funds as provided by paragraphs (1) through (3) above, the department shall allocate any funds remaining in the Hospital Account to hospitals which do not receive a preponderance of their revenue from the same associated comprehensive group practice prepayment health care service plan pro rata based upon their respective funding percentages.

(c) Prior to each allocation under subdivision (b), the actual costs of the department (including any costs to the department resulting from charges under Section 11527 of the Government Code) for administering the provisions of this chapter, and the percentage of costs incurred by the State Board of Equalization for its functions under Section 41135 of the Revenue and Taxation Code equal to the percentage of remittances it receives under such section which are deposited in the Hospital Account, shall be reimbursed from the Hospital Account. The aggregate funds withdrawn for all administrative costs under this subdivision shall not exceed 1 percent of the total amounts deposited in the Hospital Account (not including any fines collected under subdivision (h) of Section 1197.99i) during the prior quarter.

(d) An eligible hospital shall use the funds received under this section only to further the provision of hospital and medical services to emergency patients. A hospital may not utilize funds received under this chapter to compensate a physician and surgeon pursuant to a contractual agreement for medical services rendered to a patient that would cause total compensation to such physician and surgeon from all public and private sources, including the hospital, to exceed his or her billed charges.

1797.99f. The department may promulgate and adopt regulations to implement, interpret and make specific the provisions of this chapter pursuant to the provisions of the Administrative Procedures Act set forth in Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The department shall have no authority to promulgate quasi-legislative rules, or to adopt any rule, guideline, criterion, manual, order, standard, manual, policy, procedure or interpretation that is inconsistent with the provisions of this chapter. This section shall not be interpreted to allow the department to adopt regulations (as defined by Section 11342.600 of the Government Code) in contravention of Section 11340.5 of the Government Code.

SECTION 8. Preservation of Existing Funding

SEC. 8.1. Section 16950 of the Welfare and Institutions Code is

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amended to read:

16950. (a) Twelve and two-tenths percent, or that portion of the CHIP Account derived from the Physician Services Account in a fiscal year, of each county's allocation under Section 16941 shall be used for the support of or payment for uncompensated physician services.

(b) Up to 50 percent of the moneys provided pursuant to subdivision (a) may be used by counties to pay for new contracts, with an effective date no earlier than July 1989, with private physicians for provision of emergency, obstetric, and pediatric services in facilities which are not owned or operated by a county, and where access to those services has been severely restricted. The contracts may provide for partial or full reimbursement for physician services provided to patients who cannot afford to pay for those services, and for whom payment will not be made through any private coverage or by any program funded in whole or in part by the federal government. ~~described in subdivision (f) of Section 16952, and shall be subject to subdivision (d) of Section 16955.~~

(c) ~~At least 50 percent of the moneys provided pursuant to subdivision (a) shall be transferred to the county Physician Services Account established in accordance with Section 16952 and administered in accordance with Article 3.5 (commencing with Section 16951). Notwithstanding any other provision of this code, at least 50 percent of the moneys provided pursuant to subdivision (a) shall be credited to the State Emergency and Trauma Physician Unpaid Claims Account established pursuant to subdivision (g) of Section 41135 of the Revenue and Taxation Code and allocated for physician and surgeon reimbursement pursuant to Chapter 2.5 (commencing with Section 1797.99a) of Division 2.5 of the Health and Safety Code.~~

SEC. 8.2. Section 16950.2 is added to the Welfare and Institutions Code, to read:

16950.2. (a) An amount, equal to the amount appropriated and allocated pursuant to Section 76 of Chapter 230 of the Statutes of 2003 (twenty-four million eight hundred three thousand dollars (\$24,803,000)), shall be transferred and credited to the State Emergency and Trauma Physician Unpaid Claims Account, created pursuant to subdivision (g) of Section 41135 of the Revenue and Taxation Code, to be used only for reimbursement of uncompensated emergency services and care as provided in Chapter 2.5 (commencing with Section 1797.99a) of Division 2.5 of the Health and Safety Code from accounts within the Cigarette and Tobacco Products Surtax Fund established pursuant to Section 30122 of the Revenue and Taxation Code, as follows:

(1) Nine million fifteen thousand dollars (\$9,015,000) from the Hospital Services Account within the Cigarette and Tobacco Products Surtax Fund;

(2) Two million three hundred twenty-eight thousand dollars (\$2,328,000) from the Physician Services Account within the Cigarette and Tobacco Products Surtax Fund;

(3) Thirteen million four hundred sixty thousand dollars (\$13,460,000) from the Unallocated Account within the Cigarette and Tobacco Products Surtax Fund.

(b) This transfer shall be made on June 30 of the first fiscal year following adoption of this act, and on June 30 each fiscal year thereafter.

(c) Nothing in this section shall preclude the Legislature from making additional appropriations from any source for the benefit of the Emergency and Trauma Physician Unpaid Account.

SEC. 8.3. Section 16950.3 is added to the Welfare and Institutions Code, to read:

16950.3. (a) An amount, equal to the amount allocated by the State Department of Health Services pursuant to Item 4260-111-0001 (16) of Chapter 157 of the Statutes of 2003 (six million seven hundred fifty-six thousand dollars (\$6,756,000)), shall be transferred and credited to the state account, created pursuant to subdivision (d) of Section 41135 of the Revenue and Taxation Code, to be used only for reimbursement of community clinic uncompensated primary care as provided in Chapter 7 (commencing with Section 124900) of Part 4 of Division 106 of the Health and Safety Code from the unallocated account within the Cigarette and Tobacco Products Surtax Fund established pursuant to Section 30122 of the Revenue and Taxation Code.

(b) This transfer shall be made on June 30 of the first fiscal year following adoption of this act, and on June 30 each fiscal year thereafter.

(c) Nothing in this section shall preclude the Legislature from making additional appropriations from any source for the benefit of the

state account, created pursuant to subdivision (d) of Section 41135 of the Revenue and Taxation Code.

SEC. 8.4. Section 16951 of the Welfare and Institutions Code is repealed.

~~16951. As a condition of receiving funds pursuant to this chapter, each county shall establish an emergency medical services fund as authorized by subdivision (a) of Section 1797.98 of the Health and Safety Code. This section shall not be interpreted to require any county to impose the assessment authorized by Section 1465 of the Penal Code.~~

SEC. 8.5. Section 16952 of the Welfare and Institutions Code is repealed.

~~16952. (a) (1) Each county shall establish within its emergency medical services fund a Physician Services Account. Each county shall deposit in the Physician Services Account those funds appropriated by the Legislature for the purposes of the Physician Services Account of the fund.~~

(2) (A) Each county may encumber sufficient funds to reimburse physician losses incurred during the fiscal year for which bills will not be received until after the fiscal year.

(B) Each county shall provide a reasonable basis for its estimate of the necessary amount encumbered.

(C) All funds which are encumbered for a fiscal year shall be expended or disencumbered prior to the submission of the report of actual expenditures required by Sections 16938 and 16980.

(b) Funds deposited in the Physician Services Account in the county emergency medical services fund shall be exempt from the percentage allocations set forth in subdivision (a) of Section 1797.98. However, funds in the county Physician Services Account shall not be used to reimburse for physician services provided by physicians employed by county hospitals.

No physician who provides physician services in a primary care clinic which receives funds from this act shall be eligible for reimbursement from the Physician Services Account for any losses incurred in the provision of those services.

(c) The county physician services account shall be administered by each county, except that a county electing to have the state administer its medically indigent adult program as authorized by Section 16809, may also elect to have its county physician services account administered by the state in accordance with Section 16954.

(d) Costs of administering the account shall be reimbursed by the account, up to 10 percent of the amount of the account.

(e) For purposes of this article "administering agency" means the agency designated by the board of supervisors to administer this article, or the department, in the case of those CMSF counties electing to have the state administer this article on their behalf.

(f) The county Physician Services Account shall be used to reimburse physicians for losses incurred for services provided during the fiscal year of allocation due to patients who cannot afford to pay for those services, and for whom payment will not be made through any private coverage or by any program funded in whole or in part by the federal government.

(g) (1) Reimbursement for losses shall be limited to emergency services as defined in Section 16953, obstetric, and pediatric services as defined in Sections 16905.5 and 16907.5, respectively.

(2) It is the intent of this subdivision to allow reimbursement for all of the following:

(A) All inpatient and outpatient obstetric services which are medically necessary, as determined by the attending physician.

(B) All inpatient and outpatient pediatric services which are medically necessary, as determined by the attending physician.

(h) No physician shall be reimbursed for more than 50 percent of the losses submitted to the administering agency.

SEC. 8.6. Section 16953 of the Welfare and Institutions Code is repealed.

~~16953. (a) For purposes of this chapter "emergency services" means physician services in one of the following:~~

(1) A general acute care hospital which provides basic or comprehensive emergency services for emergency medical conditions.

(2) A site which was approved by a county prior to January 1, 1990, as a paramedic receiving station for the treatment of emergency

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patients, for emergency medical conditions.

(2) ~~Beginning in the 1991-92 fiscal year and each fiscal year thereafter, in a facility which contracted prior to January 1, 1990, with the National Park Service to provide emergency medical services, for emergency medical conditions:~~

(4) ~~A standby emergency room in a hospital specified in Section 124840 of the Health and Safety Code, for emergency medical conditions.~~

(b) ~~For purposes of this chapter, "emergency medical condition" means a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, which in the absence of immediate medical attention could reasonably be expected to result in any of the following:~~

(1) ~~Placing the patient's health in serious jeopardy.~~

(2) ~~Serious impairment to bodily functions.~~

(3) ~~Serious dysfunction to any bodily organ or part.~~

(c) ~~It is the intent of this section to allow reimbursement for all inpatient and outpatient services which are necessary for the treatment of an emergency medical condition as certified by the attending physician or other appropriate provider.~~

SEC. 8.7. Section 16953.1 of the Welfare and Institutions Code is repealed.

~~16953.1. Notwithstanding any other provision of this chapter, an emergency physician and surgeon, or an emergency physician group, with a gross billings arrangement with a hospital shall be entitled to receive reimbursement from the physician services account in the county's emergency medical services fund for services provided in that hospital, if all of the following conditions are met:~~

(a) ~~The services are provided in a basic or comprehensive general acute care hospital emergency department.~~

(b) ~~The physician and surgeon is not an employee of the hospital.~~

(c) ~~All provisions of Section 16955 are satisfied, except that payment to the emergency physician and surgeon, or an emergency physician group, by a hospital pursuant to a gross billings arrangement shall not be interpreted to mean that payment for a patient is made by a responsible third party.~~

(d) ~~Reimbursement from the physician services account in the county's emergency medical services fund is sought by the hospital or the hospital's designee, as the billing and collection agent for the emergency physician and surgeon, or an emergency physician group.~~

(e) ~~For purposes of this section, "gross billings arrangement" means an arrangement whereby a hospital serves as the billing and collection agent for the emergency physician and surgeon, or an emergency physician group, and pays the emergency physician and surgeon, or an emergency physician group, a percentage of the emergency physician and surgeon's or group's gross billings for all patients.~~

SEC. 8.8. Section 16953.2 of the Welfare and Institutions Code is repealed.

~~16953.2. Nothing in this article shall prevent a physician from utilizing an agent who furnishes billing and collection services to the physician to submit claims or receive payment for claims.~~

SEC. 8.9. Section 16953.3 of the Welfare and Institutions Code is repealed.

~~16953.3. Notwithstanding any other restrictions on reimbursement, a county may adopt a fee schedule to establish a uniform, reasonable level of reimbursement from the physician services account for reimbursable services.~~

SEC. 8.10. Section 16955 of the Welfare and Institutions Code is repealed.

~~16955. Reimbursement for losses incurred by any physician shall be limited to services provided to a patient defined in subdivision (f) of Section 16952, and where all of the following conditions have been met:~~

(a) ~~The physician has inquired if there is a responsible third party source of payment.~~

(b) ~~The physician has billed for payment of services.~~

(c) ~~Either of the following:~~

(1) ~~A period of not less than three months has passed from the date the physician billed the patient or responsible third party, during which time the physician has made reasonable efforts to obtain reimbursement and has not received reimbursement for any portion of the amount billed.~~

(2) ~~The physician has received actual notification from the patient or responsible third party that no payment will be made for the services rendered by the physician.~~

(d) ~~The physician has stopped any current, and waives any future, collection efforts to obtain reimbursement from the patient, upon receipt of funds from the county physician services account in the county emergency medical services fund.~~

SEC. 8.11. Section 16955.1 of the Welfare and Institutions Code is repealed.

~~16955.1. This article shall not be applied or interpreted so as to prevent a physician from seeking payment from a patient or responsible third party payor, or arranging a repayment schedule for the costs of services rendered prior to receiving payment under this article.~~

SEC. 8.12. Section 16956 of the Welfare and Institutions Code is repealed.

~~16956. (a) The administering agency shall establish procedures and time schedules for submission and processing of reimbursement claims submitted by physicians in accordance with this chapter.~~

(b) ~~Schedules for payment established in accordance with this section shall provide for disbursement of the funds available in the account periodically and at least annually to all physicians who have submitted claims containing accurate and complete data for payment by the dates established by the administering agency.~~

(c) ~~Claims which are not supported by records may be denied by the administering agency, and any reimbursement paid in accordance with this chapter to any physician which is not supported by records shall be repaid to the administering agency, and shall be a claim against the physician.~~

(d) ~~Any physician who submits any claim for reimbursement under this chapter which is inaccurate or which is not supported by records may be excluded from reimbursement of future claims under this chapter.~~

(e) ~~A listing of patient names shall accompany a physician's claim, and those names shall be given full confidentiality protections by the administering agency.~~

SEC. 8.13. Section 16957 of the Welfare and Institutions Code is repealed.

~~16957. Any physician who submits any claim in accordance with this chapter shall keep and maintain records of the services rendered, the person to whom services were rendered, and any additional information the administering agency may require, for a period of three years after the services were provided.~~

SEC. 8.14. Section 16958 of the Welfare and Institutions Code is repealed.

~~16958. If, after receiving payment from the account, a physician is reimbursed by a patient or a responsible third party, the physician shall do one of the following:~~

(a) ~~Notify the administering agency and the administering agency shall reduce the physician's future payment of claims from the account. In the event there is not a subsequent submission of a claim for reimbursement within one year, the physician shall reimburse the account in an amount equal to the amount collected from the patient or third party payor, but not more than the amount of reimbursement received from the account.~~

(b) ~~Notify the administering agency of the payment and reimburse the account in an amount equal to the amount collected from the patient or third party payor, but not more than the amount of the reimbursement received from the account for that patient's care.~~

SEC. 8.15. Section 16959 of the Welfare and Institutions Code is repealed.

~~16959. The moneys contained in a Physician Services Account within an Emergency Medical Services Fund shall not be subject to Chapter 2.5 (commencing with Section 1797.98a) of Division 2.5 of the Health and Safety Code.~~

SECTION 9. *New Funds Not to Supplant Existing Funds*

Funds allocated and appropriated pursuant to this act shall be used to supplement existing levels of federal, state and local funding and not to supplant existing levels of funding.

SECTION 10. *Amendment*

This act may only be amended by the Legislature to further its pur-

TEXT OF PROPOSED LAWS

Proposition 67 (cont.)

poses by a statute passed in each house by rollcall vote entered in the journal, four-fifths of the membership concurring.

SECTION 11. *Operative Date*

This act shall become effective immediately upon its adoption by the people, however it shall not become operative until January 1 in the year following its adoption.

SECTION 12. *Severability*

If any provision of this act, or part thereof, is for any reason held to be invalid or unconstitutional, the remaining provisions shall not be affected, but shall remain in full force and effect, and to this end the provisions of this act are severable. In addition, the provisions of this act are intended to be in addition to and not in conflict with any other initiative measure that may be adopted by the people at the same election, and the provisions of this act shall be interpreted and construed so as to avoid conflicts with any such measure whenever possible. In the event the distribution of funds from any of the accounts established by subdivision (c), (d), (e), (f), or (g) of Section 41135 of the Revenue and Taxation Code is permanently enjoined or invalidated by final judicial

action that is not subject to appeal, the funds in any such account shall be continuously transferred to all other accounts in the 911 Emergency and Trauma Care Fund on the same basis as funds are allocated to such accounts by Section 41135 of the Revenue and Taxation Code. Funds remaining in the account shall be allocated as many times as necessary to reduce the account balance to ten thousand dollars (\$10,000) or less.

SECTION 13. *Conformity with State Constitution*

SEC. 13.1. Section 14 is added to Article XIII B of the California Constitution, to read:

SEC. 14. "Appropriations subject to limitation" of each entity of government shall not include appropriations of revenue from the 911 Emergency and Trauma Care Fund created by the 911 Emergency and Trauma Care Act. No adjustment in the appropriations limit of any entity of government shall be required pursuant to Section 3 as a result of revenue being deposited in or appropriated from the 911 Emergency and Trauma Care Fund. The surcharge created by the 911 Emergency and Trauma Care Act shall not be considered General Fund revenues for the purposes of Sections 8 and 8.5 of Article XVI.

Proposition 68

This initiative measure is submitted to the people of California in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure amends provisions of, and adds sections to, the California Constitution and the Business and Professions Code and the Government Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

THE GAMING REVENUE ACT OF 2004

SECTION 1. Title.

This act shall be known as and may be cited as the "Gaming Revenue Act of 2004." This act may also be cited as the "Gaming Revenue Act" or the "act."

SEC. 2. Findings and Purpose.

The people of the State of California hereby make the following findings and declare that their purpose in enacting this act is as follows:

(a) California now faces an unprecedented budget deficit of billions of dollars that particularly threatens funding for education, police protection, and fire safety. As a result of California's budget crisis, the state needs to find new ways to generate revenues without raising taxes. In March 2000, Proposition 1A was enacted, which triggered an unprecedented expansion of Indian casino gaming, gave Indian tribes a monopoly on casino gaming, and has led to billions of dollars in profits for Indian tribes, but little or no taxes to the state. Moreover, local governments and communities have not been adequately protected, the state does not have sufficient regulation and oversight of tribal casino gaming, and tribal casinos have not complied with state laws applicable to other businesses and designed to protect California citizens, such as laws regarding the environment and political contributions. Gaming tribes also have failed to fully fund a trust fund to promote the welfare of Indian tribes that do not operate large casinos. Some Indian tribes have attempted to acquire land far away from their reservations or traditional lands to be used as casinos and not for use as traditional reservations. Tribes have expended over one hundred twenty million dollars (\$120,000,000) in political contributions but have refused to comply with disclosure requirements.

(b) California should request that all Indian gaming tribes voluntarily share some of their gaming profits with the state that can be used to support public education, and local police and fire services, and address other problems associated with tribal casino gaming, and in the event all Indian gaming tribes do not do so, California should grant gaming rights to other persons who will share substantial revenue with the state that can be used to support public education and local police and fire services.

(c) The Governor should be authorized to negotiate amendments to all existing compacts with Indian tribes to allow these Indian tribes to continue to have the exclusive right to operate gaming devices in the State of California if the Indian tribes agree to pay 25 percent of their winnings from such devices to a gaming revenue trust fund and agree to comply with state laws, including laws governing environmental protection, gaming regulation, and campaign contributions and their public disclosure.

(d) In the event all Indian tribes with existing compacts do not agree to these terms, five existing horse racing tracks and 11 existing gambling establishments, where forms of legal gambling and wagering already occur, should have the right to operate a limited number of gaming devices, provided they pay 33 percent of their winnings from the operation of such gaming devices to cities, counties, and a gaming revenue trust fund to be used for education, and police and fire services, and provided they comply with strict legal requirements on the operation and location of such gaming devices.

(e) In addition to paying substantial taxes, the owners of gambling establishments and horse racing tracks authorized to operate gaming devices would have to be licensed by the California Gambling Control Commission under the Gambling Control Act, which requires that they be persons of good character, honesty, and integrity, and persons whose prior activities, reputation and associations entitle them to receive a license from the state.

(f) Permitting five existing horse racing tracks and 11 licensed gambling establishments to operate gaming devices and requiring them to pay 33 percent of their winnings from these gaming devices will generate revenues estimated to exceed one billion dollars (\$1,000,000,000) annually. These funds will help alleviate California's dire fiscal crisis, which particularly threatens funding for education, police protection, and fire safety, and will help mitigate the impact on cities and counties where gaming occurs.

(g) The Gaming Revenue Act will establish the Gaming Revenue Trust Fund, the sole purpose of which will be to ensure that the revenues raised by this act are distributed in accordance with the act. The act will also establish a board of trustees consisting of individuals who are engaged in public school education, law enforcement, and fire protection.

(h) The Gaming Revenue Act will provide funding for the existing Division of Gambling Control and the existing California Gambling Control Commission for the purpose of regulating gaming authorized by this act.

(i) The Gaming Revenue Act will increase the moneys distributed to non-gaming Indian tribes by guaranteeing that each such tribe will receive at least one million two hundred thousand dollars (\$1,200,000) annually, and will award three million dollars (\$3,000,000) annually to responsible gambling programs.

(j) The Gaming Revenue Act Trust Fund will distribute 50 percent of the net revenues directly to county boards of education to be used to improve educational services for abused and neglected children and children in foster care.

(k) The Gaming Revenue Act Trust Fund will distribute 35 percent of the net revenues directly to local governments for additional neighborhood sheriffs and police officers.

(l) The Gaming Revenue Act Trust Fund will distribute 15 percent of the net revenues directly to local governments for additional firefighters.

(m) The revenues generated for county offices of education for improving the educational outcomes of abused and neglected children and children in foster care and local governments for police protection and fire safety by this act are not to be used as substitute funds but rather shall supplement the total amount of money allocated for county offices of education and local governments.

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(n) Indian tribes have attempted to acquire land at locations off of their reservations or distant from their traditional Indian lands to be used solely as casinos and not for use as traditional reservations. Gaming on these newly acquired lands would be detrimental to the surrounding communities. Therefore, the Gaming Revenue Act prohibits the location of gaming establishments by Indian tribes on newly or recently acquired lands.

(o) In order to reasonably restrict the growth of non-Indian gaming, non-Indian gaming authorized by this act will be limited to the sites of five existing horse racing tracks located in the Counties of Alameda, Los Angeles, Orange, and San Mateo, and the sites of 11 existing gambling establishments located in the Counties of Los Angeles, San Diego, Contra Costa, and San Mateo. To ensure that there are no new gambling establishments other than those in existence as of the enactment of the act, the current limitation on the issuance of new gambling licenses, which expires in 2007, will be made permanent. The purpose of such restriction is to exercise control over the proliferation of gambling.

(p) The expansion of Indian gaming has led to conflicts between tribes and local governments. In some cases, tribes have failed to take sufficient steps to address local concerns and impacts. Therefore, this act will authorize the Governor to negotiate amendments to all existing compacts pursuant to which all tribes agree to enter into good faith negotiations with county and city governments to address and mitigate community impacts.

(q) To clarify legal jurisdiction over Indian casinos, state courts should have jurisdiction over any criminal or civil proceeding arising under this act, under a compact, or related to a tribal casino. Therefore, this act will authorize the Governor to negotiate amendments to all existing compacts pursuant to which all tribes agree that state courts will have jurisdiction over such disputes.

(r) Indian tribes have used their gambling profits to spend well over one hundred twenty million dollars (\$120,000,000) on campaign contributions and political activities in California. But some Indian tribes maintain that they are sovereign nations and do not have to comply with California's laws and regulations relating to political contributions and reporting. Because these tribal political expenditures result substantially from, and often concern, gaming activities in California, this act will authorize the Governor to negotiate amendments to all existing compacts pursuant to which all tribes agree to comply with the California Political Reform Act.

(s) While some terms of this act concern conditions tribal casinos must meet if Indian tribes are to retain a monopoly over slot machines, it is the express intent of the voters to raise revenues immediately through this initiative to help solve California's current fiscal crisis, regardless of whether those revenues come from tribal or non-tribal gaming, regardless of court decisions regarding Indian gaming, regardless of changes in federal law, or regardless of any challenges or efforts by the Indian tribes or others to delay or circumvent this act. Therefore, if all Indian tribes with existing compacts do not agree to share with the state 25 percent of their winnings from gaming devices and do not agree to the other conditions on tribal gaming set forth in this act within the time limits provided in this act, it is the express intent of the voters to immediately allow licensed gambling establishments and authorized horse racing tracks to operate a limited number of gaming devices, provided they pay 33 percent of their winnings from the operation of such gaming devices to cities, counties, and the Gaming Revenue Trust Fund.

SEC. 3. Section 19 of Article IV of the California Constitution is amended to read:

SEC. 19. (a) The Legislature has no power to authorize lotteries and shall prohibit the sale of lottery tickets in the State.

(b) The Legislature may provide for the regulation of horse races and horse race meetings and wagering on the results.

(c) Notwithstanding subdivision (a), the Legislature by statute may authorize cities and counties to provide for bingo games, but only for charitable purposes.

(d) Notwithstanding subdivision (a), there is authorized the establishment of a California State Lottery.

(e) The Legislature has no power to authorize, and shall prohibit, casinos of the type currently operating in Nevada and New Jersey.

(f) Notwithstanding subdivisions (a) and (e), and any other provision of state law, the Governor is authorized to negotiate and conclude compacts, subject to ratification by the Legislature, for the operation of ~~slot machines~~ gaming devices and for the conduct of lottery games and banking and percentage card games by federally recognized Indian

tribes on Indian lands in California in accordance with federal law. Accordingly, ~~slot machines~~ gaming devices, lottery games, and banking and percentage card games are hereby permitted to be conducted and operated on tribal lands subject to those compacts.

(g) Notwithstanding subdivision (a), the Legislature may authorize private, nonprofit, eligible organizations, as defined by the Legislature, to conduct raffles as a funding mechanism to provide support for their own or another private, nonprofit, eligible organization's beneficial and charitable works, provided that (1) at least 90 percent of the gross receipts from the raffle go directly to beneficial or charitable purposes in California, and (2) any person who receives compensation in connection with the operation of a raffle is an employee of the private nonprofit organization that is conducting the raffle. The Legislature, two-thirds of the membership of each house concurring, may amend the percentage of gross receipts required by this subdivision to be dedicated to beneficial or charitable purposes by means of a statute that is signed by the Governor.

(h) Notwithstanding subdivisions (e) and (f), and any other provision of state law, the Governor is authorized to negotiate and conclude amendments to all existing compacts with all Indian tribes in accordance with the provisions of this subdivision. An "existing compact" means a gaming compact entered into between the State and an Indian tribe prior to the effective date of the Gaming Revenue Act of 2004. All compacts amended pursuant to this subdivision shall include the following terms, conditions, and requirements:

(1) The Indian tribe shall agree to pay 25 percent of its net win from all gaming devices operated by it or on its behalf to the Gaming Revenue Trust Fund. Such payments shall be made monthly and shall be due within 30 days of the end of each month. "Net win" means the wagering revenue from all gaming devices operated by the Indian tribe or on its behalf retained after prizes or winnings have been paid to players or to pools dedicated to the payment of such prizes and winnings, and prior to the payment of operating or other expenses. Such payments shall commence immediately after federal approval of the amended compact.

(2) The Indian tribe shall agree to report to the Division of Gambling Control the net win on all gaming devices operated by or on behalf of it. Such reports shall be submitted monthly, shall be due within 30 days of the end of each month, and shall be available to the public upon request.

(3) The Indian tribe shall agree to pay for an annual audit performed by an independent firm of certified public accountants approved by the California Gambling Control Commission to ensure that the net win is properly reported and the payment is properly paid to the Gaming Revenue Trust Fund. The audit report shall be available to the public upon request.

(4) The Indian tribe shall agree to comply with the California Political Reform Act.

(5) The Indian tribe shall agree that its casino facilities shall comply with the California Environmental Quality Act.

(6) The Indian tribe shall agree to enter into good faith negotiations with any city or county within which the Indian lands are located where class III gaming is conducted to mitigate local gaming-related impacts within a reasonable time following the State's execution of the compact. The state courts shall have exclusive jurisdiction to resolve any dispute regarding the failure to reach an agreement or the enforcement of the agreement.

(7) The Indian tribe shall agree to comply with all provisions of the Gambling Control Act, and shall agree to be subject to the jurisdiction of the California Gambling Control Commission and Division of Gambling Control.

(8) The Indian tribe shall agree that state courts shall have exclusive jurisdiction over any criminal or civil proceeding arising from or related to the Gaming Revenue Act, arising from or related to the compact, or arising from or related to any act or incident occurring on the premises of a tribal casino.

The powers of the State and the applicability of state law to Indian tribes and Indian casinos pursuant to this subdivision are to be construed consistently with the fullest extent of State's rights and powers under federal law to reach agreements with Indian tribes with tribal consent. No tribe with an existing compact is required by this subdivision to agree to amend its existing compact. Nothing in the Gaming Revenue Act of 2004 waives or restricts the civil or criminal jurisdiction of the State under Public Law 280 (18 U.S.C. Sec. 1162), and the State may not waive such jurisdiction in any compacts.

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(i) Notwithstanding subdivisions (a) and (e), and any other provision of state or local law, in the event amendments to all existing compacts with all Indian tribes, as provided in subdivision (h), are not entered into and submitted to the Secretary of the Interior within 90 days of the effective date of the Gaming Revenue Act of 2004, owners of authorized gambling establishments and owners of authorized horse racing tracks shall immediately thereafter be authorized to operate not more than a combined total of 30,000 gaming devices. In the event tribal monopolies are adjudicated to be illegal, in the event the amended compacts are not approved or considered approved pursuant to the Indian Gaming Regulatory Act, or in the event subdivision (h) is invalidated, or delayed more than 90 days after this act would otherwise take effect, by the State, the federal government, or any court, owners of authorized gambling establishments and owners of authorized horse racing tracks shall immediately thereafter be authorized to operate the gaming devices authorized by this section. For purposes of this act, "authorized gambling establishment" shall mean a site in the Counties of Los Angeles, San Diego, Contra Costa, or San Mateo at which 14 or more gaming tables were authorized to be operated as of September 1, 2003, pursuant to the Gambling Control Act, except such sites that were actually taken into trust for an Indian tribe or Indians after September 1, 2003. For purposes of the Gaming Revenue Act of 2004, "authorized horse racing track" shall mean a site in the Counties of Alameda, Los Angeles, Orange, or San Mateo at which horse racing was conducted by a thoroughbred racing association or quarter horse racing association that was licensed pursuant to the Horse Racing Law to conduct more than 50 days or nights of racing in 2002. For purposes of the Gaming Revenue Act of 2004, "site" shall mean the real property on which an authorized horse racing track or an authorized gambling establishment was located as of September 1, 2003, and shall include real property adjacent to the site. The operation of these gaming devices shall be subject to the following provisions:

(1) Payments.

(A) Owners of authorized gambling establishments and authorized horse racing tracks shall pay 30 percent of the net win from gaming devices operated by them to the Gaming Revenue Trust Fund created pursuant to this section. Such payments shall be made monthly and shall be due within 30 days of the end of each month. "Net win" means the wagering revenue from gaming devices operated pursuant to the Gaming Revenue Act of 2004, retained after prizes or winnings have been paid to players or to pools dedicated to the payment of such prizes and winnings, and prior to the payment of operating or other expenses.

(B) Owners of authorized gambling establishments and authorized horse racing tracks shall report to the Division of Gambling Control the net win on all gaming devices operated by or on behalf of them. Such reports shall be submitted monthly, shall be due within 30 days of the end of each month, and shall be available to the public upon request.

(C) Owners of authorized gambling establishments and authorized horse racing tracks shall pay for an annual audit performed by an independent firm of certified public accountants approved by the California Gambling Control Commission to ensure that the net win is properly reported and the payment is properly paid to the Gaming Revenue Trust Fund. The audit report shall be available to the public upon request.

(D) Owners of authorized gambling establishments and authorized horse racing tracks shall pay 2 percent of their respective net win from gaming devices operated by them to the city in which each authorized horse racing track and authorized gambling establishment is located. In the event an authorized gambling establishment or an authorized horse racing track is not located within the boundaries of a city, the payment imposed by the Gaming Revenue Act of 2004, shall be made to the county in which the authorized gambling establishment or authorized horse racing track is located. Such payments shall be made monthly and shall be due within 30 days of the end of each month.

(E) Owners of authorized gambling establishments and authorized horse racing tracks shall pay 1 percent of their respective net win from gaming devices operated by them to the county in which each authorized gambling establishment and authorized horse racing track is located. Such payments shall be made monthly and shall be due within 30 days of the end of each month.

(2) Number and Location of Authorized Gaming Devices.

(A) A total of 30,000 gaming devices are authorized to be operated by owners of authorized horse racing tracks and owners of authorized gambling establishments, which are allocated as follows:

(i) For authorized horse racing tracks:

Three thousand gaming devices for each authorized horse racing track. In order to ensure the maximum generation of revenue for the Gaming Revenue Trust Fund, in the event that the owners of an authorized horse racing track for any reason cease to have or lose the right to operate any of the gaming devices authorized by the Gaming Revenue Act of 2004, the gaming devices allocated to that authorized horse racing track shall be reallocated equally among the remaining authorized horse racing tracks. Notwithstanding the limit of 3,000 gaming devices, owners of authorized horse racing tracks may also transfer, sell, license, or assign their rights to own and operate one or more gaming devices to other authorized horse racing tracks or authorized gambling establishments, but in no event shall the total number of gaming devices authorized to be operated at an authorized horse racing track exceed 3,800. The owners of gaming devices that are reallocated, or are transferred, sold, licensed, or assigned pursuant to this clause shall make the distributions required by Section 19609 of the Business and Professions Code.

(ii) For authorized gambling establishments:

(I) Authorized gambling establishments located in Los Angeles County authorized as of September 1, 2003, to operate 100 or more gaming tables shall be authorized to operate 1,700 gaming devices each; authorized gambling establishments in Los Angeles County authorized as of September 1, 2003, to operate between 14 and 99 gaming tables shall be authorized to operate 1,000 gaming devices each; and all other authorized gambling establishments shall be authorized to operate 800 gaming devices each.

(II) Licensed gambling establishments that are not authorized gambling establishments under this section shall be licensed for four gaming devices for each table authorized pursuant to the Gambling Control Act as of September 1, 2003, up to a maximum of 2,000 gaming devices in total, which they cannot operate at their gambling establishments, but may transfer, sell, or assign the rights to own or operate such gaming devices to authorized gambling establishments.

(III) In order to ensure the maximum generation of revenue for the Gaming Revenue Trust Fund, in the event the owners of an authorized gambling establishment described in subclause (I) for any reason cease to have or lose the right to operate any of the gaming devices authorized by the Gaming Revenue Act of 2004, these gaming devices shall be transferred or allocated to authorized gambling establishments pro rata according to the allocation in subclause (I). Notwithstanding the limitation on gaming devices imposed by subclause (I), authorized gambling establishments may also transfer, sell, license, or assign their rights to own and operate one or more gaming devices to other authorized gambling establishments or authorized horse racing tracks, but in no event shall the total number of gaming devices authorized to be operated at an authorized gambling establishment exceed 1,900.

(IV) In the event that the allocation of gaming devices set forth in clause (ii) exceeds 15,000, the gaming devices authorized pursuant to subclause (II) shall be reduced ratably to bring the total number of gaming devices allocated to all authorized gambling establishments to 15,000 or less.

(B) The owners of an authorized horse racing track may, in accordance with provisions of applicable law, relocate its racing meeting to another site whether or not it is an authorized horse racing track, or discontinue its racing operation. In the event they do so, however, the gaming devices authorized to be operated by them may only be operated at an authorized horse racing track or an authorized gambling establishment.

(C) In order to ensure the maximum generation of revenue for the Gaming Revenue Trust Fund, the owner or operator of an authorized horse racing track and the owner or operator of an authorized gambling establishment whose facilities are located in the same city may agree upon the maximum number of gaming devices that may be operated at each such facility, subject to approval of any such agreement by the California Gambling Control Commission, which shall make its decision of whether to approve any such agreement based upon a determination that any such agreement is in the interests of regulated gaming in the State of California. Any such agreement approved by the California Gambling Control Commission shall not exceed three years in duration.

(3) Suspension of Authorization.

The authorization to operate gaming devices and to transfer, sell, or assign rights to gaming devices pursuant to this subdivision may be suspended by the California Gambling Control Commission for failure to make the payments imposed by this subdivision within 30 days of such payments becoming due.

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(4) Prohibition on Additional Fees, Taxes, and Levies.

The payments imposed pursuant to the Gaming Revenue Act of 2004 are in lieu of any and all other fees, taxes, or levies, including, but not limited to, revenue, receipt, or personal property taxes, that may be charged or imposed, directly or indirectly, against authorized horse racing tracks or authorized gambling establishments, their patrons, gaming devices, employers, or suppliers, by the State, cities, or counties, excepting fees, taxes, or levies that were in effect and imposed prior to September 1, 2003, that applied to horse racing and controlled games with cards or tiles, or that are applied generally to commercial activities, including sales and use, income, corporate, or real property taxes. The physical expansion of gaming facilities or the operation of gaming devices authorized by the Gaming Revenue Act of 2004 shall not be considered an enlargement of gaming operations under any local ordinance related to fees, taxes, or levies.

(5) Licenses.

The owners of authorized gambling establishments and the owners of authorized horse racing tracks shall be licensed by the California Gambling Control Commission under the Gambling Control Act.

(6) Other Laws.

The Gaming Revenue Act of 2004 shall supercede any inconsistent provisions of state, city, or county law relating to gaming devices, including, but not limited to, laws regarding the transportation, manufacture, operation, sale, lease, storage, ownership, licensing, repair, or use of gaming devices authorized in this act. In order to encourage the maximum generation of revenue for the Gaming Revenue Trust Fund, the operation of gaming devices authorized pursuant to the Gaming Revenue Act of 2004 is not subject to any prohibition in state or local law now existing or hereafter enacted.

(j) Gaming Revenue Trust Fund.

(1) There is hereby established the Gaming Revenue Trust Fund in the State Treasury that shall receive all payments pursuant to the requirements of subdivisions (h) and (i).

(2) There is hereby established the board of trustees to administer the Gaming Revenue Trust Fund. The board of trustees shall be comprised of five members appointed by the Governor. Of the five members, two shall be engaged in public school education, one shall be engaged in law enforcement, one shall be engaged in fire protection, and one shall be a certified public accountant. Each member shall be a citizen of the United States and a resident of this state. No more than three of the five members shall be members of the same political party. Of the members initially appointed, two shall be appointed for a term of two years, two shall be appointed for a term of three years, and one shall be appointed for a term of four years. After the initial terms, the term of office of each member shall be four years. The Governor shall appoint the members and shall designate one member to serve as the initial chairperson. The initial chairperson shall serve as chairperson for the length of his or her term. Thereafter, the chairperson shall be selected by the board of trustees. The initial appointments shall be made within three months of the operative date of the Gaming Revenue Act of 2004. The board of trustees shall approve all transfers of moneys from the Gaming Revenue Trust Fund. The board of trustees shall engage an independent firm of certified public accountants to conduct an annual audit of all accounts and transactions of the Gaming Revenue Trust Fund.

(3) The moneys in the Gaming Revenue Trust Fund shall be distributed as follows:

(A) Not more than 1 percent of the moneys annually to the Division of Gambling Control and the California Gambling Control Commission for the cost of carrying out administrative duties pursuant to the Gaming Revenue Act of 2004, and for reimbursement of any state department or agency that provides any service pursuant to the provisions of the Gaming Revenue Act of 2004.

(B) Moneys sufficient to guarantee that each non-gaming tribe shall receive one million two hundred thousand dollars (\$1,200,000) annually from the Indian Gaming Revenue Sharing Trust Fund as codified in the Government Code. "Non-gaming tribe" shall mean a federally recognized Indian tribe which operates fewer than 350 gaming devices.

(C) Three million dollars (\$3,000,000) to be awarded annually by the board of trustees to responsible gambling programs.

(D) After the distributions required pursuant to subparagraphs (A), (B), and (C), the remaining moneys shall be distributed as follows:

(i) Fifty percent to county offices of education to provide services for abused and neglected children and children in foster care. These moneys shall be allocated to each county office of education according to each county's proportionate share of the annual statewide total of child abuse referral reports for the prior calendar year and shall be used to improve educational outcomes of abused and neglected children and children in foster care. Each county office of education shall allocate these funds to county child protective services agencies to provide these services. Funds received by each county child protective services agency shall be used for the following purposes:

(I) Out-stationing county child protective services social workers in schools.

(II) Providing appropriate caseloads to ensure that professional staff will have sufficient time to provide services necessary to improve the educational outcomes of abused and neglected children and children in foster care.

(III) Providing services to children in foster care to minimize mid-year transfers from school to school.

(IV) Hiring juvenile court workers whose responsibility it is to ensure the implementation of court orders issued by juvenile court judges affecting a foster child's educational performance.

Each county child protective services agency shall be subject to all accountability standards including student performance, enrollment, school stability, and performance measured by the percentage of children at grade level on standardized tests, as provided by state and federal law. Each county child protective services agency shall use funds received pursuant to this section in a manner that maximizes the counties' ability to obtain federal matching dollars for services to children in the child protective services system.

(ii) Thirty-five percent to local governments on a per capita basis for additional neighborhood sheriffs and police officers.

(iii) Fifteen percent to local governments on a per capita basis for additional firefighters.

(k) The Governor shall not consent, concur, or agree to the location of any tribal casinos on newly acquired land pursuant to 25 U.S.C. Sec. 2719(b)(1)(A). Further, any compact entered into by the State pursuant to 25 U.S.C. Sec. 2710(d) shall only be for class III gaming on Indian lands actually taken into trust by the United States for the benefit of an Indian tribe prior to September 1, 2003, except for land contiguous to reservations existing as of that date.

SEC. 4. Section 19609 is added to the Business and Professions Code, to read:

19609. (a) Unless otherwise defined in this chapter, the terms used in this section shall have the meaning ascribed to them in the Gaming Revenue Act of 2004 ("the act").

(b) Three-quarters of 1 percent of the net win from all gaming devices operated by, or on behalf of, owners of authorized horse racing tracks upon which a thoroughbred racing meeting was conducted in 2002 shall be distributed for thoroughbred incentive awards and shall be payable to the applicable official registering agency and thereafter distributed as provided in the California Horse Racing Law.

(c) One and one-half percent of the net win from all gaming devices operated by, or on behalf of, owners of authorized horse racing tracks upon which a thoroughbred racing meeting was conducted in 2002 shall be distributed to each of those thoroughbred racing associations and racing fairs that are not authorized horse racing tracks in the same relative proportions that such thoroughbred racing associations or racing fairs generated commissions during the preceding calendar year. A lessee of an authorized horse racing track as of the effective date of the act shall not be deemed to be an authorized horse racing track for the purposes of this section.

(d) Seventeen and three-quarters percent of the net win from all gaming devices operated by, or on behalf of, owners of authorized horse racing tracks upon which a thoroughbred racing meeting was conducted in 2002 shall be pooled ("the pooled net win") and shall be distributed in the form of purses for thoroughbred horses in accordance with the provisions of this subdivision.

(1) The pooled net win shall be allocated to thoroughbred racing associations and racing fairs throughout the State of California and shall be distributed among each of them in such manner as to equalize on an average daily basis purses for thoroughbred races other than stakes and special events. Notwithstanding the foregoing, pooled net win may be allocated to supplement purses for thoroughbred races so the thoroughbred racing associations and racing fairs may maintain

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up to their historic relative proportions between overnight races, and stakes races and special events. Increases in the aggregate amount of purses for stakes races of thoroughbred racing associations and racing fairs resulting from pooled net win contributions shall be determined in accordance with an agreement signed by all the thoroughbred racing associations and the organization responsible for negotiating thoroughbred purse agreements on behalf of thoroughbred horsemen.

(2) Notwithstanding the provisions of paragraph (1), the funds distributable to thoroughbred racing associations and racing fairs from the pooled net win shall be allocated in such a manner as to cause average daily purses for thoroughbred races, other than stakes races and special events, to be the percentages of the average daily purses for such races conducted by thoroughbred racing associations in the central and southern zone as set forth below:

(A) Ninety percent for thoroughbred racing associations in the northern zone;

(B) Sixty-five percent for a racing fair in the central zone;

(C) Fifty percent for racing fairs in the northern zone other than the Humboldt County Fair;

(D) Seven and one-half percent for the Humboldt County Fair.

(3) Notwithstanding the provisions of this subdivision to the contrary, the allocation of purses among the thoroughbred racing associations and the racing fairs may be altered upon approval of the California Horse Racing Board, in accordance with an agreement signed by all of the thoroughbred racing associations and the organization responsible for negotiating thoroughbred purse agreements on behalf of horsemen.

(4) The California Horse Racing Board shall be responsible for the oversight of the distribution of the pooled net win in accordance with the provisions of this subdivision.

(e) Eighteen and one-half percent of the net win from all gaming devices operated by owners of an authorized horse racing track upon which a quarter horse racing meeting was conducted in 2002 shall be paid to supplement purses of races conducted by a quarter horse racing association.

(f) One and four-tenths percent of the net win from gaming devices operated by owners of an authorized horse racing track described in subdivision (e) shall be paid to supplement the purses of harness races conducted by a harness racing association that conducts at least 150 days or nights of harness racing annually at the California Exposition and State Fair, and one-tenth of 1 percent of such net win shall be paid to the harness racing association described in this subdivision.

SEC. 5. Section 19805.5 is added to the Business and Professions Code, to read:

19805.5. As used in this chapter, and in the Gaming Revenue Act of 2004, "gaming device" shall mean and include a slot machine, under state law, or any class III device under the Indian Gaming Regulatory Act. The operation of a gaming device by a tribe, entity, or person authorized to operate gaming devices under the Gaming Revenue Act shall constitute controlled gaming under state law.

SEC. 6. Section 19863 of the Business and Professions Code is amended to read:

19863. A publicly traded racing association or a qualified racing association, or their successors in interest, shall be allowed to operate only one gaming gambling establishment, and the gaming gambling establishment shall be located on the same premises site as the entity's racetrack was located in 2002.

SEC. 7. Section 19985 is added to the Business and Professions Code, to read:

19985. (a) Except as provided in this section, the Gambling Control Act, including, but not limited to, the jurisdiction and powers of the division and commission to enact regulations, to enforce applicable law, to conduct background investigations, and to issue licenses and work permits, shall apply to authorized horse racing tracks, as defined in the Gaming Revenue Act, and to the operators of gaming devices thereon, including their successors in interest, in and to the same extent the Gambling Control Act applies to gambling establishments.

(b) Employees of authorized horse racing tracks who are not owners, shareholders, partners, or key employees, and whose job responsibilities do not involve controlled games, shall not be required to obtain work permits pursuant to this chapter.

SEC. 8. Section 19962 of the Business and Professions Code is amended to read:

19962. (a) On and after the effective date of this chapter, neither the governing body nor the electors of a county, city, or city and county that has not authorized legal gaming within its boundaries prior to January 1, 1996, shall authorize legal gaming.

(b) ~~Am~~ No ordinance in effect on January 1, 1996, that authorizes legal gaming within a city, county, or city and county may ~~not~~ be amended to expand gaming in that jurisdiction beyond that permitted on January 1, 1996.

(c) This section ~~shall remain operative only until January 1, 2010, and as of that date is repealed~~ is not intended to prohibit gaming authorized by the Gaming Revenue Act of 2004.

SEC. 9. Section 19963 of the Business and Professions Code is amended to read:

19963. ~~(a)~~ In addition to any other limitations on the expansion of gambling imposed by Section 19962 or any provision of this chapter, and except as provided in the Gaming Revenue Act of 2004, the commission ~~may~~ shall not issue a gambling license for a gambling establishment that was not licensed to operate on December 31, 1999, unless an application to operate that establishment was on file with the division prior to September 1, 2000.

~~(b) This section shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2010, deletes or extends that date.~~

SEC. 10. Section 19817 of the Business and Professions Code is amended to read:

19817. The commission shall establish and appoint a Gaming Policy Advisory Committee of 10 members. The committee shall be composed of representatives of controlled gambling licensees, authorized horse racing tracks under the Gaming Revenue Act, representatives of gaming tribes, and members of the general public ~~in equal numbers~~. The executive director shall, from time to time, convene the committee for the purpose of discussing matters of controlled gambling regulatory policy and any other relevant gambling-related issue. The recommendations concerning gambling policy made by the committee shall be presented to the commission, but shall be deemed advisory and not binding on the commission in the performance of its duties or functions. ~~The committee may not advise the commission on Indian gaming.~~

SEC. 11. Section 12012.6 is added to the Government Code, to read:

12012.6. (a) Notwithstanding Sections 12012.25 and 12012.5, and any other provision of law, the Governor is the designated state officer responsible for negotiating and executing, on behalf of the state, tribal-state gaming compacts with federally recognized Indian tribes located within the State of California pursuant to the federal Indian Gaming Regulatory Act of 1988 (18 U.S.C. Secs. 1166 to 1168, incl., and 25 U.S.C. Sec. 2701 et seq.) for the purpose of authorizing class III gaming, as defined in that act, on Indian lands within this state. Nothing in this section shall be construed to deny the existence of the Governor's authority to have negotiated and executed tribal-state gaming compacts prior to the effective date of this section.

(b) The Governor shall submit a copy of any executed tribal-state compact to the Secretary of State, who shall forward a copy of the executed compact to the Secretary of the Interior for his or her review and approval, in accordance with paragraph (8) of subsection (d) of Section 2710 of Title 25 of the United States Code.

SEC. 12. Section 12012.75 of the Government Code is amended to read:

12012.75. There is hereby created in the State Treasury a special fund called the "Indian Gaming Revenue Sharing Trust Fund" for the receipt and deposit of moneys derived from gaming device license fees that are paid into the fund pursuant to the terms of tribal-state gaming compacts, and moneys received from the Gaming Revenue Trust Fund, for the purpose of making distributions to noncompact tribes. Moneys in the Indian Gaming Revenue Sharing Trust Fund shall be available to the California Gambling Control Commission, upon appropriation by the Legislature, for the purpose of making distributions to noncompact tribes, in accordance with ~~distribution plans specified in the Gaming Revenue Act~~ and tribal-state gaming compacts.

SEC. 13. Section 8.3 is added to Article XVI of the California Constitution, to read:

Proposition 68 (cont.)

SEC. 8.3. (a) Funds appropriated pursuant to the Gaming Revenue Act of 2004 shall not be deemed to be part of “total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B” as that term is used in paragraphs (2) and (3) of subdivision (b) of Section 8.

(b) Revenues derived from payments made pursuant to the Gaming Revenue Act of 2004 shall not be deemed to be “General Fund revenues”, which may be appropriated pursuant to Article XIII B” as that term is used in paragraph (1) of subdivision (b) of Section 8 nor shall they be considered in the determination of “per capita General Fund revenues” as that term is used in paragraph (3) of subdivision (b) and in subdivision (e) of Section 8.

SEC. 14. Section 14 is added to Article XIII B of the California Constitution, to read:

SEC. 14. (a) For purposes of this article, “proceeds of taxes” shall not include the revenues created by the Gaming Revenue Act of 2004.

(b) For purposes of this article, “appropriations subject to limitation” of each entity of government shall not include appropriations of revenues from the Gaming Revenue Trust Fund created by the Gaming Revenue Act of 2004.

SEC. 15. Amendment

The statutory provisions of this act may be amended only by a vote of two-thirds of the membership of both houses of the Legislature. All statutory amendments to this act shall be to further the act and must be consistent with its purposes.

SEC. 16. Consistency With Other Ballot Measures

The provisions of this act are not in conflict with any initiative measure that appears on the same ballot that amends the California Constitution to authorize gaming of any kind. In the event that this act and another measure that amends the California Constitution to permit gaming of any kind are adopted at the same election, the courts are

hereby directed to reconcile their respective statutory provisions to the greatest extent possible and to give effect to every provision of both measures.

SEC. 17. Additional Funding

No moneys in the Gaming Revenue Trust Fund shall be used to supplant federal, state, or local funds used for child protective and foster care services, neighborhood sheriffs and police officers, and firefighters but shall be used exclusively to supplement the total amount of federal, state, and local funds allocated for child protective services and foster care which improve the educational outcomes of abused and neglected children and children in foster care and for additional sheriffs, police officers, and firefighters.

SEC. 18. Judicial Proceedings

In any action for declaratory or injunctive relief, or for relief by way of any extraordinary writ, wherein the construction, application, or validity of Section 3 of this act or any part thereof is called into question, a court shall not grant any temporary restraining order, preliminary or permanent injunction, or any peremptory writ of mandate, certiorari, or prohibition, or other provisional or permanent order to restrain, stay, or otherwise interfere with the operation of the act except upon a finding by the court, based on clear and convincing evidence, that the public interest will not be prejudiced thereby, and no such order shall be effective for more than 15 calendar days. A court shall not restrain any part of this act except the specific provisions that are challenged.

SEC. 19. Severability

If any provision of this act or the application thereof to any person or circumstances is held invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this act that can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this act are severable.

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This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure amends a section of the Government Code, and amends, repeals, and adds sections to the Penal Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

SECTION I. Title

(a) This measure shall be known and referred to as the DNA Fingerprint, Unsolved Crime and Innocence Protection Act.

SEC. II. Findings and Declarations of Purpose

The people of the State of California do hereby find and declare that:

(a) Our communities have a compelling interest in protecting themselves from crime.

(b) There is critical and urgent need to provide law enforcement officers and agencies with the latest scientific technology available for accurately and expeditiously identifying, apprehending, arresting, and convicting criminal offenders and exonerating persons wrongly suspected or accused of crime.

(c) Law enforcement should be able to use the DNA Database and Data Bank Program to substantially reduce the number of unsolved crimes; to help stop serial crime by quickly comparing DNA profiles of qualifying persons and evidence samples with as many investigations and cases as necessary to solve crime and apprehend perpetrators; to exonerate persons wrongly suspected or accused of crime; and to identify human remains.

(d) Expanding the statewide DNA Database and Data Bank Program is:

(1) The most reasonable and certain means to accomplish effective crime solving in California, to aid in the identification of missing and unidentified persons, and to exonerate persons wrongly suspected or

accused of crime;

(2) The most reasonable and certain means to solve crime as effectively as other states which have found that the majority of violent criminals have nonviolent criminal prior convictions, and that the majority of cold hits and criminal investigation links are missed if a DNA database or data bank is limited only to violent crimes;

(3) The most reasonable and certain means to rapidly and substantially increase the number of cold hits and criminal investigation links so that serial crime offenders may be identified, apprehended and convicted for crimes they committed in the past and prevented from committing future crimes that would jeopardize public safety and devastate lives; and

(4) The most reasonable and certain means to ensure that California’s Database and Data Bank Program is fully compatible with, and a meaningful part of, the nationwide Combined DNA Index System (CODIS).

(e) The state has a compelling interest in the accurate identification of criminal offenders, and DNA testing at the earliest stages of criminal proceedings for felony offenses will help thwart criminal perpetrators from concealing their identities and thus prevent time-consuming and expensive investigations of innocent persons.

(f) The state has a compelling interest in the accurate identification of criminal offenders, and it is reasonable to expect qualifying offenders to provide forensic DNA samples for the limited identification purposes set forth in this chapter.

(g) Expanding the statewide DNA Database and Data Bank Program is the most reasonable and certain means to ensure that persons wrongly suspected or accused of crime are quickly exonerated so that they may reestablish their standing in the community. Moreover, a person whose sample has been collected for Database and Data Bank purposes must be able to seek expungement of his or her profile from the Database and Data Bank.

SEC. III. DNA and Forensic Identification Database and Data Bank Act

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SEC. 1. Section 295 of the Penal Code is amended to read:

295. (a) This chapter shall be known and may be cited as the DNA and Forensic Identification ~~Data Base Database~~ and Data Bank Act of 1998, *as amended*.

(b) The ~~Legislature finds and declares~~ people of the State of California set forth all of the following:

(1) Deoxyribonucleic acid (DNA) and forensic identification analysis is a useful law enforcement tool for identifying and prosecuting ~~sexual and violent offenders criminal offenders and exonerating the innocent~~.

(2) It is the intent of the ~~Legislature~~ people of the State of California, in order to further the purposes of this chapter, to require DNA and forensic identification ~~databank~~ data bank samples from all persons, including juveniles, for the felony and misdemeanor offenses described in subdivision (a) of Section 296.

(3) It is necessary to enact this act defining and governing the state's DNA and forensic identification database and ~~databank~~ data bank in order to clarify existing law and to enable the state's DNA and ~~forensic identification database and databank program~~ Forensic Identification Database and Data Bank Program to become a more effective law enforcement tool.

(c) The purpose of the DNA and ~~forensic identification databank~~ Forensic Identification Database and Data Bank Program is to assist federal, state, and local criminal justice and law enforcement agencies within and outside California in the expeditious and accurate detection and prosecution of individuals responsible for sex offenses and other ~~violent~~ crimes, the exclusion of suspects who are being investigated for these crimes, and the identification of missing and unidentified persons, particularly abducted children.

(d) *Like the collection of fingerprints, the collection of DNA samples pursuant to this chapter is an administrative requirement to assist in the accurate identification of criminal offenders.*

(e) Unless otherwise requested by the Department of Justice, collection of biological samples for DNA analysis from qualifying persons under this chapter is limited to collection of inner cheek cells of the mouth (buccal swab samples).

(f) The Department of Justice DNA Laboratory may obtain through federal, state, or local law enforcement agencies blood specimens from qualifying persons as defined in subdivision (a) of Section 296, and according to procedures set forth in Section 298, when it is determined in the discretion of the Department of Justice that such specimens are necessary in a particular case or would aid the department in obtaining an accurate forensic DNA profile for identification purposes.

~~(4)~~ (g) The Department of Justice, through its DNA Laboratory, shall be responsible for the management and administration of the state's ~~DNA database and databank identification program~~ DNA and Forensic Identification Database and Data Bank Program and for liaison with the Federal Bureau of Investigation (FBI) regarding the state's participation in a national or international DNA database and data bank program such as the FBI's Combined DNA Index System (CODIS) that allows the storage and exchange of DNA records submitted by state and local forensic DNA laboratories nationwide.

~~(5)~~ (h) The Department of Justice shall be responsible for implementing this chapter.

(1) The Department of Justice DNA Laboratory, the Department of Corrections, the Board of Corrections, and the Department of the Youth Authority ~~shall~~ may adopt policies and enact regulations for the implementation of this chapter, as necessary, to give effect to the intent and purpose of this chapter, and to ensure that ~~databank~~ data bank blood specimens, ~~saliva~~ buccal swab samples, and thumb and palm print impressions ~~as required by this chapter~~ are collected from qualifying ~~offenders~~ persons in a timely manner, as soon as possible after arrest, conviction, or a plea or finding of guilty, no contest, or not guilty by reason of insanity, or upon ~~the~~ any disposition rendered in the case of a juvenile who is ~~adjudged a ward of the court~~ adjudicated under Section 602 of the Welfare and Institutions Code for commission of any of this chapter's enumerated qualifying offenses, including attempts, or when it is determined that a qualifying ~~offender~~ person has not given the required specimens, samples or print impressions. ~~The~~ Before adopting any policy or regulation implementing this chapter, the Department of Corrections, the Board of Corrections, and the Department of the Youth Authority shall ~~adopt the policies and regulations for implementing this chapter with~~ seek advice from and ~~in consultation~~ consult with the Department of Justice DNA Laboratory Director.

(2) *Given the specificity of this chapter, and except as provided in subdivision (c) of Section 298.1, any administrative bulletins, notices, regulations, policies, procedures, or guidelines adopted by the Department of Justice and its DNA Laboratory, the Department of Corrections, the Department of the Youth Authority, or the Board of Corrections for the purpose of the implementing this chapter are exempt from the provisions of the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), Chapter 4.5 (commencing with Section 11400), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.*

(3) The Department of Corrections, the Board of Corrections, and the Department of the Youth Authority shall submit copies of any of their policies and regulations with respect to this chapter to the Department of Justice DNA Laboratory Director, and ~~periodically~~ quarterly shall submit to the director written reports updating the director as to the status of their compliance with this chapter.

(4) On or before April 1 in the year following adoption of the act that added this paragraph, and quarterly thereafter, the Department of Justice DNA Laboratory shall submit a quarterly report to be published electronically on a Department of Justice website and made available for public review. The quarterly report shall state the total number of samples received, the number of samples received from the Department of Corrections, the number of samples fully analyzed for inclusion in the CODIS database, and the number of profiles uploaded into the CODIS database for the reporting period. Each quarterly report shall state the total, annual, and quarterly number of qualifying profiles in the Department of Justice DNA Laboratory data bank both from persons and case evidence, and the number of hits and investigations aided, as reported to the National DNA Index System. The quarterly report shall also confirm the laboratory's accreditation status and participation in CODIS and shall include an accounting of the funds collected, expended, and disbursed pursuant to subdivision (k).

(5) On or before April 1 in the year following adoption of the act that added this paragraph, and quarterly thereafter, the Department of Corrections shall submit a quarterly report to be published electronically on a Department of Corrections website and made available for public review. The quarterly report shall state the total number of inmates housed in state correctional facilities, including a breakdown of those housed in state prisons, camps, community correctional facilities, and other facilities such as prisoner mother facilities. Each quarterly report shall also state the total, annual, and quarterly number of inmates who have yet to provide specimens, samples and print impressions pursuant to this chapter and the number of specimens, samples and print impressions that have yet to be forwarded to the Department of Justice DNA Laboratory within 30 days of collection.

~~(4)~~ (i) (1) When the specimens, samples, and print impressions required by this chapter are collected at a county jail or other county ~~detection~~ facility, including a private community correctional facility, the county sheriff or chief administrative officer of the county jail or other ~~detection~~ facility shall be responsible for ensuring all of the following:

(A) The requisite specimens, samples, and print impressions are collected from qualifying ~~offenders~~ persons immediately following arrest, conviction, or adjudication, or during the booking or intake or reception center process at that facility, or reasonably promptly thereafter.

(B) The requisite specimens, samples, and print impressions are collected as soon as administratively practicable after a qualifying ~~offender~~ person reports to the facility for the purpose of providing specimens, samples, and print impressions.

(C) The specimens, samples, and print impressions collected pursuant to this chapter are forwarded immediately to the Department of Justice, and in compliance with department policies.

(2) The specimens, samples, and print impressions required by this chapter shall be collected by a person using a collection kit approved by the Department of Justice and in accordance with the requirements and procedures set forth in subdivision (b) of Section 298.

(3) The counties shall be reimbursed for the costs of obtaining specimens, samples, and print impressions subject to the conditions and limitations set forth by the Department of Justice policies governing reimbursement for collecting specimens, samples, and print impressions pursuant to this chapter.

(j) *The trial court may order that a portion of the costs assessed pursuant to Section 1203.1c, 1203.1e, or 1203.1m include a reason-*

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able portion of the cost of obtaining specimens, samples, and print impressions in furtherance of this chapter and the funds collected pursuant to this subdivision shall be deposited in the Department of Justice DNA Testing Fund as created by paragraph (2) of subdivision (b) of Section 290.3.

~~(g)~~ (k) Any funds appropriated by the Legislature to implement this chapter, including funds or costs ordered pursuant to subdivision (j) to reimburse counties, shall be deposited into the Department of Justice DNA Testing Fund as created by paragraph (2) of subdivision (b) of Section 290.3.

~~(h)~~ (l) The Department of Justice DNA Laboratory shall be known as the Jan Bashinski DNA Laboratory.

SEC. 2. Section 295.1 of the Penal Code is amended to read:

295.1. (a) The Department of Justice shall perform DNA analysis and other forensic identification analysis pursuant to this chapter only for identification purposes.

(b) The Department of Justice Bureau of Criminal Identification and Information shall perform examinations of palm prints pursuant to this chapter only for identification purposes.

(c) The DNA Laboratory of the Department of Justice shall serve as a repository for blood specimens and ~~saliva buccal swab~~ and other biological samples collected, and shall analyze specimens and samples, and store, compile, correlate, compare, maintain, and use DNA and forensic identification profiles and records related to the following:

- (1) Forensic casework and forensic unknowns .
- (2) Known and evidentiary specimens and samples from crime scenes or criminal investigations.
- (3) Missing or unidentified persons.
- (4) ~~Offenders~~ Persons required to provide specimens, samples, and print impressions under this chapter.

(5) Legally obtained samples.

~~(5)~~ (6) Anonymous DNA records used for training, research, statistical analysis of populations, quality assurance, or quality control.

(d) The computerized data bank and database of the DNA Laboratory of the Department of Justice shall include files as necessary to implement this chapter.

(e) Nothing in this section shall be construed as requiring the Department of Justice to provide specimens or samples for quality control or other purposes to those who request specimens or samples.

(f) Submission of samples, specimens, or profiles for the state DNA Database and Data Bank Program shall include information as required by the Department of Justice for ensuring search capabilities and compliance with National DNA Index System (NDIS) standards.

SEC. 3. Section 296 of the Penal Code is amended to read:

296. (a) The following persons shall provide buccal swab samples, right thumbprints, and a full palm print impression of each hand, and any blood specimens or other biological samples required pursuant to this chapter for law enforcement identification analysis:

~~(a)~~ (1) Any person , including any juvenile, who is convicted of or pleads guilty or no contest to any felony offense ~~any of the following crimes~~ , or is found not guilty by reason of insanity of any of the following crimes, felony offense, or any juvenile who is adjudicated under Section 602 of the Welfare and Institutions Code for committing any felony offense. ~~shall, regardless of sentence imposed or disposition rendered, be required to provide two specimens of blood, a saliva sample, right thumbprints, and a full palm print impression of each hand for law enforcement identification analysis.~~

~~(A) Any offense or attempt to commit any felony offense described in Section 290, or any felony offense that imposes upon a person the duty to register in California as a sex offender under Section 290.~~

~~(B) Murder in violation of Section 187, 190, 190.05, or any degree of murder as set forth in Chapter 1 (commencing with Section 187) of Title 8 of Part 1 of the Penal Code, or any attempt to commit murder.~~

~~(C) Voluntary manslaughter in violation of Section 192 or an attempt to commit voluntary manslaughter.~~

~~(D) Felony spousal abuse in violation of Section 273.5.~~

~~(E) Aggravated sexual assault of a child in violation of Section 269.~~

~~(F) A felony offense of assault or battery in violation of Section 217.1, 220, 241.1, 243, 243.1, 243.3, 243.4, 243.7, 244, 245, 245.2, 245.3, or 245.5.~~

~~(G) Kidnapping in violation of subdivisions (a) to (e), inclusive, of Section 207, or Section 208, 209, 209.5, or 210, or an attempt to commit any of these offenses.~~

~~(H) Mayhem in violation of Section 203 or aggravated mayhem in violation of Section 205, or an attempt to commit either of these offenses.~~

~~(I) Torture in violation of Section 206 or an attempt to commit torture.~~

~~(J) Burglary as defined in subdivision (a) of Section 460 or an attempt to commit this offense.~~

~~(K) Robbery as defined in subdivision (a) or (b) of Section 212.5 or an attempt to commit either of these offenses.~~

~~(L) Arson in violation of subdivision (a) or (b) of Section 451 or an attempt to commit either of these offenses.~~

~~(M) Carjacking in violation of Section 215 or an attempt to commit this offense.~~

~~(N) Terrorist activity in violation of Section 11418 or 11419, or a felony violation of Section 11418.5, or an attempt to commit any of these offenses.~~

(2) Any adult person who is arrested for or charged with any of the following felony offenses:

(A) Any felony offense specified in Section 290 or attempt to commit any felony offense described in Section 290, or any felony offense that imposes upon a person the duty to register in California as a sex offender under Section 290.

(B) Murder or voluntary manslaughter or any attempt to commit murder or voluntary manslaughter.

(C) Commencing on January 1 of the fifth year following enactment of the act that added this subparagraph, as amended, any adult person arrested or charged with any felony offense.

~~(2)~~ (3) Any person , including any juvenile, who is required to register under Section 290 or 457.1 because of the commission of, or the attempt to commit, a felony or misdemeanor offense ~~specified in Section 290~~ , or any person, including any juvenile, who is housed in a mental health facility or sex offender treatment program after referral to such facility or program by a court after being charged with any felony offense and who is committed to any institution under the jurisdiction of the Department of the Youth Authority where he or she was confined, or is granted probation, or is or was committed to a state hospital as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, shall be required to provide two specimens of blood, a saliva sample, right thumbprints, and a full palm print impression of each hand to that institution or, in the case of a person granted probation, to a person and at a location within the county designated for testing .

(4) The term “felony” as used in this subdivision includes an attempt to commit the offense.

(5) Nothing in this chapter shall be construed as prohibiting collection and analysis of specimens, samples, or print impressions as a condition of a plea for a non-qualifying offense.

(b) The provisions of this chapter and its requirements for submission of specimens, samples and print impressions as soon as administratively practicable shall apply to all qualifying persons regardless of sentence imposed, including any sentence of death, life without the possibility of parole, or any life or indeterminate term, or any other disposition rendered in the case of an adult or juvenile tried as an adult, or whether the person is diverted, fined, or referred for evaluation, and regardless of disposition rendered or placement made in the case of juvenile who is found to have committed any felony offense or is adjudicated under Section 602 of the Welfare and Institutions Code.

~~(b)~~ (c) The provisions of this chapter and its requirements for submission to testing of specimens, samples, and print impressions as soon as administratively practicable to provide specimens, samples, and print impressions by qualified persons as described in subdivision (a) shall apply regardless of placement or confinement in any mental hospital or other public or private treatment facility, and shall include, but not be limited to, the following persons, including juveniles:

(1) Any person committed to a state hospital or other treatment facility as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(2) Any person who has a severe mental disorder as set forth within the provisions of Article 4 (commencing with Section 2960) of Chapter 7 of Title 1 of Part 3 of the Penal Code.

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(3) Any person found to be a sexually violent predator pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

~~(d) The provisions of this chapter are mandatory and apply whether or not the court advises a person, including any juvenile, that he or she must provide the databank data bank and database specimens, samples, and print impressions as a condition of probation, parole, or any plea of guilty, no contest, or not guilty by reason of insanity, or any admission to any of the offenses described in subdivision (a).~~

~~(d) At sentencing or disposition, the prosecuting attorney shall verify in writing that the requisite samples are required by law, and that they have been taken, or are scheduled to be taken before the offender is released on probation, or other scheduled release. However, a failure by the prosecuting attorney or any other law enforcement agency to verify sample requirement or collection shall not relieve a person of the requirement to provide samples.~~

(e) If at any stage of court proceedings the prosecuting attorney determines that specimens, samples, and print impressions required by this chapter have not already been taken from any person, as defined under subdivision (a) of Section 296, the prosecuting attorney shall notify the court orally on the record, or in writing, and request that the court order collection of the specimens, samples, and print impressions required by law. However, a failure by the prosecuting attorney or any other law enforcement agency to notify the court shall not relieve a person of the obligation to provide specimens, samples, and print impressions pursuant to this chapter.

~~(f) Prior to final disposition or sentencing in the case the court shall inquire and verify that the specimens, samples, and print impressions required by this chapter have been obtained and that this fact is included in the abstract of judgment or dispositional order in the case of a juvenile. The abstract of judgment issued by the court shall indicate that the court has ordered the person to comply with the requirements of this chapter and that the person shall be included in the state's DNA and Forensic Identification Data Base and Data Bank program and be subject to this chapter.~~

However, failure by the court to verify specimen, sample, and print impression collection or enter these facts in the abstract of judgment or dispositional order in the case of a juvenile shall not invalidate an arrest, plea, conviction, or disposition, or otherwise relieve a person from the requirements of this chapter.

SEC. 4. Section 296.1 of the Penal Code is amended to read:

296.1. (a) The specimens, samples, and print impressions required by this chapter shall be collected from persons described in subdivision (a) of Section 296 for present and past qualifying offenses of record as follows:

(1) Collection from any adult person following arrest for a felony offense as specified in subparagraphs (A), (B), and (C) of paragraph (2) of subdivision (a) of Section 296:

(A) Each adult person arrested for a felony offense as specified in subparagraphs (A), (B), and (C) of paragraph (2) of subdivision (a) of Section 296 shall provide the buccal swab samples and thumb and palm print impressions and any blood or other specimens required pursuant to this chapter immediately following arrest, or during the booking or intake or reception center process or as soon as administratively practicable after arrest, but, in any case, prior to release on bail or pending trial or any physical release from confinement or custody:

(B) If the person subject to this chapter did not have specimens, samples, and print impressions taken immediately following arrest or during booking or intake procedures or is released on bail or pending trial or is not confined or incarcerated at the time of sentencing or otherwise bypasses a prison inmate reception center maintained by the Department of Corrections, the court shall order the person to report within five calendar days to a county jail facility or to a city, state, local, private, or other designated facility to provide the required specimens, samples, and print impressions in accordance with subdivision (i) of Section 295.

(2) Collection from persons confined or in custody after conviction or adjudication:

(A) Any person, including any juvenile who is imprisoned or confined or placed in a state correctional institution, a county jail, a facility within the jurisdiction of the Department of the Youth Authority, the Board of Corrections, a residential treatment program, or any state, local, city, private, or other facility after a conviction of any felony or

misdemeanor offense, or any adjudication 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 buccal swab samples and thumb and palm print impressions and any blood or other specimens required pursuant to this chapter, immediately at intake, or during the prison reception center process, or as soon as administratively practicable at the appropriate custodial or receiving institution or placed in program if:

(i) The person has a record of any past or present conviction or adjudication as a ward of the court in California of a qualifying offense described in subdivision (a) of Section 296 or has a record of any past or present conviction or adjudication in any other court, including any state, federal, or military court, of any offense that, if committed or attempted in this state, would have been punishable as an offense described in subdivision (a) of Section 296; and

(ii) The person's blood specimens, buccal swab samples, and thumb and palm print impressions authorized by this chapter are not in the possession of the Department of Justice DNA Laboratory or have not been recorded as part of the department's DNA data bank program.

(3) Collection from persons on probation, parole, or other release:

(A) Any person, including any juvenile, who has a record of any past or present conviction or adjudication for an offense set forth in subdivision (a) of Section 296, and who is on probation or parole for any felony or misdemeanor offense, whether or not that crime or offense is one set forth in subdivision (a) of Section 296, shall provide buccal swab samples and thumb and palm print impressions and any blood specimens required pursuant to this chapter, if:

(i) The person has a record of any past or present conviction or adjudication as a ward of the court in California of a qualifying offense described in subdivision (a) of Section 296 or has a record of any past or present conviction or adjudication in any other court, including any state, federal, or military court, of any offense that, if committed or attempted in this state, would have been punishable as an offense described in subdivision (a) of Section 296; and

(ii) The person's blood specimens, buccal swab samples, and thumb and palm print impressions authorized by this chapter are not in the possession of the Department of Justice DNA Laboratory or have not been recorded as part of the department's DNA data bank program.

(B) The person shall have any required specimens, samples, and print impressions collected within five calendar days of being notified by the court, or 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 (i) of Section 295 at a county jail facility or a city, state, local, private, or other facility designated for this collection.

(4) Collection from parole violators and others returned to custody:

(A) If a person, including any juvenile, who has been released on parole, furlough, or other release for any offense or crime, whether or not set forth in subdivision (a) of Section 296, is returned to a state correctional or other institution for a violation of a condition of his or her parole, furlough, or other release, or for any other reason, that person shall provide buccal swab samples and thumb and palm print impressions and any blood or other specimens required pursuant to this chapter, at a state correctional or other receiving institution, if:

(i) The person has a record of any past or present conviction or adjudication as a ward of the court in California of a qualifying offense described in subdivision (a) of Section 296 or has a record of any past or present conviction or adjudication in any other court, including any state, federal, or military court, of any offense that, if committed or attempted in this state, would have been punishable as an offense described in subdivision (a) of Section 296; and

(ii) The person's blood specimens, buccal swab samples, and thumb and palm print impressions authorized by this chapter are not in the possession of the Department of Justice DNA Laboratory or have not been recorded as part of the department's DNA data bank program.

(5) Collection from persons accepted into California from other jurisdictions:

(A) 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 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

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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, buccal swab samples, and palm and thumb print impressions pursuant to this chapter, if the offender has a record of any past or present conviction or adjudication in California of a qualifying offense described in subdivision (a) of Section 296 or has a record of any past or present conviction or adjudication or had a disposition rendered in any other court, including any state, federal, or military court, of any offense that, if committed or attempted in this state, would have been punishable as an offense described in subdivision (a) of Section 296.

(B) 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 person reports to the supervising agent or within five calendar days of notice to the person, 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 (i) of Section 295.

(C) If the person is confined, he or she shall provide the blood specimens, buccal swab samples, and thumb and palm print impressions required by this chapter as soon as practicable after his or her receipt in a state, county, city, local, private, or other designated facility.

(6) Collection from persons in federal institutions:

(A) Subject to the approval of the Director of the FBI, persons confined or incarcerated in a federal prison or federal institution who have a record of any past or present conviction or juvenile adjudication for 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, buccal swab samples, and thumb and palm print impressions pursuant to this chapter if any of the following apply:

(i) The person committed a qualifying offense in California.

(ii) The person was resident of California at the time of the qualifying offense.

(iii) The person has any record of a California conviction for an offense described in subdivision (a) of Section 296, regardless of when the crime was committed.

(iv) The person will be released in California.

(B) The Department of Justice DNA Laboratory shall, upon the request of the United States Department of Justice, forward portions of the specimens or samples, taken pursuant to this chapter, to the United States Department of Justice DNA data bank laboratory. The specimens and samples required by this chapter shall be taken in accordance with the procedures set forth in subdivision (i) of Section 295. The Department of Justice DNA Laboratory is authorized to analyze and upload specimens and samples collected pursuant to this section upon approval of the Director of the FBI.

(b) Retroactive application of paragraphs (1), (2), (3), (4), (5), and (6) of subdivision (a).

(1) Subdivision (a) and all of its paragraphs shall have retroactive application. Collection shall occur pursuant to paragraphs (1), (2), (3), (4), (5), and (6) of subdivision (a) regardless of when the crime charged or committed became a qualifying offense pursuant to this chapter, and 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 pursuant to the United States Code of Military Justice, 10 U.S.C., Sections 801 and following, 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.

(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 or adjudicated a ward of the court in California of a qualifying offense described in subdivision (a) of Section 296 or has been convicted or had a disposition rendered in any other court, including any state, federal, or military court, of any offense that, if committed or attempted in this state, would have been punishable as 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) of Chapter 2 of Title 1 of Part 4 of this code, or Chapter 4 (commencing with Section 1200) 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 would qualify as a crime described in subdivision (a) of Section 296, or if the person was con-

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violated 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, with the exception of those taken from suspects pursuant to subdivision (b) of Section 297, 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. 5. Section 297 of the Penal Code is amended to read:

297. (a) (1) The laboratories of the Department of Justice that are accredited by the American Society of Crime Laboratory Directors Laboratory Accreditation Board (ASCLD/LAB) or any certifying body approved by the ASCLD/LAB, and any law enforcement crime laboratory designated by the Department of Justice that is accredited by the ASCLD/LAB or any certifying body approved by the ASCLD/LAB, are authorized to analyze crime scene samples and other samples of known and unknown origin and to compare and check the forensic identification profiles, including DNA profiles, of these samples against available DNA and forensic identification data banks and data bases databases in order to establish identity and origin of samples for identification purposes.

(2) Laboratories, including law enforcement laboratories, that are accredited by ASCLD/LAB or any certifying body approved by the ASCLD/LAB that contract with the Department of Justice pursuant to Section 298.3 are authorized to perform anonymous analysis of specimens and samples for forensic identification as provided in this chapter.

(b) (1) Except as provided in paragraph (2), a biological sample taken in the course of a criminal investigation, either voluntarily or by court order, from a person who has not been convicted, may only be compared to samples taken from that specific criminal investigation and may not be compared to any other samples from any other criminal investigation without a court order.

(2) A biological sample obtained from a suspect, as defined in paragraph (3), in a criminal investigation may be analyzed for forensic identification profiles, including DNA profiles so that the profile can be placed in a suspect data base file and searched against the DNA data bank profiles of case evidence. For the purposes of this subdivision, the DNA data bank comparison of suspect and evidence profiles may be made, by the DNA Laboratory of the Department of Justice, or any crime laboratory designated by the Department of Justice that is accredited by the ASCLD/LAB or any certifying body approved by the ASCLD/LAB.

(3) For the purposes of this subdivision, "a suspect" means a person against whom an information or indictment has been filed for one of the crimes listed in subdivision (a) of Section 296. For the purposes of this subdivision, a person shall remain a suspect for two years from the date of the filing of the information or indictment or until the DNA laboratory receives notification that the person has been acquitted of the charges or the charges were dismissed.

(b) (1) A biological sample obtained from a suspect in a criminal investigation for the commission of any crime may be analyzed for forensic identification profiles, including DNA profiles, by the DNA Laboratory of the Department of Justice or any law enforcement crime laboratory accredited by the ASCLD/LAB or any certifying body approved by the ASCLD/LAB and then compared by the Department of Justice in and between as many cases and investigations as necessary, and searched against the forensic identification profiles, including DNA profiles, stored in the files of the Department of Justice DNA data bank or database or any available data banks or databases as part of the Department of Justice DNA Database and Data Bank Program.

(2) The law enforcement investigating agency submitting a specimen, sample, or print impression to the DNA Laboratory of the Department of Justice or law enforcement crime laboratory pursuant to this section shall inform the Department of Justice DNA Laboratory within two years whether the person remains a suspect in a criminal investigation. Upon written notification from a law enforcement agency that a person is no longer a suspect in a criminal investigation, the Department of Justice DNA Laboratory shall remove the suspect sample from its data bank files. However, any identification, warrant, arrest, or prosecution based upon a data bank or database match shall not be invalidated or dismissed due to a failure to purge or delay in purging records.

(c) All laboratories, including the Department of Justice DNA laboratories, contributing DNA profiles for inclusion in California's DNA Data Bank shall be accredited by the ASCLD/LAB or any certifying body approved by the ASCLD/LAB. Additionally, each laboratory shall submit to the Department of Justice for review the annual report required by the ASCLD/LAB or any certifying body approved by the ASCLD/LAB which documents the laboratory's adherence to ASCLD/LAB standards or the standards of any certifying body approved by the ASCLD/LAB. The requirements of this subdivision apply to California laboratories only and do not preclude DNA profiles developed in California from being searched in the National DNA Data Base Database or Data Bank (CODIS).

(d) Nothing in this section precludes local law enforcement DNA laboratories meeting Technical Working Group on DNA Analysis Methods (TWGDAM) or Scientific Working Group on DNA Analysis Methods (SWGDM) guidelines or standards promulgated by the DNA Advisory Board as established pursuant to Section 14131 of Title 42 of the United States Code, from maintaining local forensic databases and data banks or performing forensic identification analyses, including DNA profiling, independent of independently from the Department of Justice DNA and Forensic Identification Data Base and Data Bank program Program.

(e) The limitation on the types of offenses set forth in subdivision (a) of Section 296 as subject to the collection and testing procedures of this chapter is for the purpose of facilitating the administration of this chapter by the Department of Justice, and shall not be considered cause for dismissing an investigation or prosecution or reversing a verdict or disposition.

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(f) The detention, arrest, wardship, *adjudication*, or conviction of a person based upon a data bank match or ~~data-base~~ database information is not invalidated if it is ~~later~~ determined that the specimens, samples, or print impressions were obtained or placed or *retained* in a data bank or ~~data-base~~ database by mistake.

SEC. 6. Section 298 of the Penal Code is amended to read:

298. (a) The Director of Corrections, or the Chief Administrative Officer of the detention facility, jail, or other facility at which the blood specimens, ~~saliva~~ buccal swab samples, and thumb and palm print impressions were collected shall cause these specimens, samples, and print impressions to be forwarded promptly to the Department of Justice. The specimens, samples, and print impressions shall be collected by a person using a Department of Justice approved collection kit and in accordance with the requirements and procedures set forth in subdivision (b).

(b) (1) The Department of Justice shall provide all blood specimen vials, buccal swab collectors, mailing tubes, labels, and instructions for the collection of the blood specimens, ~~saliva~~ buccal swab samples, and thumbprints. The specimens, samples, and thumbprints shall thereafter be forwarded to the DNA Laboratory of the Department of Justice for analysis of DNA and other forensic identification markers.

Additionally, the Department of Justice shall provide all full palm print cards, mailing envelopes, and instructions for the collection of full palm prints. The full palm prints, on a form prescribed by the Department of Justice, shall thereafter be forwarded to the Department of Justice for maintenance in a file for identification purposes.

(2) The withdrawal of blood shall be performed in a medically approved manner. Only health care providers trained and certified to draw blood may withdraw the blood specimens for purposes of this section.

(3) Buccal swab samples may be procured by law enforcement or corrections personnel or other individuals trained to assist in buccal swab collection.

~~(4)~~ (4) Right thumbprints and a full palm print impression of each hand shall be taken on forms prescribed by the Department of Justice. The palm print forms shall be forwarded to and maintained by the Bureau of Criminal Identification and Information of the Department of Justice. Right thumbprints also shall be taken at the time of the ~~withdrawal~~ collection of blood samples and specimens and shall be placed on the sample and specimen containers and forms as directed by the Department of Justice and the blood vial label. The blood vial samples, specimens, and forms and thumbprint forms shall be forwarded to and maintained by the DNA Laboratory of the Department of Justice.

(5) The law enforcement or custodial agency collecting specimens, samples, or print impressions is responsible for confirming that the person qualifies for entry into the Department of Justice DNA Database and Data Bank Program prior to collecting the specimens, samples, or print impressions pursuant to this chapter.

~~(6)~~ (6) The DNA Laboratory of the Department of Justice is responsible for establishing procedures for entering data bank and ~~data-base~~ database information. ~~The DNA laboratory procedures shall confirm that the offender qualifies for entry into the DNA data bank prior to actual entry of the information in to the DNA data bank.~~

(c) (1) Persons authorized to draw blood or obtain samples or print impressions under this chapter for the data bank or ~~data-base~~ database shall not be civilly or criminally liable either for withdrawing blood when done in accordance with medically accepted procedures, or for obtaining ~~saliva~~ buccal swab samples by scraping inner cheek cells of the mouth, or thumb or palm print impressions when performed in accordance with standard professional practices.

(2) There is no civil or criminal cause of action against any law enforcement agency or the Department of Justice, or any employee thereof, for a mistake in confirming a person's or sample's qualifying status for inclusion within the database or data bank or in placing an entry in a data bank or a ~~data-base~~ database.

(3) The failure of the Department of Justice or local law enforcement to comply with Article 4 or any other provision of this chapter shall not invalidate an arrest, plea, conviction, or disposition.

SEC. 7. Section 298.2 is added to the Penal Code, to read:

298.2. (a) Any person who is required to submit a specimen sample or print impression pursuant to this chapter who engages or attempts to engage in any of the following acts is guilty of a felony punishable by imprisonment in the state prison for two, three, or four years:

(1) Knowingly facilitates the collection of a wrongfully attributed blood specimen, buccal swab sample, or thumb or palm print impression, with the intent that a government agent or employee be deceived as to the origin of a DNA profile or as to any identification information associated with a specimen, sample, or print impression required for submission pursuant to this chapter.

(2) Knowingly tampers with any specimen, sample, print, or the collection container for any specimen or sample, with the intent that any government agent or employee be deceived as to the identity of the person to whom the specimen, sample, or print relates.

SEC. 8. Section 298.3 is added to the Penal Code, to read:

298.3. (a) To ensure expeditious and economical processing of offender specimens and samples for inclusion in the FBI's CODIS System and the state's DNA Database and Data Bank Program, the Department of Justice DNA Laboratory is authorized to contract with other laboratories, whether public or private, including law enforcement laboratories, that have the capability of fully analyzing offender specimens or samples within 60 days of receipt, for the anonymous analysis of specimens and samples for forensic identification testing as provided in this chapter and in accordance with the quality assurance requirement established by CODIS and ASCLD/LAB.

(b) Contingent upon the availability of sufficient funds in the state's DNA Identification Fund established pursuant to Section 76104.6, the Department of Justice DNA Laboratory shall immediately contract with other laboratories, whether public or private, including law enforcement laboratories, for the anonymous analysis of offender reference specimens or samples and any arrestee reference specimens or samples collected pursuant to subdivision (a) of Section 296 for forensic identification testing as provided in subdivision (a) of this section and in accordance with the quality assurance requirements established by CODIS and ASCLD/LAB for any specimens or samples that are not fully analyzed and uploaded into the CODIS database within six months of the receipt of the reference specimens or samples by the Department of Justice DNA Laboratory.

SEC. 9. Section 299 of the Penal Code is amended to read:

299. ~~(a) A person whose DNA profile has been included in the data bank pursuant to this chapter shall have his or her information and materials expunged from the data bank when the underlying conviction or disposition serving as the basis for including the DNA profile has been reversed and the case dismissed, the defendant has been found factually innocent of the underlying offense pursuant to Section 851.8, the defendant has been found not guilty, or the defendant has been acquitted of the underlying offense. The court issuing the reversal, dismissal, or acquittal shall order the expungement and shall send a copy of that order to the Department of Justice DNA Laboratory Director. Upon receipt of the court order, the Department of Justice shall expunge all identifiable information in the data bank and any criminal identification records pertaining to the person.~~

(a) A person whose DNA profile has been included in the data bank pursuant to this chapter shall have his or her DNA specimen and sample destroyed and searchable database profile expunged from the data bank program pursuant to the procedures set forth in subdivision (b) if the person has no past or present offense or pending charge which qualifies that person for inclusion within the state's DNA and Forensic Identification Database and Data Bank Program and there otherwise is no legal basis for retaining the specimen or sample or searchable profile.

~~(b) (1) A person whose DNA profile has been included in a data bank pursuant to this chapter. Pursuant to subdivision (a), a person who has no past or present qualifying offense, and for whom there otherwise is no legal basis for retaining the specimen or sample or searchable profile, may make a written request to expunge information and materials from the data bank.~~ (b) (1) A person whose DNA profile has been included in a data bank pursuant to this chapter shall have his or her specimen and sample destroyed and searchable database profile expunged from the data bank program if:

(1) Following arrest, no accusatory pleading has been filed within the applicable period allowed by law charging the person with a qualifying offense as set forth in subdivision (a) of Section 296 or if the charges which served as the basis for including the DNA profile in the state's DNA Database and Data Bank Identification Program have been dismissed prior to adjudication by a trier of fact;

(2) The underlying conviction or disposition serving as the basis for including the DNA profile has been reversed and the case dismissed;

(3) The person has been found factually innocent of the underlying offense pursuant to Section 851.8, or Section 781.5 of the Welfare and Institutions Code; or

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(c) (1) The person requesting the data bank entry to be expunged

(2) Except as provided below, the Department of Justice shall ~~destroy a specimen and sample and expunge the searchable DNA database profile of all identifiable information in the data bank and any criminal identification records~~ pertaining to the person *who has no present or past qualifying offense of record* upon receipt of a court order that verifies the applicant has made the necessary showing at a noticed hearing, and that includes all of the following:

(B) A certified copy of the court order reversing and dismissing the conviction *or case*, or a letter from the district attorney certifying that *no accusatory pleading has been filed or the charges which served as the basis for collecting a DNA specimen and sample have been dismissed prior to adjudication by a trier of fact*, the defendant has been found factually innocent, the defendant has been found not guilty, the defendant has been acquitted of the underlying offense, or the underlying conviction has been reversed and the case dismissed.

(D) A court order verifying that no retrial or appeal of the case is pending, that it has been at least 180 days since the defendant *or minor* has notified the prosecuting attorney and the Department of Justice of the expungement request, and that the court has not received an objection from the Department of Justice or the prosecuting attorney.

The Department of Justice is not required to destroy an ~~an autoradiograph~~ *analytical data* or other ~~item~~ *items* obtained from a blood specimen *or saliva, or buccal swab sample*, if evidence relating to another person subject to the provisions of this chapter would thereby be destroyed *or otherwise compromised*.

(d) The Department of Justice DNA Laboratory shall periodically review its files to determine whether its files contain DNA reference sample profiles from suspects as defined in subdivision (b) of Section 297 who are no longer eligible for inclusion in the data bank. The DNA profiles and samples stored in the suspect data base from a person who is a suspect in a criminal investigation shall be purged within two years of the date of the filing of the information or indictment or when the DNA laboratory receives notice that the suspect was acquitted or the charges against the suspect were dismissed, whichever occurs earlier. The notice shall include a certified copy of the court order dismissing the information or indictment, a certified copy of the defendant's fingerprints and the defendant's CH number.

(f) Notwithstanding any other provision of law, including Sections 17, 1203.4, and 1203.4a, a judge is not authorized to relieve a person of the separate administrative duty to provide specimens, samples, or print impressions required by this chapter if a person has been found guilty or was adjudicated a ward of the court by a trier of fact of

SEC. 10. Section 299.5 of the Penal Code is amended to read:

(b) All evidence and forensic samples containing biological material retained by the Department of Justice DNA Laboratory or other state law enforcement agency are exempt from any law requiring disclosure of information to the public or the return of biological specimens, *samples, or print impressions*.

(d) The DNA and other forensic identification information retained by the Department of Justice pursuant to this chapter shall not be included in the state summary criminal history information. However, nothing in this chapter precludes law enforcement personnel from entering into a person's criminal history information or offender file maintained by the Department of Justice, the fact that the specimens, samples, and print impressions required by this chapter have or have not been collected from that person.

The full palm prints of each hand shall be filed and maintained by the Automated Latent Print Section of the Bureau of Criminal Identification and Information of the Department of Justice, and may be included in the state summary criminal history information.

(g) A defendant's DNA and other forensic identification information developed pursuant to this chapter shall be available to his or her defense counsel upon court order made pursuant to Chapter 10 (commencing with Section 1054) of Title 6 of Part 2.

~~(e)~~ (i) (1) (A) Any person who knowingly uses an offender *specimen*, sample, or DNA profile *collected pursuant to this chapter* for other than criminal identification or exclusion purposes, *or for other than the identification of missing persons*, or who knowingly discloses DNA or other forensic identification information developed pursuant to this section to an unauthorized individual or agency, for other than criminal identification or exclusion purposes, *or for the identification of missing persons*, in violation of this chapter, shall be punished by imprisonment in a county jail not exceeding one year or by imprisonment in the state prison.

(B) Any person who, for the purpose of financial gain, knowingly uses ~~an offender~~ *a specimen, sample, or DNA profile collected pursuant to this chapter* for other than criminal identification or exclusion purposes ~~or for the identification of missing persons or who, for the purpose of financial gain, knowingly discloses DNA or other forensic iden-~~

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tification information developed pursuant to this section to an unauthorized individual or agency, for other than criminal identification or exclusion purposes or for other than the identification of missing persons, in violation of this chapter, shall, in addition to the penalty provided in subparagraph (A), be punished by a criminal fine in an amount three times that of any financial gain received or ten thousand dollars (\$10,000), whichever is greater.

(2) (A) If any employee of the Department of Justice knowingly uses ~~an offender~~ a specimen, sample, or DNA profile collected pursuant to this chapter for other than criminal identification or exclusion purposes, or knowingly discloses DNA or other forensic identification information developed pursuant to this section to an unauthorized individual or agency, for other than criminal identification or exclusion purposes or for other than the identification of missing persons, in violation of this chapter, the department shall be liable in civil damages to the donor of the DNA identification information in the amount of five thousand dollars (\$5,000) for each violation, plus attorney's fees and costs. In the event of multiple disclosures, the total damages available to the donor of the DNA is limited to fifty thousand dollars (\$50,000) plus attorney's fees and costs.

(B) (i) Notwithstanding any other law, this shall be the sole and exclusive remedy against the Department of Justice and its employees available to the donor of the DNA.

(ii) The Department of Justice employee disclosing DNA identification information in violation of this chapter shall be absolutely immune from civil liability under this or any other law.

(3) It is not a violation of this section for a law enforcement agency in its discretion to publicly disclose the fact of a DNA profile match, or the name of the person identified by the DNA match when this match is the basis of law enforcement's investigation, arrest, or prosecution of a particular person, or the identification of a missing or abducted person.

~~(4)~~ (j) It is not a violation of this chapter to furnish DNA or other forensic identification information of the defendant to his or her defense counsel for criminal defense purposes in compliance with discovery.

~~(5)~~ (k) It is not a violation of this section for law enforcement to release DNA and other forensic identification information developed pursuant to this chapter to a jury or grand jury, or in a document filed with a court or administrative agency, or as part of a judicial or administrative proceeding, or for this information to become part of the public transcript or record of proceedings when, in the discretion of law enforcement, disclosure is necessary because the DNA information pertains to the basis for law enforcement's identification, arrest, investigation, prosecution, or exclusion of a particular person related to the case.

~~(6)~~ (l) It is not a violation of this section to include information obtained from a file in a transcript or record of a judicial proceeding, or in any other public record when the inclusion of the information in the public record is authorized by a court, statute, or decisional law.

~~(7)~~ (m) It is not a violation of this section for the DNA Laboratory of the Department of Justice, or an organization retained as an agent of the Department of Justice, or a local public laboratory to use anonymous DNA records or criminal history information obtained pursuant to this chapter for training, research, statistical analysis of populations, or quality assurance or quality control.

~~(8)~~ It is not a violation of this section to disseminate statistical or research information obtained from the offender's file, the computerized databank system, any of the DNA laboratory's databases, or the full palm print file, provided that the subject of the file is not identified and cannot be identified from the information disclosed. All requests for statistical or research information obtained from the DNA databank shall be cataloged by the Department of Justice. Commencing January 1, 2000, the department shall submit an annual letter to the Legislature including, with respect to each request, the requester's name or agency, the purpose of the request, whether the request is related to a criminal investigation or court proceeding, whether the request was granted or denied, any reasons for denial, costs incurred or estimates of the cost of the request, and the date of the request.

~~(9)~~ (n) The Department of Justice shall make public the methodology and procedures to be used in its DNA program prior to the commencement of DNA testing in its laboratories. The Department of Justice shall review and consider on an ongoing basis the findings and results of any peer review and validation studies submitted to the department by members of the relevant scientific community experienced in

the use of DNA technology. This material shall be available to criminal defense counsel upon court order made pursuant to Chapter 10 (commencing with Section 1054) of Title 6 of Part 2.

~~(10)~~ (o) In order to maintain the computer system security of the Department of Justice DNA and forensic identification database and databank program Forensic Identification Database and Data Bank Program, the computer software and database structures used by the DNA Laboratory of the Department of Justice to implement this chapter are confidential.

~~(11)~~ Nothing in this section shall preclude a court from ordering discovery pursuant to Chapter 10 (commencing with Section 1054) of Title 6 of Part 2.

SEC. 11. Section 299.6 of the Penal Code is amended to read:

299.6. (a) Nothing in this chapter shall prohibit the Department of Justice, in its sole discretion, from the sharing or disseminating of population data base database or data bank information, DNA profile or forensic identification database or data bank information, analytical data and results generated for forensic identification database and data bank purposes, or protocol and forensic DNA analysis methods and quality assurance or quality control procedures with any of the following:

(1) Federal, state, or local law enforcement agencies.

(2) Crime laboratories, whether public or private, that serve federal, state, and local law enforcement agencies that have been approved by the Department of Justice.

(3) The attorney general's office of any state.

(4) Any state or federally authorized auditing agent or board that inspects or reviews the work of the Department of Justice DNA Laboratory for the purpose of ensuring that the laboratory meets ASCLD/LAB and FBI standards for accreditation and quality assurance standards necessary under this chapter and for the state's participation in CODIS and other national or international crime-solving networks.

~~(5)~~ (5) Any third party that the Department of Justice deems necessary to assist the department's crime laboratory with statistical analyses of the population data base databases, or the analyses of forensic protocol, research methods, or quality control procedures, or to assist in the recovery or identification of human remains for humanitarian purposes, including identification of missing persons.

~~(6)~~ Nothing in this chapter shall prohibit the sharing or disseminating of protocol and forensic DNA analysis methods and quality control procedures with any of the following:

~~(1)~~ Federal, state, or local law enforcement agencies.

~~(2)~~ Crime laboratories, whether public or private, that serve federal, state, and local law enforcement agencies that have been approved by the Department of Justice.

~~(3)~~ The attorney general's office of any state.

~~(4)~~ Any third party that the Department of Justice deems necessary to assist the department's crime laboratory with analyses of forensic protocol, research methods, or quality control procedures.

~~(5)~~ (b) The population data base databases and data bank banks of the DNA Laboratory of the Department of Justice may be made available to and searched by the FBI and any other agency participating in the FBI's CODIS System or any other national or international law enforcement database or data bank system.

~~(6)~~ (c) The Department of Justice may provide portions of the biological samples including blood specimens and, saliva samples, and buccal swab samples collected pursuant to this chapter to local public law enforcement DNA laboratories for identification purposes provided that the privacy provisions of this section are followed by the local public law enforcement laboratory and if each of the following conditions is met:

(1) The procedures used by the local public DNA laboratory for the handling of specimens and samples and the disclosure of results are the same as those established by the Department of Justice pursuant to Sections 297, 298, and 299.5.

(2) The methodologies and procedures used by the local public DNA laboratory for DNA or forensic identification analysis are compatible with those established used by the Department of Justice pursuant to subdivision (i) of Section 299.5, or otherwise are determined by the Department of Justice to be valid and appropriate for identification purposes.

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(3) Only tests of value to law enforcement for identification purposes are performed and a copy of the results of the analysis are sent to the Department of Justice.

(4) All provisions of this section concerning privacy and security are followed.

(5) The local public law enforcement DNA laboratory assumes all costs of securing the specimens and samples and provides appropriate tubes, labels, and ~~instructions~~ materials necessary to secure the specimens and samples.

~~(d) Any local DNA laboratory that produces DNA profiles of known reference samples for inclusion within the permanent files of the state's DNA Data Bank program shall comply with and be subject to all of the rules, regulations, and restrictions of this chapter and shall follow the policies of the DNA Laboratory of the Department of Justice.~~

SEC. 12. Section 300 of the Penal Code is amended to read:

300. Nothing in this chapter shall limit or abrogate any existing authority of law enforcement officers to take, maintain, store, and utilize DNA or forensic identification markers, blood specimens, buccal swab samples, saliva samples, or thumb or palm print impressions for identification purposes.

SEC. 13. Section 300.1 of the Penal Code is amended to read:

300.1. (a) Nothing in this chapter shall be construed to restrict the authority of local law enforcement to maintain their own DNA-related databases or data banks, or to restrict the Department of Justice with respect to data banks and ~~data-bases~~ databases created by other statutory authority, including, but not limited to, ~~data-bases~~ databases related to fingerprints, firearms and other weapons, child abuse, domestic violence deaths, child deaths, driving offenses, missing persons, violent crime information as described in Title 12 (commencing with Section 14200) of Part 4, and criminal justice statistics permitted by Section 13305.

(b) Nothing in this chapter shall be construed to limit the authority of local or county coroners or their agents, in the course of their scientific investigation, to utilize genetic and DNA technology to inquire into and determine the circumstances, manner, and cause of death, or to employ or use outside laboratories, hospitals, or research institutions that utilize genetic and DNA technology.

SEC. 14. Section 300.2 is added to the Penal Code, to read:

300.2. Any requirement to provide saliva samples pursuant to this chapter shall be construed as a requirement to provide buccal swab samples as of the effective date of the act that added this section. However, the Department of Justice may retain and use previously collected saliva and other biological samples as part of its database and databank program and for quality control purposes in conformity with the provisions of this chapter.

SEC. IV. Supplemental Funding

SEC. 1. Section 76104.6 is added to the Government Code, to read:

76104.6. (a) For the purpose of implementing the DNA Fingerprint, Unsolved Crime and Innocence Protection Act, there shall be levied an additional penalty of one dollar for every ten dollars (\$10) or fraction thereof in each county which shall be collected together with and in the same manner as the amounts established by Section 1464 of the Penal Code, upon every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses, including all offenses involving a violation of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code, except parking offenses subject to Article 3 (commencing with Section 40200) of Chapter 1 of Division 17 of the Vehicle Code. These moneys shall be taken from fines and forfeitures deposited with the county treasurer prior to any division pursuant to Section 1463 of the Penal Code. The board of supervisors shall establish in the county treasury a DNA Identification Fund into which shall be deposited the collected moneys pursuant to this section. The moneys of the fund shall be allocated pursuant to subdivision (b).

(b) (1) The fund moneys described in subdivision (a), together with any interest earned thereon, shall be held by the county treasurer separate from any funds subject to transfer or division pursuant to Section 1463 of the Penal Code. Deposits to the fund may continue through and including the 20th year after the initial calendar year in which the surcharge is collected, or longer if and as necessary to make payments upon any lease or leaseback arrangement utilized to finance any of the projects specified herein.

(2) On the last day of each calendar quarter of the year specified in this subdivision, the county treasurer shall transfer fund moneys in the county's DNA Identification Fund to the state Controller for credit to the state's DNA Identification Fund, which is hereby established in the State Treasury, as follows:

(A) in the first two calendar years following the effective date of this section, 70 percent of the amounts collected, including interest earned thereon;

(B) in the third calendar year following the effective date of this section, 50 percent of the amounts collected, including interest earned thereon;

(C) in the fourth calendar year following the effective date of this section and in each calendar year thereafter, 25 percent of the amounts collected, including interest earned thereon.

(3) Funds remaining in the county's DNA Identification Fund shall be used only to reimburse local sheriff or other law enforcement agencies to collect DNA specimens, samples, and print impressions pursuant to this chapter; for expenditures and administrative costs made or incurred to comply with the requirements of paragraph (5) of subdivision (b) of Section 298 including the procurement of equipment and software integral to confirming that a person qualifies for entry into the Department of Justice DNA Database and Data Bank Program; and to local sheriff, police, district attorney, and regional state crime laboratories for expenditures and administrative costs made or incurred in connection with the processing, analysis, tracking, and storage of DNA crime scene samples from cases in which DNA evidence would be useful in identifying or prosecuting suspects, including the procurement of equipment and software for the processing, analysis, tracking, and storage of DNA crime scene samples from unsolved cases.

(4) The state's DNA Identification Fund shall be administered by the Department of Justice. Funds in the state's DNA Identification Fund, upon appropriation by the Legislature, shall be used by the Attorney General only to support DNA testing in the state and to offset the impacts of increased testing and shall be allocated as follows:

(A) Of the amount transferred pursuant to subparagraph (A) of paragraph (2) of subdivision (b), 90 percent to the Department of Justice DNA Laboratory; first, to comply with the requirements of Section 298.3 of the Penal Code and, second, for expenditures and administrative costs made or incurred in connection with the processing, analysis, tracking, and storage of DNA specimens and samples including the procurement of equipment and software for the processing, analysis, tracking, and storage of DNA samples and specimens obtained pursuant to the DNA and Forensic Identification Database and Databank Act, as amended, and 10 percent to the Department of Justice Information Bureau Criminal History Unit for expenditures and administrative costs that have been approved by the Chief of the Department of Justice Bureau of Forensic Services made or incurred to update equipment and software to facilitate compliance with the requirements of subdivision (e) of Section 299.5 of the Penal Code.

(B) Of the amount transferred pursuant to subparagraph (B) of paragraph (2) of subdivision (b), funds shall be allocated by the Department of Justice DNA Laboratory; first, to comply with the requirements of Section 298.3 of the Penal Code and, second, for expenditures and administrative costs made or incurred in connection with the processing, analysis, tracking, and storage of DNA specimens and samples including the procurement of equipment and software for the processing, analysis, tracking, and storage of DNA samples and specimens obtained pursuant to the DNA and Forensic Identification Database and Databank Act, as amended.

(C) Of the amount transferred pursuant to subparagraph (C) of paragraph (2) of subdivision (b), funds shall be allocated by the Department of Justice to the DNA Laboratory to comply with the requirements of Section 298.3 of the Penal Code and for expenditures and administrative costs made or incurred in connection with the processing, analysis, tracking, and storage of DNA specimens and samples including the procurement of equipment and software for the processing, analysis, tracking, and storage of DNA samples and specimens obtained pursuant to the DNA and Forensic Identification Database and Databank Act, as amended.

(c) On or before April 1 in the year following adoption of this section, and annually thereafter, the board of supervisors of each county shall submit a report to the Legislature and the Department of Justice. The report shall include the total amount of fines collected and allocated pursuant to this section, and the amounts expended by the

Proposition 69 (cont.)

county for each program authorized pursuant to paragraph (3) of subdivision (b) of this section. The Department of Justice shall make the reports publicly available on the department's Web site.

(d) All requirements imposed on the Department of Justice pursuant to the DNA Fingerprint, Unsolved Crime and Innocence Protection Act are contingent upon the availability of funding and are limited by revenue, on a fiscal year basis, received by the Department of Justice pursuant to this section and any additional appropriation approved by the Legislature for purposes related to implementing this measure.

(e) Upon approval of the DNA Fingerprint, Unsolved Crime and Innocence Protection Act, the Legislature shall loan the Department of Justice General Fund in the amount of \$7,000,000 for purposes of implementing that act. This loan shall be repaid with interest calculated at the rate earned by the Pooled Money Investment Account at the time the loan is made. Principal and interest on the loan shall be repaid in full no later than four years from the date the loan was made and shall be repaid from revenue generated pursuant to this section.

SEC. V. General Provisions

(a) Conflicting Measures: If this measure is approved by the voters,

but superseded by any other conflicting ballot measure approved by more voters at the same election, and the conflicting ballot measure is later held invalid, it is the intent of the voters that this measure shall be self-executing and be given the full force of the law.

(b) Severability: The provisions of this measure are severable. If any provision of this measure or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

(c) Amendment: The provisions of this measure may be amended by a statute that is passed by each house of the Legislature and signed by the Governor. All amendments to this measure shall be to further the measure and shall be consistent with its purposes to enhance the use of DNA identification evidence for the purpose of accurate and expeditious crime-solving and exonerating the innocent.

(d) Supplantation: All funds distributed to state or local governmental entities pursuant to this measure shall not supplant any federal, state, or local funds that would, in the absence of this measure, be made available to support law enforcement and prosecutorial activities.

Proposition 70

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure amends the California Constitution and adds a section to the Government Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

THE INDIAN GAMING FAIR-SHARE REVENUE ACT OF 2004

SECTION 1. Title

This act shall be known as the "Indian Gaming Fair-Share Revenue Act of 2004."

SEC. 2. Findings and Purpose

The people of the State of California hereby find and declare as follows:

(a) The purpose of the people of the State of California in enacting this measure is to provide a means for California Indian tribes to contribute their fair share of gaming revenues to the State of California. Both the people of California and California Indian tribal governments desire for tribes to assist in restoring financial integrity to the state by contributing an amount that is equivalent to what any private California corporation pays to the state on the net income it earns from its lawful business activities.

(b) In March 2000, the people of the State of California adopted Proposition 1A, which authorized the Governor to negotiate tribal-state gaming compacts with federally recognized Indian tribes for the operation of slot machines and certain casino games on tribal lands in California in accordance with federal law. Proposition 1A was enacted by the people in recognition of the fact that, historically, Indian tribes within the state have long suffered from high rates of unemployment and inadequate educational, housing, elderly care, and health care opportunities, while typically being located on lands that are not conducive to economic development in order to meet those needs.

(c) Since the adoption of Proposition 1A, over 50 Indian tribes have entered into tribal gaming compacts with the State of California. These compacts and the gaming facilities they authorize have assisted Indian tribes throughout the state to move towards economic self-sufficiency by providing a much-needed revenue source for various tribal purposes, including tribal government services and programs such as those that address reservation housing, elderly care, education, health care, roads, sewers, water systems, and other tribal needs. Tribal gaming has also spurred new development, has created thousands of jobs for Indians and non-Indians alike, and has had a substantial positive economic impact on the local communities in which these facilities are located.

(d) Under the existing tribal gaming compacts, Indian tribes also pay millions of dollars each year into two state special funds that are used to provide grants to local governments, to finance programs

addressing gambling addiction, to reimburse the state for the costs of regulating tribal gaming, and to share gaming revenues with other Indian tribes in the state that do not operate gaming facilities. However, because Indian tribes are sovereign governments and are exempt from most forms of taxation, they do not pay any corporate income taxes directly to the state on the profits derived from their gaming operations.

(e) Given California's current fiscal crisis, the state needs to find new ways to generate revenues for the General Fund in the State Treasury. Indian tribes want to and should do their part to assist California in meeting its budget needs by contributing to the state a fair share of the net income they receive from gaming activities in recognition of their continuing right to operate tribal gaming facilities in an economic environment free of competition from casino-style gaming on non-Indian lands. A fair share for the Indian tribes to contribute to the state is an amount that is equivalent to the amount of corporate taxes that a private California corporation pays to the state on the net income it earns from its lawful business activities.

(f) Accordingly, in order to provide additional revenues to the State of California in this time of fiscal crisis, this measure authorizes and requires the Governor to enter into new or amended tribal gaming compacts under which the Indian tribes agree to contribute to the state a fair share of the net income derived from their gaming activities in exchange for the continued exclusive right to operate casino-style gaming facilities in California. In addition, in order to maximize revenues for the state and to permit the free market to determine the number and type of casino games and devices that will exist on tribal lands, this measure requires these new or amended compacts to allow each tribal government to choose the number and size of the gaming facilities it operates, and the types of games offered, that it believes will maximize the tribe's income, as long as the facilities are restricted to and are located in those areas that have been designated by both the State of California and the United States government as tribal lands. Under the new or amended compacts authorized by this measure, Indian tribes must also prepare environmental impact reports analyzing the off-reservation impacts of any proposed new or expanded gaming facilities, and they must consult with the public and local government officials to develop a good-faith plan to mitigate any significant adverse environmental impacts.

SEC. 3. Section 19 of Article IV of the California Constitution is amended to read:

SEC. 19. (a) The Legislature has no power to authorize lotteries and shall prohibit the sale of lottery tickets in the State.

(b) The Legislature may provide for the regulation of horse races and horse race meetings and wagering on the results.

(c) Notwithstanding subdivision (a), the Legislature by statute may authorize cities and counties to provide for bingo games, but only for charitable purposes.

(d) Notwithstanding subdivision (a), there is authorized the establishment of a California State Lottery.

Proposition 70 (cont.)

(e) The Legislature has no power to authorize, and shall prohibit, casinos of the type currently operating in Nevada and New Jersey.

(f) Notwithstanding subdivisions (a) and (e), and any other provision of state law, the Governor is authorized to negotiate and conclude compacts, subject to ratification by the Legislature, for the operation of slot machines and for the conduct of ~~lottery games and banking and percentage card games~~ any and all forms of Class III gaming by federally recognized Indian tribes on Indian lands in California in accordance with federal law. Accordingly, slot machines, lottery games, roulette, craps, ~~and banking and percentage card games~~, and any and all other forms of casino gaming are hereby specifically permitted to be conducted and operated on tribal lands subject to those compacts.

(g) Notwithstanding subdivision (a), the Legislature may authorize private, nonprofit, eligible organizations, as defined by the Legislature, to conduct raffles as a funding mechanism to provide support for their own or another private, nonprofit, eligible organization's beneficial and charitable works, provided that (1) at least 90 percent of the gross receipts from the raffle go directly to beneficial or charitable purposes in California, and (2) any person who receives compensation in connection with the operation of a raffle is an employee of the private nonprofit organization that is conducting the raffle. The Legislature, two-thirds of the membership of each house concurring, may amend the percentage of gross receipts required by this subdivision to be dedicated to beneficial or charitable purposes by means of a statute that is signed by the Governor.

(h) Notwithstanding subdivisions (e) and (f), and any other provision of state law, within 30 days of being requested to do so by any federally recognized Indian tribe, the Governor is authorized, directed, and required to amend any existing compact with any Indian tribe, and to offer a new compact to any federally recognized Indian tribe without an existing compact, in accordance with the provisions of this subdivision. An "existing compact" means a gaming compact entered into between the State and an Indian tribe that was ratified prior to the effective date of the Indian Gaming Fair-Share Revenue Act of 2004. Any existing compact that is amended pursuant to this subdivision shall not require legislative ratification, but any new compact entered into pursuant to this subdivision shall be submitted to the Legislature within 15 days after the conclusion of negotiations and shall be deemed ratified if it is not rejected by each house of the Legislature, two-thirds of the members thereof concurring in the rejection, within 30 days of the submission of the compact to the Legislature by the Governor, except that if this 30-day period ends during a joint recess of the Legislature, the period shall be extended until the tenth day following the day on which the Legislature reconvenes. All compacts amended pursuant to this subdivision, and all new compacts entered into pursuant to this subdivision, shall include the following terms, conditions, and requirements:

(1) Any federally recognized Indian tribe requesting to enter into a new or amended compact pursuant to this subdivision shall agree under the terms of the compact to contribute to the State, on a sovereign-to-sovereign basis, a percentage of its net income from gaming activities that is equivalent to the amount of revenue the State would receive on the same amount of net business income earned by a private, non-exempt California corporation based upon the then-prevailing general corporate tax rate under the state Revenue and Taxation Code. This contribution shall be made in consideration for the exclusive right enjoyed by Indian tribes to operate gaming facilities in an economic environment free of competition for slot machines and other forms of Class III casino gaming on non-Indian lands in California. The compact shall provide that in the event the Indian tribes lose their exclusive right to operate slot machines and other forms of Class III casino gaming in California, the obligation of the Indian tribe to contribute to the State a portion of its net income from gaming activities pursuant to this subdivision shall cease. Contributions made to the State pursuant to this subdivision shall be in lieu of any and all other fees, taxes, or levies that may be charged or imposed, directly or indirectly, by the State, cities, or counties against the Indian tribe on its authorized gaming activities, except that a tribe amending an existing compact or entering into a new compact pursuant to this subdivision shall be required to make contributions to the Revenue Sharing Trust Fund and, if the tribe operated gaming devices on September 1, 1999, to the Special Distribution Fund, in amounts and under terms that are identical to those contained in the existing compacts.

(2) Any federally recognized Indian tribe requesting to enter into a new or amended compact pursuant to this subdivision shall agree under the terms of the compact to adopt an ordinance providing for the

preparation, circulation, and consideration by the tribe of an environmental impact report analyzing potential off-reservation impacts of any project involving the development and construction of a new gaming facility or the significant expansion, renovation, or modification of an existing gaming facility. The environmental impact report prepared in accordance with this subdivision shall incorporate the policies and objectives of the National Environmental Policy Act and the California Environmental Quality Act consistent with the tribe's governmental interests. Prior to the commencement of any such project, the tribe shall also agree (A) to inform and to provide an opportunity for the public to submit comments regarding the planned project, (B) to consult with local governmental officials regarding mitigation of significant adverse off-reservation environmental impacts and to make good-faith efforts to mitigate any and all such significant adverse off-reservation environmental impacts, and (C) to keep local governmental officials and potentially affected members of the public informed of the project's progress.

(3) Any federally recognized Indian tribe requesting to enter into a new or amended compact pursuant to this subdivision shall be entitled under the terms of the compact to operate and conduct any forms and kinds of gaming authorized and permitted pursuant to subdivision (f).

(4) Any federally recognized Indian tribe requesting to enter into a new or amended compact pursuant to this subdivision shall be entitled under the terms of the compact to operate as many slot machines and to conduct as many games as each tribal government deems appropriate. There shall likewise be no limit under the terms of the compact on the number or the size of gaming facilities that each tribe may establish and operate, provided that each and every such gaming facility must be owned by the tribe and operated only on Indian lands on which such gaming may lawfully be conducted under federal law.

(5) The initial term of any new or amended compact entered into pursuant to this subdivision shall be 99 years, and the compact shall be subject to renewal upon mutual consent of the parties. The terms and conditions of any new or amended compact entered into pursuant to this subdivision may be amended at any time by the mutual and written agreement of both parties.

(6) Any Indian tribe with an existing compact that wishes to enter into an amended compact pursuant to this subdivision shall not be required as a condition thereof to make any other amendments to its existing compact or to agree to any other terms, conditions, or restrictions beyond those contained in this subdivision and in its existing compact, except as the provisions of its existing compact may be modified in accordance with paragraphs (1) to (5), inclusive.

SEC. 4. Section 12012.80 is added to the California Government Code, to read:

12012.80. Indian Gaming Fair-Share Revenue Fund

(a) There is hereby created in the State Treasury a fund called the "Indian Gaming Fair-Share Revenue Fund" for the receipt and deposit of moneys received by the state from Indian tribes under the terms of tribal-state gaming compacts entered into or amended pursuant to subdivision (h) of Section 19 of Article IV of the California Constitution.

(b) Moneys in the Indian Gaming Fair-Share Revenue Fund shall be available for appropriation by the Legislature for any purpose specified by law.

SEC. 5. Inconsistency With Other Ballot Measures

The provisions of this act shall be deemed to conflict with and to be inconsistent with any other initiative measure that appears on the same ballot that amends the California Constitution relating to gaming by federally recognized Indian tribes in California. In the event that this act and another measure that amends the California Constitution relating to gaming by Indian tribes are adopted at the same election, the measure receiving the greater number of affirmative votes shall prevail in its entirety, and no provision of the measure receiving the fewer number of affirmative votes shall be given any force or effect.

SEC. 6. Severability

If any provision of this act or the application thereof to any person or circumstances is held invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this act that can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this act are severable.

Proposition 71

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure expressly amends the California Constitution by adding an article thereto; and amends a section of the Government Code, and adds sections to the Health and Safety Code; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

CALIFORNIA STEM CELL RESEARCH AND CURES INITIATIVE

SECTION 1. Title

This measure shall be known as the “California Stem Cell Research and Cures Act.”

SEC. 2. Findings and Declarations

The people of California find and declare the following:

Millions of children and adults suffer from devastating diseases or injuries that are currently incurable, including cancer, diabetes, heart disease, Alzheimer’s, Parkinson’s, spinal cord injuries, blindness, Lou Gehrig’s disease, HIV/AIDS, mental health disorders, multiple sclerosis, Huntington’s disease, and more than 70 other diseases and injuries.

Recently medical science has discovered a new way to attack chronic diseases and injuries. The cure and treatment of these diseases can potentially be accomplished through the use of new regenerative medical therapies including a special type of human cells, called stem cells. These life-saving medical breakthroughs can only happen if adequate funding is made available to advance stem cell research, develop therapies, and conduct clinical trials.

About half of California’s families have a child or adult who has suffered or will suffer from a serious, often critical or terminal, medical condition that could potentially be treated or cured with stem cell therapies. In these cases of chronic illness or when patients face a medical crisis, the health care system may simply not be able to meet the needs of patients or control spiraling costs, unless therapy focus switches away from maintenance and toward prevention and cures.

Unfortunately, the federal government is not providing adequate funding necessary for the urgent research and facilities needed to develop stem cell therapies to treat and cure diseases and serious injuries. This critical funding gap currently prevents the rapid advancement of research that could benefit millions of Californians.

The California Stem Cell Research and Cures Act will close this funding gap by establishing an institute which will issue bonds to support stem cell research, emphasizing pluripotent stem cell and progenitor cell research and other vital medical technologies, for the development of life-saving regenerative medical treatments and cures.

SEC. 3. Purpose and Intent

It is the intent of the people of California in enacting this measure to:

Authorize an average of \$295 million per year in bonds over a 10-year period to fund stem cell research and dedicated facilities for scientists at California’s universities and other advanced medical research facilities throughout the state.

Maximize the use of research funds by giving priority to stem cell research that has the greatest potential for therapies and cures, specifically focused on pluripotent stem cell and progenitor cell research among other vital research opportunities that cannot, or are unlikely to, receive timely or sufficient federal funding, unencumbered by limitations that would impede the research. Research shall be subject to accepted patient disclosure and patient consent standards.

Assure that the research is conducted safely and ethically by including provisions to require compliance with standards based on national models that protect patient safety, patient rights, and patient privacy.

Prohibit the use of bond proceeds of this initiative for funding for human reproductive cloning.

Improve the California health care system and reduce the long-term health care cost burden on California through the development of therapies that treat diseases and injuries with the ultimate goal to cure them.

Require strict fiscal and public accountability through mandatory independent audits, open meetings, public hearings, and annual reports to the public. Create an Independent Citizen’s Oversight Committee composed of representatives of the University of California campuses with medical schools; other California universities and California medical research institutions; California disease advocacy groups; and California experts in the development of medical therapies.

Protect and benefit the California budget: by postponing general fund payments on the bonds for the first five years; by funding scientific and medical research that will significantly reduce state health care costs in the future; and by providing an opportunity for the state to benefit from royalties, patents, and licensing fees that result from the research.

Benefit the California economy by creating projects, jobs, and therapies that will generate millions of dollars in new tax revenues in our state.

Advance the biotech industry in California to world leadership, as an economic engine for California’s future.

SEC. 4. Article XXXV is added to the California Constitution, to read:

Article XXXV. Medical Research

SECTION 1. There is hereby established the California Institute for Regenerative Medicine.

SEC. 2. The institute shall have the following purposes:

(a) To make grants and loans for stem cell research, for research facilities, and for other vital research opportunities to realize therapies, protocols, and/or medical procedures that will result in, as speedily as possible, the cure for, and/or substantial mitigation of, major diseases, injuries, and orphan diseases.

(b) To support all stages of the process of developing cures, from laboratory research through successful clinical trials.

(c) To establish the appropriate regulatory standards and oversight bodies for research and facilities development.

SEC. 3. No funds authorized for, or made available to, the institute shall be used for research involving human reproductive cloning.

SEC. 4. Funds authorized for, or made available to, the institute shall be continuously appropriated without regard to fiscal year, be available and used only for the purposes provided in this article, and shall not be subject to appropriation or transfer by the Legislature or the Governor for any other purpose.

SEC. 5. There is hereby established a right to conduct stem cell research which includes research involving adult stem cells, cord blood stem cells, pluripotent stem cells, and/or progenitor cells. Pluripotent stem cells are cells that are capable of self-renewal, and have broad potential to differentiate into multiple adult cell types. Pluripotent stem cells may be derived from somatic cell nuclear transfer or from surplus products of in vitro fertilization treatments when such products are donated under appropriate informed consent procedures. Progenitor cells are multipotent or precursor cells that are partially differentiated, but retain the ability to divide and give rise to differentiated cells.

SEC. 6. Notwithstanding any other provision of this Constitution or any law, the institute, which is established in state government, may utilize state issued tax-exempt and taxable bonds to fund its operations, medical and scientific research, including therapy development through clinical trials, and facilities.

SEC. 7. Notwithstanding any other provision of this Constitution, including Article VII, or any law, the institute and its employees are exempt from civil service.

SEC. 5. Chapter 3 (commencing with Section 125290.10) is added to Part 5 of Division 106 of the Health and Safety Code, to read:

CHAPTER 3. CALIFORNIA STEM CELL RESEARCH AND CURES BOND ACT

Article 1. California Stem Cell Research and Cures Act

125290.10. General—Independent Citizen’s Oversight Committee (ICOC)

This chapter implements Article XXXV of the California Constitution, which established the California Institute for Regenerative Medicine (institute).

125290.15. Creation of the ICOC

There is hereby created the Independent Citizen’s Oversight Committee, hereinafter, the ICOC, which shall govern the institute and is hereby vested with full power, authority, and jurisdiction over the institute.

125290.20. ICOC Membership; Appointments; Terms of Office

(a) ICOC Membership

The ICOC shall have 29 members, appointed as follows:

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(1) The Chancellors of the University of California at San Francisco, Davis, San Diego, Los Angeles, and Irvine, shall each appoint an executive officer from his or her campus.

(2) The Governor, the Lieutenant Governor, the Treasurer, and the Controller shall each appoint an executive officer from the following three categories:

(A) A California university, excluding the five campuses of the University of California described in paragraph (1), that has demonstrated success and leadership in stem cell research, and that has:

(i) A nationally ranked research hospital and medical school; this criteria will apply to only two of the four appointments.

(ii) A recent proven history of administering scientific and/or medical research grants and contracts in an average annual range exceeding one hundred million dollars (\$100,000,000).

(iii) A ranking, within the past five years, in the top 10 United States universities with the highest number of life science patents or that has research or clinical faculty who are members of the National Academy of Sciences.

(B) A California nonprofit academic and research institution that is not a part of the University of California, that has demonstrated success and leadership in stem cell research, and that has:

(i) A nationally ranked research hospital or that has research or clinical faculty who are members of the National Academy of Sciences.

(ii) A proven history in the last five years of managing a research budget in the life sciences exceeding twenty million dollars (\$20,000,000).

(C) A California life science commercial entity that is not actively engaged in researching or developing therapies with pluripotent or progenitor stem cells, that has a background in implementing successful experimental medical therapies, and that has not been awarded, or applied for, funding by the institute at the time of appointment. A board member of that entity with a successful history of developing innovative medical therapies may be appointed in lieu of an executive officer.

(D) Only one member shall be appointed from a single university, institution, or entity. The executive officer of a California university, a nonprofit research institution or life science commercial entity who is appointed as a member, may from time to time delegate those duties to an executive officer of the entity or to the dean of the medical school, if applicable.

(3) The Governor, the Lieutenant Governor, the Treasurer, and the Controller shall appoint members from among California representatives of California regional, state, or national disease advocacy groups, as follows:

(A) The Governor shall appoint two members, one from each of the following disease advocacy groups: spinal cord injury and Alzheimer's disease.

(B) The Lieutenant Governor shall appoint two members, one from each of the following disease advocacy groups: type II diabetes and multiple sclerosis or amyotrophic lateral sclerosis.

(C) The Treasurer shall appoint two members, one from each of the following disease groups: type I diabetes and heart disease.

(D) The Controller shall appoint two members, one from each of the following disease groups: cancer and Parkinson's disease.

(4) The Speaker of the Assembly shall appoint a member from among California representatives of a California regional, state, or national mental health disease advocacy group.

(5) The President pro Tempore of the Senate shall appoint a member from among California representatives of a California regional, state, or national HIV/AIDS disease advocacy group.

(6) A chairperson and vice chairperson who shall be elected by the ICOC members. Within 40 days of the effective date of this act, each constitutional officer shall nominate a candidate for chairperson and another candidate for vice chairperson. The chairperson and vice chairperson shall each be elected for a term of six years. The chairperson and vice chairperson of ICOC shall be full or part time employees of the institute and shall meet the following criteria:

(A) Mandatory Chairperson Criteria

(i) Documented history in successful stem cell research advocacy.

(ii) Experience with state and federal legislative processes that must include some experience with medical legislative approvals of standards and/or funding.

(iii) Qualified for appointment pursuant to paragraph (3), (4), or (5) of subdivision (a).

(iv) Cannot be concurrently employed by or on leave from any prospective grant or loan recipient institutions in California.

(B) Additional Criteria for Consideration:

(i) Experience with governmental agencies or institutions (either executive or board position).

(ii) Experience with the process of establishing government standards and procedures.

(iii) Legal experience with the legal review of proper governmental authority for the exercise of government agency or government institutional powers.

(iv) Direct knowledge and experience in bond financing.

The vice chairperson shall satisfy clauses (i), (iii), and (iv) of subparagraph (A). The vice chairperson shall be selected from among individuals who have attributes and experience complementary to those of the chairperson, preferably covering the criteria not represented by the chairperson's credentials and experience.

(b) Appointment of ICOC Members

(1) All appointments shall be made within 40 days of the effective date of this act. In the event that any of the appointments are not completed within the permitted timeframe, the ICOC shall proceed to operate with the appointments that are in place, provided that at least 60 percent of the appointments have been made.

(2) Forty-five days after the effective date of the measure adding this chapter, the State Controller and the Treasurer, or if only one is available within 45 days, the other shall convene a meeting of the appointed members of the ICOC to elect a chairperson and vice chairperson from among the individuals nominated by the constitutional officers pursuant to paragraph (6) of subdivision (a).

(c) ICOC Member Terms of Office

(1) The members appointed pursuant to paragraphs (1), (3), (4), and (5) of subdivision (a) shall serve eight-year terms, and all other members shall serve six-year terms. Members shall serve a maximum of two terms.

(2) If a vacancy occurs within a term, the appointing authority shall appoint a replacement member within 30 days to serve the remainder of the term.

(3) When a term expires, the appointing authority shall appoint a member within 30 days. ICOC members shall continue to serve until their replacements are appointed.

125290.25. Majority Vote of Quorum

Actions of the ICOC may be taken only by a majority vote of a quorum of the ICOC.

125290.30. Public and Financial Accountability Standards

(a) Annual Public Report

The institute shall issue an annual report to the public which sets forth its activities, grants awarded, grants in progress, research accomplishments, and future program directions. Each annual report shall include, but not be limited to, the following: the number and dollar amounts of research and facilities grants; the grantees for the prior year; the institute's administrative expenses; an assessment of the availability of funding for stem cell research from sources other than the institute; a summary of research findings, including promising new research areas; an assessment of the relationship between the institute's grants and the overall strategy of its research program; and a report of the institute's strategic research and financial plans.

(b) Independent Financial Audit for Review by State Controller

The institute shall annually commission an independent financial audit of its activities from a certified public accounting firm, which shall be provided to the State Controller, who shall review the audit and annually issue a public report of that review.

(c) Citizen's Financial Accountability Oversight Committee

There shall be a Citizen's Financial Accountability Oversight Committee chaired by the State Controller. This committee shall review the annual financial audit, the State Controller's report and evaluation of that audit, and the financial practices of the institute. The State Controller, the State Treasurer, the President pro Tempore of the Senate, the Speaker of the Assembly, and the Chairperson of the ICOC shall each appoint a public member of the committee. Committee members

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shall have medical backgrounds and knowledge of relevant financial matters. The committee shall provide recommendations on the institute's financial practices and performance. The State Controller shall provide staff support. The committee shall hold a public meeting, with appropriate notice, and with a formal public comment period. The committee shall evaluate public comments and include appropriate summaries in its annual report. The ICOC shall provide funds for the per diem expenses of the committee members and for publication of the annual report.

(d) Public Meeting Laws

(1) The ICOC shall hold at least two public meetings per year, one of which will be designated as the institute's annual meeting. The ICOC may hold additional meetings as it determines are necessary or appropriate.

(2) The Bagley-Keene Open Meeting Act, Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code, shall apply to all meetings of the ICOC, except as otherwise provided in this section. The ICOC shall award all grants, loans, and contracts in public meetings and shall adopt all governance, scientific, medical, and regulatory standards in public meetings.

(3) The ICOC may conduct closed sessions as permitted by the Bagley-Keene Open Meeting Act, under Section 11126 of the Government Code. In addition, the ICOC may conduct closed sessions when it meets to consider or discuss:

(A) Matters involving information relating to patients or medical subjects, the disclosure of which would constitute an unwarranted invasion of personal privacy.

(B) Matters involving confidential intellectual property or work product, whether patentable or not, including, but not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information, which is not patented, which is known only to certain individuals who are using it to fabricate, produce, or compound an article of trade or a service having commercial value and which gives its user an opportunity to obtain a business advantage over competitors who do not know it or use it.

(C) Matters involving prepublication, confidential scientific research or data.

(D) Matters concerning the appointment, employment, performance, compensation, or dismissal of institute officers and employees. Action on compensation of the institute's officers and employees shall only be taken in open session.

(4) The meeting required by paragraph (2) of subdivision (b) of Section 125290.20 shall be deemed to be a special meeting for the purposes of Section 11125.4 of the Government Code.

(e) Public Records

(1) The California Public Records Act, Article 1 (commencing with Section 6250) of Chapter 3.5 of Division 7 of Title 1 of the Government Code, shall apply to all records of the institute, except as otherwise provided in this section.

(2) Nothing in this section shall be construed to require disclosure of any records that are any of the following:

(A) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.

(B) Records containing or reflecting confidential intellectual property or work product, whether patentable or not, including, but not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information, which is not patented, which is known only to certain individuals who are using it to fabricate, produce, or compound an article of trade or a service having commercial value and which gives its user an opportunity to obtain a business advantage over competitors who do not know it or use it.

(C) Prepublication scientific working papers or research data.

(f) Competitive Bidding

(1) The institute shall, except as otherwise provided in this section, be governed by the competitive bidding requirements applicable to the University of California, as set forth in Article 1 (commencing with Section 10500) of Chapter 2.1 of Part 2 of Division 2 of the Public Contract Code.

(2) For all institute contracts, the ICOC shall follow the procedures required of the Regents by Article 1 (commencing with Section 10500) of Chapter 2.1 of Part 2 of Division 2 of the Public Contract Code with respect to contracts let by the University of California.

(3) The requirements of this section shall not be applicable to grants or loans approved by the ICOC.

(4) Except as provided in this section, the Public Contract Code shall not apply to contracts let by the institute.

(g) Conflicts of Interest

(1) The Political Reform Act, Title 9 (commencing with Section 81000) of the Government Code, shall apply to the institute and to the ICOC, except as provided in this section and in subdivision (e) of Section 125290.50.

(A) No member of the ICOC shall make, participate in making, or in any way attempt to use his or her official position to influence a decision to approve or award a grant, loan, or contract to his or her employer, but a member may participate in a decision to approve or award a grant, loan, or contract to a nonprofit entity in the same field as his or her employer.

(B) A member of the ICOC may participate in a decision to approve or award a grant, loan, or contract to an entity for the purpose of research involving a disease from which a member or his or her immediate family suffers or in which the member has an interest as a representative of a disease advocacy organization.

(C) The adoption of standards is not a decision subject to this section.

(2) Service as a member of the ICOC by a member of the faculty or administration of any system of the University of California shall not, by itself, be deemed to be inconsistent, incompatible, in conflict with, or inimical to the duties of the ICOC member as a member of the faculty or administration of any system of the University of California and shall not result in the automatic vacation of either such office. Service as a member of the ICOC by a representative or employee of a disease advocacy organization, a nonprofit academic and research institution, or a life science commercial entity shall not be deemed to be inconsistent, incompatible, in conflict with, or inimical to the duties of the ICOC member as a representative or employee of that organization, institution, or entity.

(3) Section 1090 of the Government Code shall not apply to any grant, loan, or contract made by the ICOC except where both of the following conditions are met:

(A) The grant, loan, or contract directly relates to services to be provided by any member of the ICOC or the entity the member represents or financially benefits the member or the entity he or she represents.

(B) The member fails to recuse himself or herself from making, participating in making, or in any way attempting to use his or her official position to influence a decision on the grant loan or contract.

(h) Patent Royalties and License Revenues Paid to the State of California

The ICOC shall establish standards that require that all grants and loan awards be subject to intellectual property agreements that balance the opportunity of the State of California to benefit from the patents, royalties, and licenses that result from basic research, therapy development, and clinical trials with the need to assure that essential medical research is not unreasonably hindered by the intellectual property agreements.

(i) Preference for California Suppliers

The ICOC shall establish standards to ensure that grantees purchase goods and services from California suppliers to the extent reasonably possible, in a good faith effort to achieve a goal of more than 50 percent of such purchases from California suppliers.

125290.35. Medical and Scientific Accountability Standards

(a) Medical Standards

In order to avoid duplication or conflicts in technical standards for scientific and medical research, with alternative state programs, the institute will develop its own scientific and medical standards to carry out the specific controls and intent of the act, notwithstanding subdivision (b) of Section 125300, Sections 125320, 125118, 125118.5, 125119, 125119.3 and 125119.5, or any other current or future state laws or regulations dealing with the study and research of pluripotent stem cells and/or progenitor cells, or other vital research opportunities, except Section 125315. The ICOC, its working committees, and its grantees shall be governed solely by the provisions of this act in the establishment of standards, the award of grants, and the conduct of grants awarded pursuant to this act.

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(b) The ICOC shall establish standards as follows:

(1) *Informed Consent*

Standards for obtaining the informed consent of research donors, patients, or participants, which initially shall be generally based on the standards in place on January 1, 2003, for all research funded by the National Institutes of Health, with modifications to adapt to the mission and objectives of the institute.

(2) *Controls on Research Involving Humans*

Standards for the review of research involving human subjects which initially shall be generally based on the Institutional Review Board standards promulgated by the National Institutes of Health and in effect on January 1, 2003, with modifications to adapt to the mission and objectives of the institute.

(3) *Prohibition on Compensation*

Standards prohibiting compensation to research donors or participants, while permitting reimbursement of expenses.

(4) *Patient Privacy Laws*

Standards to assure compliance with state and federal patient privacy laws.

(5) *Limitations on Payments for Cells*

Standards limiting payments for the purchase of stem cells or stem cell lines to reasonable payment for the removal, processing, disposal, preservation, quality control, storage, transplantation, or implantation or legal transaction or other administrative costs associated with these medical procedures and specifically including any required payments for medical or scientific technologies, products, or processes for royalties, patent, or licensing fees or other costs for intellectual property.

(6) *Time Limits for Obtaining Cells*

Standards setting a limit on the time during which cells may be extracted from blastocysts, which shall initially be 8 to 12 days after cell division begins, not counting any time during which the blastocysts and/or cells have been stored frozen.

125290.40. *ICOC Functions*

The ICOC shall perform the following functions:

(a) *Oversee the operations of the institute.*

(b) *Develop annual and long-term strategic research and financial plans for the institute.*

(c) *Make final decisions on research standards and grant awards in California.*

(d) *Ensure the completion of an annual financial audit of the institute's operations.*

(e) *Issue public reports on the activities of the institute.*

(f) *Establish policies regarding intellectual property rights arising from research funded by the institute.*

(g) *Establish rules and guidelines for the operation of the ICOC and its working groups.*

(h) *Perform all other acts necessary or appropriate in the exercise of its power, authority, and jurisdiction over the institute.*

(i) *Select members of the working groups.*

(j) *Adopt, amend, and rescind rules and regulations to carry out the purposes and provisions of this chapter; and to govern the procedures of the ICOC. Except as provided in subdivision (k), these rules and regulations shall be adopted in accordance with the Administrative Procedure Act (Government Code, Title 2, Division 3, Part 1, Chapter 4.5, Sections 11371 et seq.).*

(k) *Notwithstanding the Administrative Procedure Act (APA), and in order to facilitate the immediate commencement of research covered by this chapter, the ICOC may adopt interim regulations without compliance with the procedures set forth in the APA. The interim regulations shall remain in effect for 270 days unless earlier superseded by regulations adopted pursuant to the APA.*

(l) *Request the issuance of bonds from the California Stem Cell Research and Cures Finance Committee and loans from the Pooled Money Investment Board.*

(m) *May annually modify its funding and finance programs to optimize the institute's ability to achieve the objective that its activities be revenue-positive for the State of California during its first five years of operation without jeopardizing the progress of its core medical and scientific research program.*

(n) *Notwithstanding Section 11005 of the Government Code, accept additional revenue and real and personal property, including, but not limited to, gifts, royalties, interest, and appropriations that may be used to supplement annual research grant funding and the operations of the institute.*

125290.45. *ICOC Operations*

(a) *Legal Actions and Liability*

(1) *The institute may sue and be sued.*

(2) *Based upon ICOC standards, institute grantees shall indemnify or insure and hold the institute harmless against any and all losses, claims, damages, expenses, or liabilities, including attorneys' fees, arising from research conducted by the grantee pursuant to the grant, and/or, in the alternative, grantees shall name the institute as an additional insured and submit proof of such insurance.*

(3) *Given the scientific, medical, and technical nature of the issues facing the ICOC, and notwithstanding Section 11042 of the Government Code, the institute is authorized to retain outside counsel when the ICOC determines that the institute requires specialized services not provided by the Attorney General's office.*

(4) *The institute may enter into any contracts or obligations which are authorized or permitted by law.*

(b) *Personnel*

(1) *The ICOC shall from time to time determine the total number of authorized employees for the institute, up to a maximum of 50 employees, excluding members of the working groups, who shall not be considered institute employees. The ICOC shall select a chairperson, vice chairperson and president who shall exercise all of the powers delegated to them by the ICOC. The following functions apply to the chairperson, vice chairperson, and president:*

(A) *The chairperson's primary responsibilities are to manage the ICOC agenda and work flow including all evaluations and approvals of scientific and medical working group grants, loans, facilities, and standards evaluations, and to supervise all annual reports and public accountability requirements; to manage and optimize the institute's bond financing plans and funding cash flow plan; to interface with the California Legislature, the United States Congress, the California health care system, and the California public; to optimize all financial leverage opportunities for the institute; and to lead negotiations for intellectual property agreements, policies, and contract terms. The chairperson shall also serve as a member of the Scientific and Medical Accountability Standards Working Group and the Scientific and Medical Research Facilities Working Group and as an ex-officio member of the Scientific and Medical Research Funding Working Group. The vice chairperson's primary responsibilities are to support the chairperson in all duties and to carry out those duties in the chairperson's absence.*

(B) *The president's primary responsibilities are to serve as the chief executive of the institute; to recruit the highest scientific and medical talent in the United States to serve the institute on its working groups; to serve the institute on its working groups; to direct ICOC staff and participate in the process of supporting all working group requirements to develop recommendations on grants, loans, facilities, and standards as well as to direct and support the ICOC process of evaluating and acting on those recommendations, the implementation of all decisions on these and general matters of the ICOC; to hire, direct, and manage the staff of the institute; to develop the budgets and cost control programs of the institute; to manage compliance with all rules and regulations on the ICOC, including the performance of all grant recipients; and to manage and execute all intellectual property agreements and any other contracts pertaining to the institute or research it funds.*

(2) *Each member of the ICOC except, the chairperson, vice chairperson, and president, shall receive a per diem of one hundred dollars (\$100) per day (adjusted annually for cost of living) for each day actually spent in the discharge of the member's duties, plus reasonable and necessary travel and other expenses incurred in the performance of the member's duties.*

(3) *The ICOC shall establish daily consulting rates and expense reimbursement standards for the non-ICOC members of all of its working groups.*

(4) *Notwithstanding Section 19825 of the Government Code, the ICOC shall set compensation for the chairperson, vice chairperson, and president and other officers, and for the scientific, medical, technical, and administrative staff of the institute within the range of compensation levels for executive officers and scientific, medical, technical,*

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and administrative staff of medical schools within the University of California system and the nonprofit academic and research institutions described in paragraph (2) of subdivision (a) of Section 125290.20.

125290.50. Scientific and Medical Working Groups-General

(a) The institute shall have, and there is hereby established, three separate scientific and medical working groups as follows:

- (1) Scientific and Medical Research Funding Working Group.
- (2) Scientific and Medical Accountability Standards Working Group.
- (3) Scientific and Medical Research Facilities Working Group.
- (b) Working Group Members

Appointments of scientific and medical working group members shall be made by a majority vote of a quorum of the ICOC, within 30 days of the election and appointment of the initial ICOC members. The working group members' terms shall be six years except that, after the first six-year terms, the members' terms will be staggered so that one-third of the members shall be elected for a term that expires two years later, one-third of the members shall be elected for a term that expires four years later, and one-third of the members shall be elected for a term that expires six years later. Subsequent terms are for six years. Working group members may serve a maximum of two consecutive terms.

(c) Working Group Meetings

Each scientific and medical working group shall hold at least four meetings per year; one of which shall be designated as its annual meeting.

(d) Working Group Recommendations to the ICOC

Recommendations of each of the working groups may be forwarded to the ICOC only by a vote of a majority of a quorum of the members of each working group. If 35 percent of the members of any working group join together in a minority position, a minority report may be submitted to the ICOC. The ICOC shall consider the recommendations of the working groups in making its decisions on applications for research and facility grants and loan awards and in adopting regulatory standards. Each working group shall recommend to ICOC rules, procedures, and practices for that working group.

(e) Conflict of Interest

(1) The ICOC shall adopt conflict of interest rules, based on standards applicable to members of scientific review committees of the National Institutes of Health, to govern the participation of non-ICOC working group members.

(2) The ICOC shall appoint an ethics officer from among the staff of the institute.

(3) Because the working groups are purely advisory and have no final decisionmaking authority, members of the working groups shall not be considered public officials, employees, or consultants for purposes of the Political Reform Act (Title 9 (commencing with Section 81000) of the Government Code), Sections 1090 and 19990 of the Government Code, and Sections 10516 and 10517 of the Public Contract Code.

(f) Working Group Records

All records of the working groups submitted as part of the working groups' recommendations to the ICOC for approval shall be subject to the Public Records Act. Except as provided in this subdivision, the working groups shall not be subject to the provisions of Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code, or Article 1 (commencing with Section 6250) of Chapter 3.5 of Division 7 of Title 1 of the Government Code.

125290.55. Scientific and Medical Accountability Standards Working Group

(a) Membership

The Scientific and Medical Accountability Standards Working Group shall have 19 members as follows:

(1) Five ICOC members from the 10 groups that focus on disease-specific areas described in paragraphs (3), (4), and (5) of subdivision (a) of Section 125290.20.

(2) Nine scientists and clinicians nationally recognized in the field of pluripotent and progenitor cell research.

(3) Four medical ethicists.

(4) The Chairperson of the ICOC.

(b) Functions

The Scientific and Medical Accountability Standards Working Group shall have the following functions:

(1) To recommend to the ICOC scientific, medical, and ethical standards.

(2) To recommend to the ICOC standards for all medical, socioeconomic, and financial aspects of clinical trials and therapy delivery to patients, including, among others, standards for safe and ethical procedures for obtaining materials and cells for research and clinical efforts for the appropriate treatment of human subjects in medical research consistent with paragraph (2) of subdivision (b) of Section 125290.35, and to ensure compliance with patient privacy laws.

(3) To recommend to the ICOC modification of the standards described in paragraphs (1) and (2) as needed.

(4) To make recommendations to the ICOC on the oversight of funded research to ensure compliance with the standards described in paragraphs (1) and (2).

(5) To advise the ICOC, the Scientific and Medical Research Funding Working Group, and the Scientific and Medical Research Facilities Working Group, on an ongoing basis, on relevant ethical and regulatory issues.

125290.60. Scientific and Medical Research Funding Working Group

(a) Membership

The Scientific and Medical Research Funding Working Group shall have 23 members as follows:

(1) Seven ICOC members from the 10 disease advocacy group members described in paragraphs (3), (4), and (5) of subdivision (a) of Section 125290.20.

(2) Fifteen scientists nationally recognized in the field of stem cell research.

(3) The Chairperson of the ICOC.

(b) Functions

The Scientific and Medical Research Funding Working Group shall perform the following functions:

(1) Recommend to the ICOC interim and final criteria, standards, and requirements for considering funding applications and for awarding research grants and loans.

(2) Recommend to the ICOC standards for the scientific and medical oversight of awards.

(3) Recommend to the ICOC any modifications of the criteria, standards, and requirements described in paragraphs (1) and (2) above as needed.

(4) Review grant and loan applications based on the criteria, requirements, and standards adopted by the ICOC and make recommendations to the ICOC for the award of research, therapy development, and clinical trial grants and loans.

(5) Conduct peer group progress oversight reviews of grantees to ensure compliance with the terms of the award, and report to the ICOC any recommendations for subsequent action.

(6) Recommend to the ICOC standards for the evaluation of grantees to ensure that they comply with all applicable requirements. Such standards shall mandate periodic reporting by grantees and shall authorize the Scientific and Medical Research Funding Working Group to audit a grantee and forward any recommendations for action to the ICOC.

(7) Recommend its first grant awards within 60 days of the issuance of the interim standards.

(c) Recommendations for Awards

Award recommendations shall be based upon a competitive evaluation as follows:

(1) Only the 15 scientist members of the Scientific and Medical Research Funding Working Group shall score grant and loan award applications for scientific merit. Such scoring shall be based on scientific merit in three separate classifications—research, therapy development, and clinical trials, on criteria including the following:

(A) A demonstrated record of achievement in the areas of pluripotent stem cell and progenitor cell biology and medicine, unless the research is determined to be a vital research opportunity.

(B) The quality of the research proposal, the potential for achieving significant research, or clinical results, the timetable for realizing such significant results, the importance of the research objectives, and the innovativeness of the proposed research.

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(C) In order to ensure that institute funding does not duplicate or supplant existing funding, a high priority shall be placed on funding pluripotent stem cell and progenitor cell research that cannot, or is unlikely to, receive timely or sufficient federal funding, unencumbered by limitations that would impede the research. In this regard, other research categories funded by the National Institutes of Health shall not be funded by the institute.

(D) Notwithstanding subparagraph (C), other scientific and medical research and technologies and/or any stem cell research proposal not actually funded by the institute under subparagraph (C) may be funded by the institute if at least two-thirds of a quorum of the members of the Scientific and Medical Research Funding Working Group recommend to the ICOC that such a research proposal is a vital research opportunity.

125290.65. Scientific and Medical Facilities Working Group

(a) Membership

The Scientific and Medical Research Facilities Working Group shall have 11 members as follows:

(1) Six members of the Scientific and Medical Research Funding Working Group.

(2) Four real estate specialists. To be eligible to serve on the Scientific and Medical Research Facilities Working Group, a real estate specialist shall be a resident of California, shall be prohibited from receiving compensation from any construction or development entity providing specialized services for medical research facilities, and shall not provide real estate facilities brokerage services for any applicant for, or any funding by the Scientific and Medical Research Facilities Working Group and shall not receive compensation from any recipient of institute funding grants.

(3) The Chairperson of the ICOC.

(b) Functions

The Scientific and Medical Research Facilities Working Group shall perform the following functions:

(1) Make recommendations to the ICOC on interim and final criteria, requirements, and standards for applications for, and the awarding of, grants and loans for buildings, building leases, and capital equipment; those standards and requirements shall include, among others:

(A) Facility milestones and timetables for achieving such milestones.

(B) Priority for applications that provide for facilities that will be available for research no more than two years after the grant award.

(C) The requirement that all funded facilities and equipment be located solely within California.

(D) The requirement that grantees comply with reimbursable building cost standards, competitive building leasing standards, capital equipment cost standards, and reimbursement standards and terms recommended by the Scientific and Medical Facilities Funding Working Group, and adopted by the ICOC.

(E) The requirement that grantees shall pay all workers employed on construction or modification of the facility funded by facilities grants or loans of the institute, the general prevailing rate of per diem wages for work of a similar character in the locality in which work on the facility is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

(F) The requirement that grantees be not-for-profit entities.

(G) The requirement that awards be made on a competitive basis, with the following minimum requirements:

(i) That the grantee secure matching funds from sources other than the institute equal to at least 20 percent of the award. Applications of equivalent merit, as determined by the Scientific and Medical Research Funding Working Group, considering research opportunities to be conducted in the proposed research facility, shall receive priority to the extent that they provide higher matching fund amounts. The Scientific and Medical Research Facilities Working Group may recommend waiving the matching fund requirement in extraordinary cases of high merit or urgency.

(ii) That capital equipment costs and capital equipment loans be allocated when equipment costs can be recovered in part by the grantee from other users of the equipment.

(2) Make recommendations to the ICOC on oversight procedures to ensure grantees' compliance with the terms of an award.

125290.70. Appropriation and Allocation of Funding

(a) Moneys in the California Stem Cell Research and Cures Fund shall be allocated as follows:

(1) (A) No less than 97 percent of the proceeds of the bonds authorized pursuant to Section 125291.30, after allocation of bond proceeds to purposes described in paragraphs (4) and (5) of subdivision (a) of Section 125291.20, shall be used for grants and grant oversight as provided in this chapter.

(B) Not less than 90 percent of the amount used for grants shall be used for research grants, with no more than the following amounts as stipulated below to be committed during the first 10 years of grant making by the institute, with each year's commitments to be advanced over a period of one to seven years, except that any such funds that are not committed may be carried over to one or more following years. The maximum amount of research funding to be allocated annually as follows: Year 1, 5.6 percent; Year 2, 9.4 percent; Year 3, 9.4 percent; Year 4, 11.3 percent; Year 5, 11.3 percent; Year 6, 11.3 percent; Year 7, 11.3 percent; Year 8, 11.3 percent; Year 9, 11.3 percent; and Year 10, 7.5 percent.

(C) Not more than 3 percent of the proceeds of bonds authorized by Section 125291.30 may be used by the institute for research and research facilities implementation costs, including the development, administration, and oversight of the grant making process and the operations of the working groups.

(2) Not more than 3 percent of the proceeds of the bonds authorized pursuant to Section 125291.30 shall be used for the costs of general administration of the institute.

(3) In any single year any new research funding to any single grantee for any program year is limited to no more than 2 percent of the total bond authorization under this chapter. This limitation shall be considered separately for each new proposal without aggregating any prior year approvals that may fund research activities. This requirement shall be determinative, unless 65 percent of a quorum of the ICOC approves a higher limit for that grantee.

(4) Recognizing the priority of immediately building facilities that ensure the independence of the scientific and medical research of the institute, up to 10 percent of the proceeds of the bonds authorized pursuant to Section 125291.30, net of costs described in paragraphs (2), (4), and (5) of subdivision (a) of Section 125291.20 shall be allocated for grants to build scientific and medical research facilities of nonprofit entities which are intended to be constructed in the first five years.

(5) The institute shall limit indirect costs to 25 percent of a research award, excluding amounts included in a facilities award, except that the indirect cost limitation may be increased by that amount by which the grantee provides matching funds in excess of 20 percent of the grant amount.

(b) To enable the institute to commence operating during the first six months following the adoption of the measure adding this chapter, there is hereby appropriated from the General Fund as a temporary start-up loan to the institute three million dollars (\$3,000,000) for initial administrative and implementation costs. All loans to the institute pursuant to this appropriation shall be repaid to the General Fund within 12 months of each loan draw from the proceeds of bonds sold pursuant to Section 125291.30.

(c) The institute's funding schedule is designed to create a positive tax revenue stream for the State of California during the institute's first five calendar years of operations, without drawing funds from the General Fund for principal and interest payments for those first five calendar years.

Article 2. California Stem Cell Research and Cures Bond Act of 2004

125291.10. This article shall be known, and may be cited, as the California Stem Cell Research and Cures Bond Act of 2004.

125291.15. As used in this article, the following terms have the following meaning:

(a) "Act" means the California Stem Cell Research and Cures Bond Act constituting Chapter 3 (commencing with Section 125290.10) of Part 5 of Division 106.

(b) "Board" or "institute" means the California Institute for Regenerative Medicine designated in accordance with subdivision (b) of Section 125291.40.

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(c) “Committee” means the California Stem Cell Research and Cures Finance Committee created pursuant to subdivision (a) of Section 125291.40.

(d) “Fund” means the California Stem Cell Research and Cures Fund created pursuant to Section 125291.25.

(e) “Interim debt” means any interim loans pursuant to subdivision (b) of Section 125290.70, and Sections 125291.60 and 125291.65, bond anticipation notes or commercial paper notes issued to make deposits into the fund and which will be paid from the proceeds of bonds issued pursuant to this article.

125291.20. (a) Notwithstanding Section 13340 of the Government Code or any other provision of law, moneys in the fund are appropriated without regard to fiscal years to the institute for the purpose of (1) making grants or loans to fund research and construct facilities for research, all as described in and pursuant to the act, (2) paying general administrative costs of the institute (not to exceed 3 percent of the net proceeds of each sale of bonds), (3) paying the annual administration costs of the interim debt or bonds after December 31 of the fifth full calendar year after this article takes effect, (4) paying the costs of issuing interim debt, paying the annual administration costs of the interim debt until and including December 31 of the fifth full calendar year after this article takes effect, and paying interest on interim debt, if such interim debt is incurred or issued on or prior to December 31 of the fifth full calendar year after this article takes effect, and (5) paying the costs of issuing bonds, paying the annual administration costs of the bonds until and including December 31 of the fifth full calendar year after this article takes effect, and paying interest on bonds that accrues on or prior to December 31 of the fifth full calendar year after this article takes effect (except that such limitation does not apply to premium and accrued interest as provided in Section 125291.70). In addition, moneys in the fund or other proceeds of the sale of bonds authorized by this article may be used to pay principal of or redemption premium on any interim debt issued prior to the issuance of bonds authorized by this article. Moneys deposited in the fund from the proceeds of interim debt may be used to pay general administrative costs of the institute without regard to the 3 percent limit set forth in (2) above, so long as such 3 percent limit is satisfied for each issue of bonds.

(b) Repayment of principal and interest on any loans made by the institute pursuant to this article shall be deposited in the fund and used to make additional grants and loans for the purposes of this act or for paying continuing costs of the annual administration of outstanding bonds.

125291.25. The proceeds of interim debt and bonds issued and sold pursuant to this article shall be deposited in the State Treasury to the credit of the California Stem Cell Research and Cures Fund, which is hereby created in the State Treasury, except to the extent that proceeds of the issuance of bonds are used directly to repay interim debt.

125291.30. Bonds in the total amount of three billion dollars (\$3,000,000,000), not including the amount of any refunding bonds issued in accordance with Section 125291.75, or as much thereof as is necessary, may be issued and sold to provide a fund to be used for carrying out the purposes expressed in this article and to be used and sold for carrying out the purposes of Section 125291.20 and to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code. The bonds, when sold, shall be and shall constitute a valid and binding obligation of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of both the principal of, and interest on, the bonds as the principal and interest become due and payable.

125291.35. The bonds authorized by this article shall be prepared, executed, issued, sold, paid, and redeemed as provided in the State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code), and all of the provisions of that law except Section 16727 apply to the bonds and to this article and are hereby incorporated in this article as though set forth in full in this article.

125291.40. (a) Solely for the purpose of authorizing the issuance and sale, pursuant to the State General Obligation Bond Law, of the bonds and interim debt authorized by this article, the California Stem Cell Research and Cures Finance Committee is hereby created. For purposes of this article, the California Stem Cell Research and Cures Finance Committee is “the committee” as that term is used in the State General Obligation Bond Law. The committee consists of the Treasurer, the Controller, the Director of Finance, the Chairperson of the California Institute for Regenerative Medicine, and two other members of the Independent Citizens Oversight Committee (as created by the act)

chosen by the Chairperson of the California Institute for Regenerative Medicine, or their designated representatives. The Treasurer shall serve as chairperson of the committee. A majority of the committee may act for the committee.

(b) For purposes of the State General Obligation Bond Law, the California Institute for Regenerative Medicine is designated the “board.”

125291.45. (a) The committee shall determine whether or not it is necessary or desirable to issue bonds authorized pursuant to this article in order to carry out the actions specified in this article and, if so, the amount of bonds to be issued and sold. Successive issues of bonds may be authorized and sold to carry out those actions progressively, and it is not necessary that all of the bonds authorized to be issued be sold at any one time. The bonds may bear interest which is includable in gross income for federal income tax purposes if the committee determines that such treatment is necessary in order to provide funds for the purposes of the act.

(b) The total amount of the bonds authorized by Section 125291.30 which may be issued in any calendar year, commencing in 2005, shall not exceed three hundred fifty million dollars (\$350,000,000). If less than this amount of bonds is issued in any year, the remaining permitted amount may be carried over to one or more subsequent years.

(c) An interest-only floating rate bond structure will be implemented for interim debt and bonds until at least December 31 of the fifth full calendar year after this article takes effect, with all interest to be paid from proceeds from the sale of interim debt or bonds, to minimize debt service payable from the General Fund during the initial period of basic research and therapy development, if the committee determines, with the advice of the Treasurer, that this structure will result in the lowest achievable borrowing costs for the state during that five-year period considering the objective of avoiding any bond debt service payments, by the General Fund, during that period. Upon such initial determination, the committee may delegate, by resolution, to the Treasurer such authority in connection with issuance of bonds as it may determine, including, but not limited to, the authority to implement and continue this bond financing structure (including during any time following the initial five-year period) and to determine that an alternate financing plan would result in significant lower borrowing costs for the state consistent with the objectives related to the General Fund and to implement such alternate financing plan.

125291.50. There shall be collected each year and in the same manner and at the same time as other state revenue is collected, in addition to the ordinary revenues of the state, a sum in an amount required to pay the principal of, and interest on, the bonds maturing each year. It is the duty of all officers charged by law with any duty in regard to the collection of the revenue to do and perform each and every act that is necessary to collect that additional sum.

125291.55. Notwithstanding Section 13340 of the Government Code, there is hereby appropriated from the General Fund in the State Treasury, for the purposes of this article, an amount that will equal the total of the following:

(a) The sum annually necessary to pay the principal of, and interest on, bonds issued and sold pursuant to this article, as the principal and interest become due and payable.

(b) The sum necessary to carry out Section 125291.60 appropriated without regard to fiscal years.

125291.60. The Director of Finance may authorize the withdrawal from the General Fund of an amount or amounts, not to exceed the amount of the unsold bonds that have been authorized by the committee, to be sold for the purpose of carrying out this article. Any money withdrawn shall be deposited in the fund. Any money made available under this section shall be returned to the General Fund, plus an amount equal to the interest that the money would have earned in the Pooled Money Investment Account, from money received from the sale of bonds for the purpose of carrying out this article.

125291.65. The institute may request the Pooled Money Investment Board to make a loan from the Pooled Money Investment Account in accordance with Section 16312 of the Government Code for the purposes of carrying out this article. The amount of the request shall not exceed the amount of the unsold bonds that the committee, by resolution, has authorized to be sold for the purpose of carrying out this article. The institute shall execute any documents required by the Pooled Money Investment Board to obtain and repay the loan. Any amounts loaned shall be deposited in the fund to be allocated by the institute in accordance with this article.

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125291.70. All money deposited in the fund that is derived from premium and accrued interest on bonds sold shall be reserved in the fund and shall be available for transfer to the General Fund as a credit to expenditures for bond interest.

125291.75. The bonds may be refunded in accordance with Article 6 (commencing with Section 16780) of Chapter 4 of Part 3 of Division 4 of Title 2 of the Government Code, which is a part of the State General Obligation Bond Law. Approval by the voters of the state for the issuance of the bonds described in this article includes the approval of the issuance of any bonds issued to refund any bonds originally issued under this article or any previously issued refunding bonds.

125291.80. Notwithstanding any provision of this article or the State General Obligation Bond Law, if the Treasurer sells bonds pursuant to this article that include a bond counsel opinion to the effect that the interest on the bonds is excluded from gross income for federal tax purposes, subject to designated conditions, the Treasurer may maintain separate accounts for the investment of bond proceeds and the investment earnings on those proceeds. The Treasurer may use or direct the use of those proceeds or earnings to pay any rebate, penalty, or other payment required under federal law or to take any other action with respect to the investment and use of bond proceeds required or desirable under federal law to maintain the tax-exempt status of those bonds and to obtain any other advantage under federal law on behalf of the funds of this state.

125291.85. Inasmuch as the proceeds from the sale of bonds authorized by this article are not "proceeds of taxes" as that term is used in Article XIII B of the California Constitution, the disbursement of these proceeds is not subject to the limitations imposed by that article.

Article 3. Definitions

125292.10. As used in this chapter and in Article XXXV of the California Constitution, the following terms have the following meanings:

(a) "Act" means the California Stem Cell Research and Cures Bond Act constituting Chapter 3 (commencing with Section 125290.10) of Part 5 of Division 106 of the Health and Safety Code.

(b) "Adult stem cell" means an undifferentiated cell found in a differentiated tissue in an adult organism that can renew itself and may, with certain limitations, differentiate to yield all the specialized cell types of the tissue from which it originated.

(c) "Capitalized interest" means interest funded by bond proceeds.

(d) "Committee" means the California Stem Cell Research and Cures Finance Committee created pursuant to subdivision (a) of Section 125291.40.

(e) "Constitutional officers" means the Governor, Lieutenant Governor, Treasurer, and Controller of California.

(f) "Facilities" means buildings, building leases, or capital equipment.

(g) "Floating-rate bonds" means bonds which do not bear a fixed rate of interest until their final maturity date, including commercial paper notes.

(h) "Fund" means the California Stem Cell Research and Disease Cures Fund created pursuant to Section 125291.25.

(i) "Grant" means a grant, loan, or guarantee.

(j) "Grantee" means a recipient of a grant from the institute. All University of California grantee institutions shall be considered as separate and individual grantee institutions.

(k) "Human reproductive cloning" means the practice of creating or attempting to create a human being by transferring the nucleus from a human cell into an egg cell from which the nucleus has been removed for the purpose of implanting the resulting product in a uterus to initiate a pregnancy.

(l) "Indirect costs" mean the recipient's costs in the administration, accounting, general overhead, and general support costs for implementing a grant or loan of the institute. NIH definitions of indirect costs will be utilized as one of the bases by the Scientific and Medical Research Standards Working Group to create a guideline for recipients on this definition, with modifications to reflect guidance by the ICOC and this act.

(m) "Institute" means the California Institute for Regenerative Medicine.

(n) "Interim standards" means temporary standards that perform the same function as "emergency regulations" under the Administrative Procedure Act (Government Code, Title 2, Division 3, Part 1, Chapter 4.5, Sections 11371 et seq.) except that in order to provide greater opportunity for public comment on the permanent regulations, remain in force for 270 days rather than 180 days.

(o) "Life science commercial entity" means a firm or organization, headquartered in California, whose business model includes biomedical or biotechnology product development and commercialization.

(p) "Medical ethicist" means an individual with advanced training in ethics who holds a Ph.D., MA, or equivalent training and who spends or has spent substantial time (1) researching and writing on ethical issues related to medicine, and (2) administering ethical safeguards during the clinical trial process, particularly through service on institutional review boards.

(q) "Pluripotent cells" means cells that are capable of self-renewal, and have broad potential to differentiate into multiple adult cell types. Pluripotent stem cells may be derived from somatic cell nuclear transfer or from surplus products of in vitro fertilization treatments when such products are donated under appropriate informed consent procedures. These excess cells from in vitro fertilization treatments would otherwise be intended to be discarded if not utilized for medical research.

(r) "Progenitor cells" means multipotent or precursor cells that are partially differentiated but retain the ability to divide and give rise to differentiated cells.

(s) "Quorum" means at least 65 percent of the members who are eligible to vote.

(t) "Research donor" means a human who donates biological materials for research purposes after full disclosure and consent.

(u) "Research funding" includes interdisciplinary scientific and medical funding for basic research, therapy development, and the development of pharmacologies and treatments through clinical trials. When a facility's grant or loan has not been provided to house all elements of the research, therapy development, and/or clinical trials, research funding shall include an allowance for a market lease rate of reimbursement for the facility. In all cases, operating costs of the facility, including, but not limited to, library and communication services, utilities, maintenance, janitorial, and security, shall be included as direct research funding costs. Legal costs of the institute incurred in order to negotiate standards with federal and state governments and research institutions; to implement standards or regulations; to resolve disputes; and/or to carry out all other actions necessary to defend and/or advance the institute's mission shall be considered direct research funding costs.

(v) "Research participant" means a human enrolled with full disclosure and consent, and participating in clinical trials.

(w) "Revenue positive" means all state tax revenues generated directly and indirectly by the research and facilities of the institute are greater than the debt service on the state bonds actually paid by the General Fund in the same year.

(x) "Stem cells" mean nonspecialized cells that have the capacity to divide in culture and to differentiate into more mature cells with specialized functions.

(y) "Vital research opportunity" means scientific and medical research and technologies and/or any stem cell research not actually funded by the institute under subparagraph (C) of paragraph (1) of subdivision (c) of Section 125290.60 which provides a substantially superior research opportunity vital to advance medical science as determined by at least a two-thirds vote of a quorum of the members of the Scientific and Medical Research Funding Working Group and recommended as such by that working group to the ICOC. Human reproductive cloning shall not be a vital research opportunity.

SEC. 6. Section 20069 of the Government Code is amended to read:

(a) "State service" means service rendered as an employee or officer (employed, appointed or elected) of the state, the California Institute for Regenerative Medicine and the officers and employees of its governing body, the university, a school employer, or a contracting agency, for compensation, and only while he or she is receiving compensation from that employer therefor, except as provided in Article 4 (commencing with Section 20990) of Chapter 11.

Proposition 71 (cont.)

(b) “State service,” solely for purposes of qualification for benefits and retirement allowances under this system, shall also include service rendered as an officer or employee of a county if the salary for the service constitutes compensation earnable by a member of this system under Section 20638.

SEC. 7. Severability

If any provision of this act, or part thereof, is for any reason held to be invalid or unconstitutional, the remaining provisions shall not be affected, but shall remain in full force and effect, and to this end the provisions of this act are severable.

SEC. 8. Amendments

The statutory provisions of this measure, except the bond provisions, may be amended to enhance the ability of the institute to further the purposes of the grant and loan programs created by the measure, by a bill introduced and passed no earlier than the third full calendar year following adoption, by 70 percent of the membership of both houses of the Legislature and signed by the Governor, provided that at least 14 days prior to passage in each house, copies of the bill in final form shall be made available by the clerk of each house to the public and news media.

Proposition 72

This law proposed by Senate Bill 2 of the 2003–2004 Regular Session (Chapter 673, Statutes of 2003) is submitted to the people as a referendum in accordance with the provisions of Section 9 of Article II of the California Constitution.

This proposed law amends and adds sections to various codes; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

SECTION 1. The Legislature finds and declares all of the following:

(a) The Legislature finds and declares that working Californians and their families should have health insurance coverage.

(b) The Legislature further finds and declares that most working Californians obtain their health insurance coverage through their employment.

(c) The Legislature finds and declares that in 2001, more than 6,000,000 Californians lacked health insurance coverage at some time and 3,600,000 Californians had no health insurance coverage at any time.

(d) The Legislature finds and declares that more than 80 percent of Californians without health insurance coverage are working people or their families. Most of these working Californians without health insurance coverage work for employers who do not offer health benefits.

(e) The Legislature finds and declares that employment-based health insurance coverage provides access for millions of Californians to the latest advances in medical science, including diagnostic procedures, surgical interventions, and pharmaceutical therapies.

(f) The Legislature finds and declares that people who are covered by health insurance have better health outcomes than those who lack coverage. Persons without health insurance are more likely to be in poor health, more likely to have missed needed medications and treatment, and more likely to have chronic conditions that are not properly managed.

(g) The Legislature finds and declares that persons without health insurance are at risk of financial ruin and that medical debt is the second most common cause of personal bankruptcy in the United States.

(h) The Legislature further finds and declares that the State of California provides health insurance to low- and moderate-income working parents and their children through the Medi-Cal and Healthy Families programs and pays the cost of coverage for those working people who are not provided health coverage through employment. The Legislature further finds and declares that the State of California and local governments fund county hospitals and clinics, community clinics, and other safety net providers that provide care to those working people whose employers fail to provide affordable health coverage to workers and their families as well as to other uninsured persons.

(i) The Legislature further finds and declares that controlling health care costs can be more readily achieved if a greater share of working people and their families have health benefits so that cost shifting is minimized.

(j) The Legislature finds and declares that the social and economic burden created by the lack of health coverage for some workers and their dependents creates a burden on other employers, the State of California, affected workers, and the families of affected workers who suffer ill health and risk financial ruin.

(k) It is therefore the intent of the Legislature to assure that working Californians and their families have health benefits and that employers pay a user fee to the State of California so that the state may serve as a purchasing agent to pool those fees to purchase coverage for all working Californians and their families that is not tied to employment with an individual employer. However, consistent with this act, if the employer voluntarily provides proof of health care coverage, that employer is to be exempted from payment of the fee.

(l) It is further the intent of the Legislature that workers who work on a seasonal basis, for multiple employers, or who work multiple jobs for the same employer should be afforded the opportunity to have health coverage in the same manner as those who work full-time for a single employer.

(m) The Legislature recognizes the vital role played by the health care safety net and the potential impact this act may have on the resources available to county hospital systems and clinics, including physicians or networks of physicians that refer patients to such hospitals and clinics, as well as community clinics and other safety net providers. It is the intent of the Legislature to preserve the viability of this important health care resource.

(n) Nothing in this act shall be construed to diminish or otherwise change existing protections in law for persons eligible for public programs including, but not limited to, Medi-Cal, Healthy Families, California Children’s Services, Genetically Handicapped Persons Program, county mental health programs, programs administered by the Department of Alcohol and Drug Programs, or programs administered by local education agencies. It is further the intent of the Legislature to preserve benefits available to the recipients of these programs, including dental, vision, and mental health benefits.

SEC. 2. Part 8.7 (commencing with Section 2120) is added to Division 2 of the Labor Code, to read:

PART 8.7. EMPLOYEE HEALTH INSURANCE

CHAPTER 1. TITLE AND PURPOSE

2120. This part shall be known and may be cited as the Health Insurance Act of 2003.

2120.1. (a) Large employers, as defined in Section 2122.3, shall comply with the provisions of this part applicable to large employers commencing on January 1, 2006.

(b) Medium employers, as defined in Section 2122.4, shall comply with the provisions of this part applicable to medium employers commencing on January 1, 2007, except that those employers with at least 20 employees but no more than 49 employees are not required to comply with the provisions of this part unless a tax credit is enacted that is available to those employers with at least 20 employees but no more than 49 employees. The tax credit shall be 20 percent of net cost to the employer of the fee owed under Chapter 4 (commencing with Section 2140). “Net cost” means the dollar amount of the employer fee or the credit consistent with Section 2160.1 reduced by the employee share of that fee or credit and further reduced by the value of state and federal tax deductions.

2120.2. It is the purpose of this part to ensure that working Californians and their families are provided health care coverage.

2120.3. This part shall not be construed to diminish any protection already provided pursuant to collective bargaining agreements or employer-sponsored plans that are more favorable to the employees than the health care coverage required by this part.

Proposition 72 (cont.)

CHAPTER 2. DEFINITIONS

2122. Unless the context requires otherwise, the definitions set forth in this chapter shall govern the construction and meaning of the terms and phrases used in this part.

2122.1. “Dependent” means the spouse, domestic partner, minor child of a covered enrollee, or child 18 years of age and over who is dependent on the enrollee, as specified by the board. “Dependent” does not include a dependent who is provided coverage by another employer or who is an eligible enrollee as a consequence of that dependent’s employment status.

2122.2. “Enrollee” means a person who works at least 100 hours per month for any individual employer and has worked for that employer for three months. The term includes sole proprietors or partners of a partnership, if they are actively engaged at least 100 hours per month in that business.

2122.3. “Large employer” means a person, as defined in Section 7701(a) of the Internal Revenue Code, or public or private entity employing for wages or salary 200 or more persons to work in this state.

2122.4. “Medium employer” means a person, as defined in Section 7701(a) of the Internal Revenue Code, or public or private entity employing for wages or salary at least 20 but no more than 199 persons to work in this state.

2122.5. “Small employer” means a person, as defined in Section 7701(a) of the Internal Revenue Code, or public or private entity employing for wages or salary at least 2 but no more than 19 persons to work in this state.

2122.6. “Employer” means an employing unit as defined in Section 135 of the Unemployment Insurance Code, that is either a large employer or medium employer, as defined in Sections 2122.3 and 2122.4. For purposes of this part, an employer shall include all of the members of a controlled group of corporations. A “controlled group of corporations” means controlled group of corporations as defined in Section 1563(a) of the Internal Revenue Code, except that “more than 50 percent” shall be substituted for “at least 80 percent” each place it appears in Section 1563(a)(1) of the Internal Revenue Code and the determination shall be made without regard to Sections 1563(a)(4) and 1563(e)(3)(C) of the Internal Revenue Code.

2122.7. “Principal employer” means the employer for whom an enrollee works the greatest number of hours in any month.

2122.8. “Wages” means wages as defined in subdivision (a) of Section 200 paid directly to an individual by his or her employer.

2122.9. “Fund” means the State Health Purchasing Fund created pursuant to Section 2210.

2122.10. “Program” means the State Health Purchasing Program, which includes a purchasing pool providing health care coverage for enrollees, and, if applicable, their dependents, which will be financed by fees paid by employers and contributions by enrollees.

2122.11. “Board” means the Managed Risk Medical Insurance Board.

2122.12. “Fee” means the fee as determined in Chapter 4 (commencing with Section 2140).

CHAPTER 3. STATE HEALTH PURCHASING PROGRAM

2130. The State Health Purchasing Program is hereby created. The program shall be managed by the Managed Risk Medical Insurance Board, which shall have those powers granted to the board with respect to the Healthy Families Program under Section 12693.21 of the Insurance Code, except that the emergency regulation authority referenced in subdivision (o) of that section shall only be in effect for this program from the effective date of this part until three years after the requirements of this program are in effect for large and medium employers as provided in Section 2120.1.

2130.1. Notwithstanding any other provisions of law to the contrary, the board shall have authority and fiduciary responsibility for the administration of the program, including sole and exclusive fiduciary responsibility over the assets of the fund. The board shall also have sole and exclusive responsibility to administer the program in a manner that will assure prompt delivery of benefits and related services to the enrollees, and, if applicable, dependents, including sole and exclusive responsibility over contract, budget, and personnel matters. Nothing in this section shall preclude legislative or state auditor oversight over the program.

2130.2. The board shall arrange coverage for enrollees, and, if applicable, dependents eligible under this part by establishing and maintaining a purchasing pool. The board shall negotiate contracts with those health care service plans and health insurers that choose to participate for the benefit package described in this part and shall not self-insure or partially self-insure the health care benefits under this part.

2130.3. The health care benefits coverage provided to enrollees, and, if applicable, dependents, shall be equivalent to the coverage required under subdivision (a) or (b) of Section 2160.1.

2130.4. The program shall be funded by employer fees and enrollee contributions as described in this part. The board shall administer the program in a manner that assures that the fees and enrollee contributions collected pursuant to this part are sufficient to fund the program, including administrative costs.

CHAPTER 4. EMPLOYER FEE

2140. Except as otherwise provided in this part, every large employer and every medium employer shall pay a fee as specified in this chapter.

2140.1. The board shall establish the level of the fee by determining the total amount necessary to pay for health care for all enrollees, and, if applicable, their dependents eligible for the program. In setting the fee the board may include costs associated with the administration of the fund, including those costs associated with collection of the fee and its enforcement by the Employment Development Department. The program implemented pursuant to this part shall be fully supported by the fees and enrollee contributions collected pursuant to this part. The fees and enrollee contributions collected pursuant to this part shall not be used for any purpose other than providing health coverage for enrollees and, if applicable, their dependents, as well as costs associated with the administration of the fund and with collection of the fee and its enforcement by the Employment Development Department.

2140.2. The board shall provide notice to the Employment Development Department of the amount of the fee in a time and manner that permits the Employment Development Department to provide notice to all employers of the estimated fee for the budget year pursuant to Section 976.7 of the Unemployment Insurance Code.

2140.3. The Employment Development Department shall waive the fee of any employer that is entitled to a credit under the terms of this part. The Employment Development Department shall specify the manner and means by which that credit may be claimed by an employer.

2140.4. Revenue from the fee and from the enrollee contributions specified in this part shall be deposited into the fund.

2140.5. The fee paid by employers shall be based on the cost of coverage for all enrollees, and, if applicable, their dependents. The fee to be paid by each employer shall be based on the number of potential enrollees, and if applicable, dependents, using the employer’s own workforce on a date specified by the board as the basis for the allocation and such other factors as the board may determine in order to provide coverage that meets the standards of this part. To assist the board in determining the fee, each employer shall provide to the board information as specified by the board regarding potential enrollees, and, if applicable, dependents. To the extent feasible, the board shall work with the Employment Development Department to facilitate the provision of information regarding the number of potential enrollees and dependents.

2140.6. A large employer shall pay a fee to the fund for the purpose of providing health care coverage pursuant to this part. The fee paid by a large employer shall be based on the number of enrollees and dependents.

2140.7. A medium employer shall pay a fee to the fund for the purpose of providing health care coverage pursuant to this part. The fee paid by a medium employer shall be based on the number of enrollees.

2140.8. Coverage of an enrollee or, if applicable, dependents shall not be contingent upon payment of the fee required pursuant to this part by the employer of that enrollee or, if applicable, dependents. If an employer fails to pay the required fee, for whatever reason, the employer shall be responsible to the fund for payment of a penalty of 200 percent of the amount of any fee that would have otherwise been paid by the employer including for the period that the enrollee and, if applicable, dependents should have received coverage but for the employer’s conduct in violation of this section.

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2140.9. All amounts due and unpaid under this part, including unpaid penalties, shall bear interest in accordance with Section 1129 of the Unemployment Insurance Code.

2140.10. Nothing in this part shall preclude an employer from purchasing additional benefits or coverage, in addition to paying the fee.

CHAPTER 5. ENROLLEE CONTRIBUTION

2150. The applicable enrollee contribution, not to exceed 20 percent of the fee assessed to the employer, shall be collected by the employer and paid concurrently with the employer fee. The employer may agree to pay more than 80 percent of the fee, resulting in an enrollee, and, if applicable, dependent contribution of less than 20 percent. For enrollees making a contribution for family coverage and whose wages are less than 200 percent of the federal poverty guidelines for a family of three, as specified annually by the United States Department of Health and Human Services, the applicable enrollee contribution shall not exceed 5 percent of wages. For enrollees making a contribution for individual coverage and whose wages are less than 200 percent of the federal poverty guidelines for an individual, the applicable enrollee contribution shall not exceed 5 percent of wages.

2150.1. (a) The board shall establish the required enrollee and dependent deductibles, coinsurance or copayment levels for specific benefits, including total annual out-of-pocket cost.

(b) No out-of-pocket costs other than copayments, coinsurance, and deductibles in accordance with this section shall be charged to enrollees and dependents for health benefits.

(c) In determining the required enrollee and dependent deductibles, coinsurance, and copayments, the board shall consider whether the proposed copayments, coinsurance, and deductibles deter enrollees and dependents from receiving appropriate and timely care, including those enrollees with low or moderate family incomes. The board shall also consider the impact of out-of-pocket costs on the ability of employers to pay the fee. This section shall apply to coverage provided through the program only and is not intended to apply coverage that is not provided through the program.

2150.2. In the event that the employer fails to collect or transmit the enrollee contribution provided for under this part in a timely manner, the employer shall become liable for a penalty of 200 percent of the amount that the employer has failed to collect or transmit, and the employee shall be relieved of all liability for that failure. In no event shall the employer's failure to collect or transmit the required enrollee's contribution or to provide enrollment information about an employee affect the employee's coverage arranged pursuant to Chapter 3 (commencing with Section 2130), nor may an employer withhold or collect any amount that is not withheld and transmitted in the manner and at such times as specified by the Employment Development Department pursuant to this part. An employee for whom enrollment information is not otherwise received by the board may demonstrate eligibility for coverage by any reliable means of demonstrating employment as provided for in regulation. To the extent feasible, the board shall work with the Employment Development Department to facilitate the provision of information regarding the eligibility of enrollees and to provide information regarding any failure of an employer to collect or transmit employee contributions as required by this part.

CHAPTER 6. EMPLOYER CREDIT AGAINST THE FEE

2160. An employer required to pay a fee to the fund may apply to the Employment Development Department for a credit against the fee by providing proof of coverage for eligible enrollees and their dependents, if applicable, consistent with Section 2140.3.

2160.1. Proof of coverage shall be demonstrated by any of the following:

(a) Any health care coverage that meets the minimum requirements set forth in Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code.

(b) A group health insurance policy, as defined in subdivision (b) of Section 106 of the Insurance Code, that covers hospital, surgical, and medical care expenses, provided the maximum out-of-pocket costs for insureds do not exceed the maximum out-of-pocket costs for enrollees of health care service plans providing benefits under a preferred provider organization policy. For the purposes of this section, a group health insurance policy shall not include Medicare supplement, vision-only, dental-only, and Champus-supplement insurance. For purposes of

this section, a group health insurance policy shall not include hospital indemnity, accident-only, and specified disease insurance that pays benefits on a fixed benefit, cash-payment-only basis.

(c) Any Taft-Hartley health and welfare fund or any other lawful collective bargaining agreement which provides for health and welfare coverage for collective bargaining unit or other employees thereby covered.

(d) Any employer sponsored group health plan meeting the requirements of the federal Employee Retirement Income Security Act of 1974, provided it meets the benefits required under subdivision (a) or (b) of this section.

(e) A multiple employer welfare arrangement established pursuant to Section 742.20 of the Insurance Code, provided that its benefits have not changed after January 1, 2004, or that it meets the benefits required under subdivision (a) or (b) of this section.

(f) Coverage provided under the Public Employees' Medical and Hospital Care Act (Part 5 (commencing with Section 22850) of Division 5 of Title 2 of the Government Code, provided it meets the benefits required under subdivision (a) or (b) of this section or is otherwise collectively bargained.

(g) Health coverage provided by the University of California to students of the University of California who are also employed by the University of California.

2160.2. Nothing in this part shall preclude an employer from providing additional benefits or coverage.

2160.3. It shall be unlawful for an employer to designate an employee as an independent contractor or temporary employee, reduce an employee's hours of work, or terminate and rehire an employee if a purpose of which is to avoid the employer's obligations under this part. An employer that violates this section shall be responsible to the fund for a penalty of 200 percent of the amount of any fee that would have otherwise been paid by the employer including for the period that the enrollee, and, if applicable, dependents should have received coverage but for the employer's conduct in violation of this section. The rights established under this section shall not reduce any other rights established under any other provision of law.

2160.4. An employer shall not request or otherwise seek to obtain information concerning income or other eligibility requirements for public health benefit programs regarding an employee, dependent, or other family member of an employee, other than that information about the employee's employment status otherwise known to the employer consistent with existing state and federal law and regulation. For these purposes, public health benefit programs include, but are not limited to, the Medi-Cal program, Healthy Families Program, Major Risk Medical Insurance Program, and Access for Infants and Mothers program.

2160.5. The Employment Development Department shall adopt regulations to ensure that employers abide by the provisions of this chapter. The regulations may initially be adopted as emergency regulations 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, but those emergency regulations shall be in effect only from the effective date of this part until after the requirements of this program are in effect for large and medium employers as provided in Section 2120.1.

2160.7. (a) Any new employer or existing employer that previously was not subject to this part shall begin complying with all applicable provisions of this part within one month of the date it became subject to this part.

(b) Any existing employer previously subject to this part but no longer subject to this part shall notify the Employment Development Department in a manner prescribed by that department within 15 days of this change before discontinuing to comply with the provisions of this part.

CHAPTER 7. PARTICIPATING HEALTH PLANS

2170. Notwithstanding any other provision of law, the board shall not be subject to licensure or regulation by the Department of Insurance or the Department of Managed Health Care.

2171. The board shall contract only with insurers that can demonstrate compliance with Section 10761.2 of the Insurance Code and only with health care service plans that can demonstrate compliance with the requirements of Section 1357.23 of the Health and Safety Code.

2173. (a) The board shall develop and utilize appropriate cost containment measures to maximize the cost-effectiveness of health care

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coverage offered under the program. The board shall consider the findings of the California Health Care Quality Improvement and Cost Containment Commission.

(b) Health care service plans, health insurers, and providers are encouraged to develop innovative approaches, services, and programs that may have the potential to deliver health care that is both cost-effective and responsive to the needs of enrollees.

CHAPTER 8. ENROLLMENT AND COORDINATION WITH PUBLIC PROGRAMS

2190. (a) Employers shall provide information to the board regarding potential enrollees, and, if applicable, dependents as prescribed by the board to assist the board in obtaining information necessary for enrollment. In no case shall the board require the employer to obtain from the potential enrollee information about the family income or other eligibility requirements for Medi-Cal, Healthy Families, or other public programs other than that information about the enrollee's employment status otherwise known to the employer consistent with existing state and federal law and regulation.

(b) The board shall obtain enrollment information from potential enrollees and, if applicable, dependents to be covered by the program. The enrollee may voluntarily provide information sufficient to determine whether the enrollee or dependents may be eligible for coverage under Medi-Cal, Healthy Families, or other public programs if the enrollee chooses to seek enrollment in those programs. The board shall use a uniform enrollment form for obtaining that information. The board shall provide information to enrollees covered by the program regarding the coverage available under the program and other programs, including Medi-Cal and Healthy Families, for which enrollees or dependents may be eligible.

2190.1. (a) An enrollee or dependent who would qualify for Medi-Cal pursuant to Chapter 7 (commencing with Section 14000) of Part 3 of Division 6 of the Welfare and Institutions Code and who chooses to provide information about eligibility for the Medi-Cal program shall be enrolled in the Medi-Cal program if determined by the State Department of Health Services to be eligible for that program and shall be charged share-of-cost, copays, coinsurance, or deductibles in accordance with the requirements of that program.

(b) An enrollee or dependent who would qualify for the Healthy Families Program pursuant to Part 6.2 (commencing with Section 12693) of the Insurance Code and who chooses to provide information about eligibility for the Healthy Families Program shall be enrolled in the Healthy Families Program if determined eligible for that program and shall be charged share-of-premium, copays, coinsurance, or deductibles in accordance with the requirements of that program.

2190.2. (a) The board shall provide to the State Department of Health Services information concerning the potential or continuing eligibility of enrollees and dependents in the program for Medi-Cal.

(b) (1) For those enrollees and dependents of the program who are determined to be eligible for Medi-Cal, the board shall provide the state share of financial participation for the cost of Medi-Cal coverage provided through the program.

(2) For those enrollees and dependents of the program who are determined to be eligible for Healthy Families, the board shall provide the state share of financial participation for the cost of Healthy Families coverage provided through the program.

(c) Nothing in this part shall affect the authority of the State Department of Health Services or the board to verify eligibility as required by federal law.

(d) The board shall have authority to make any necessary repayments of enrollee contributions to persons whose coverage is provided under this section, and may also delegate to the State Department of Health Services the authority to repay those contributions.

(e) The State Department of Health Services shall seek all state plan amendments and federal approvals as necessary to maximize the amount of any federal financial participation available.

2190.3. Nothing in this part shall be construed to diminish or otherwise change existing protections in law for persons eligible for public programs, including, but not limited to, California Children's Services, Genetically Handicapped Persons Program, county mental health programs, programs administered by the Department of Alcohol and Drug Programs, or programs administered by local education agencies.

2190.4. In implementing this part, the board shall consult with organizations representing the interests of enrollees, particularly those

who may be covered by public programs as well as family members, providers, advocacy organizations, and plans providing coverage under public programs.

CHAPTER 9. ADMINISTRATION

2200. A contract entered into by the board pursuant to this part shall be exempt from any provision of law relating to competitive bidding, and shall be exempt from the review or approval of any division of the Department of General Services. The board shall not be required to specify the amounts encumbered for each contract, but may allocate funds to each contract based on the projected or actual enrollee enrollments to a total amount not to exceed the amount appropriate for the program including applicable contributions.

2210. (a) The State Health Purchasing Fund is hereby created in the State Treasury and, notwithstanding Section 13340 of the Government Code, is continuously appropriated to the board for the purposes specified in this part.

(b) The board shall authorize the expenditure from the fund of applicable employer fees and enrollee contributions that are deposited into the fund. This shall include the authority for the board to transfer funds to two separate special deposit funds to be established by the board pursuant to this part, and administered respectively by the State Department of Health Services and the board, to be used as the state's share of financial participation for the respective costs of Medi-Cal or Healthy Families coverage provided to enrollees, and, if applicable, dependents, who enroll in Medi-Cal or Healthy Families.

(c) Notwithstanding Section 2130.4, the board is authorized to obtain a loan from the General Fund for all necessary and reasonable expenses related to the establishment and administration of this part prior to the collection of the employer fee. The proceeds of the loan are subject to appropriation in the annual Budget Act. The board shall repay principal and interest, using the rate of interest paid under the Pooled Money Investment Account, to the General Fund no later than five years after the first year of implementation of the employer fee.

SEC. 3. Article 3.11 (commencing with Section 1357.20) is added to Chapter 2.2 of Division 2 of the Health and Safety Code, to read:

Article 3.11. Insurance Market Reform

1357.20. If the provisions of Part 8.7 (commencing with Section 2120) of Division 2 of the Labor Code are held invalid, then the provisions of this article shall become inoperative.

1357.21. (a) Notwithstanding any other provision of law, on and after January 1, 2006, except as specified in subdivision (b), all requirements in Article 3.1 (commencing with Section 1357) applicable to offering, marketing, and selling health care service plan contracts to small employers as defined in that article, including, but not limited to, the obligation to fairly and affirmatively offer, market, and sell all of the plan's contracts to all employers, guaranteed renewal of all health care service plan contracts, use of the risk adjustment factor, and the restriction of risk categories to age, geographic region, and family composition as described in that article, shall be applicable to all health care service plan contracts offered to all small and medium employers providing coverage to employees pursuant to Part 8.7 (commencing with Section 2120) of Division 2 of the Labor Code, except as follows:

(1) For small and medium employers with two to 50 eligible employees, all requirements in that article shall apply. As used in this article, "small employer" shall have the meaning as defined in Section 2122.5 of the Labor Code and "medium employer" shall have the meaning as defined in Section 2122.4 of the Labor Code, unless the context otherwise requires.

(2) For medium employers with 51 or more eligible employees, all requirements in that article shall apply, except that the health care service plan may develop health care coverage benefit plan designs to fairly and affirmatively market only to medium employer groups of 51 to 199 eligible employees, and apply a risk adjustment factor of no more than 115 percent and no less than 85 percent of the standard employee risk rate.

(b) Health care service plans shall be required to comply with this section only beginning with the date when coverage begins to be offered through the State Health Purchasing Program pursuant to Part 8.7 (commencing with Section 2120) of Division 2 of the Labor Code.

1357.22. On and after January 1, 2006, a health care service plan contract with an employer as defined in Section 2122.6 of the Labor Code providing health coverage to enrollees or subscribers shall meet all of the following requirements:

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(a) The employer shall be responsible for the cost of health care coverage except as provided in this section.

(b) An employer may require a potential enrollee to pay up to 20 percent of the cost of the coverage, proof of which is provided by the employer in lieu of paying the fee required by Part 8.7 (commencing with Section 2120) of Division 2 of the Labor Code, unless the wages of the potential enrollee are less than 200 percent of the federal poverty guidelines, as specified annually by the United States Department of Health and Human Services. For enrollees making a contribution for family coverage and whose wages are less than 200 percent of the federal poverty guidelines for a family of three, the applicable enrollee contribution shall not exceed 5 percent of wages. For enrollees making a contribution for individual coverage and whose wages are less than 200 percent of the federal poverty guidelines for an individual, the applicable enrollee contribution shall not exceed 5 percent of wages of the individual.

(c) If an employer, as defined in Section 2122.6 of the Labor Code, chooses to purchase more than one means of coverage for potential enrollees and, if applicable, dependents, the employer may require a higher level of contribution from potential enrollees as long as one means of coverage meets the standards of this section.

(d) An employer, as defined in Section 2122.6 of the Labor Code, may purchase health care coverage that includes additional out-of-pocket expenses, such as copayments, coinsurance, or deductibles. In reviewing subscriber or enrollee share-of-premium, deductibles, copayments, and other out-of-pocket costs, the department shall consider those permitted by the board under Part 8.7 (commencing with Section 2120) of Division 2 of the Labor Code.

(e) Notwithstanding subdivision (b), a medium employer may require an enrollee to contribute more than 20 percent of the cost of coverage if both of the following apply:

(1) The coverage provided by the employer includes coverage for dependents.

(2) The employer contributes an amount that exceeds 80 percent of the cost of the coverage for an individual employee.

(f) The contract includes prescription drug coverage with out-of-pocket costs for enrollees consistent with subdivision (d).

1357.23. On and after January 1, 2006, all health care service plans contracting with employers consistent with Section 1357.22 or with the State Health Purchasing Program shall make reasonable efforts to contract with county hospital systems and clinics, including providers or networks of providers that refer enrollees to such hospitals and clinics, as well as community clinics and other safety net providers. This section shall not prohibit a plan from applying appropriate credentialing requirements consistent with this chapter. This section shall not apply to a nonprofit health care service plan that provides hospital services to its enrollees primarily through a nonprofit hospital corporation with which the health care service plan shares an identical board of directors.

SEC. 4. Chapter 8.1 (commencing with Section 10760) is added to Part 2 of Division 2 of the Insurance Code, to read:

CHAPTER 8.1. INSURANCE MARKET REFORM

10760. If the provisions of Part 8.7 (commencing with Section 2120) of Division 2 of the Labor Code are held invalid, then the provisions of this chapter shall become inoperative.

10761. (a) Notwithstanding any other provision of law, on and after January 1, 2006, except as specified in subdivision (b), all requirements in Chapter 8 (commencing with Section 10700) applicable to offering, marketing, and selling health benefit plans to small employers as defined in that chapter, including, but not limited to, the obligation to fairly and affirmatively offer, market, and sell all of the insurer's health benefit plans to all employers, guaranteed renewal of all health benefit plans, use of the risk adjustment factor, and the restriction of risk categories to age, geographic region, and family composition as described in that chapter, shall be applicable to all health benefit plans offered to all small and medium employers providing coverage to employees pursuant to Part 8.7 (commencing with Section 2120) of Division 2 of the Labor Code, except as follows:

(1) For small and medium employers with two to 50 eligible employees, all requirements in that chapter shall apply. As used in this chapter, "small employer" shall have the meaning as defined in Section 2122.5 of the Labor Code and "medium employer" shall have the meaning as defined in Section 2122.4 of the Labor Code, unless the context otherwise requires.

(2) For medium employers with 51 or more eligible employees, all requirements in that chapter shall apply, except that the health insurers may develop health care coverage benefit plan designs to fairly and affirmatively market only to medium employer groups of 51 to 199 eligible employees, and apply a risk adjustment factor of no more than 115 percent and no less than 85 percent of the standard employee risk rate.

(b) Insurers shall be required to comply with this section only beginning with the date when coverage begins to be offered through the State Health Purchasing Program pursuant to Part 8.7 (commencing with Section 2120) of Division 2 of the Labor Code.

10762. On and after January 1, 2006, a health insurer selling a policy to an employer, as defined in Section 2122.6 of the Labor Code, providing health coverage to insureds pursuant to Part 8.7 (commencing with Section 2120) of Division 2 of the Labor Code shall meet all of the following requirements:

(a) The employer shall be responsible for the cost of health care coverage except as provided in this section.

(b) An employer may require a potential enrollee to pay up to 20 percent of the cost of the coverage, proof of which is provided by the employer in lieu of paying the fee required by Part 8.7 (commencing with Section 2120) of Division 2 of the Labor Code, unless the wages of the potential enrollee are less than 200 percent of the federal poverty guidelines, as specified annually by the United States Department of Health and Human Services. For enrollees making a contribution for family coverage and whose wages are less than 200 percent of the federal poverty guidelines for a family of three, the applicable enrollee contribution shall not exceed 5 percent of wages. For enrollees making a contribution for individual coverage and whose wages are less than 200 percent of the federal poverty guidelines for an individual, the applicable enrollee contribution shall not exceed 5 percent of wages of the individual.

(c) If an employer, as defined in Section 2122.6 of the Labor Code, chooses to purchase more than one means of coverage for potential enrollees and, if applicable, dependents, the employer may require a higher level of contribution from potential enrollees as long as one means of coverage meets the standards of this section.

(d) An employer, as defined in Section 2122.6 of the Labor Code, may purchase health care coverage that includes additional out-of-pocket expenses, such as copayments, coinsurance, or deductibles. In reviewing enrollee share-of-premium, deductibles, copayments, and other out-of-pocket costs, the department shall consider those permitted by the board under Part 8.7 (commencing with Section 2120) of Division 2 of the Labor Code.

(e) Notwithstanding subdivision (b), a medium employer may require an enrollee to contribute more than 20 percent of the cost of coverage if both of the following apply:

(1) The coverage provided by the employer includes coverage for dependents.

(2) The employer contributes an amount that exceeds 80 percent of the cost of the coverage for an individual employee.

(f) The contract includes prescription drug coverage with out-of-pocket costs for enrollees consistent with subdivision (d).

10763. On and after January 1, 2006, all insurers that sell insurance policies to employers consistent with Section 10762 or to the State Health Purchasing Program shall make reasonable efforts to include as preferred providers county hospital systems and clinics, including providers or networks of providers that refer enrollees to those hospitals and clinics, as well as community clinics and other safety net providers. This section shall not prohibit a plan from applying appropriate credentialing requirements consistent with this chapter. This section shall not apply to a nonprofit health care service plan that provides hospital services to its enrollees primarily through a nonprofit hospital corporation with which the plan shares an identical board of directors.

10764. (a) On and after January 1, 2006, except as provided in subdivision (b), health insurers shall not offer or sell the following insurance policies to employers providing coverage to employees pursuant to Part 8.7 (commencing with Section 2120) of Division 2 of the Labor Code:

(1) A Medicare supplement, vision-only, dental-only, or Champus-supplement insurance policy.

(2) A hospital indemnity, accident-only, or specified disease insurance policy that pays benefits on a fixed benefit, cash-payment-only basis.

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(b) However, an insurer may sell one or more of the types of policies listed in paragraph (1) or (2) of subdivision (a) if the employer has purchased or purchases concurrently health care coverage meeting the standards of Part 8.7 (commencing with Section 2120) of Division 2 of the Labor Code.

(c) If an employer, as defined in Section 2022.6 of the Labor Code, chooses to purchase more than one means of coverage, the employer may require a higher level of contribution from potential enrollees so long as one means of coverage meets the standards of this section.

(d) An employer, as defined in Section 2122.6 of the Labor Code, may purchase health care coverage that includes additional out-of-pocket expenses, such as coinsurance or deductibles. In reviewing the share-of-premium, deductibles, copayments, and other out-of-pocket costs paid by insureds, the department shall consider those permitted by the board under Part 8.7 (commencing with Section 2120) of Division 2 of the Labor Code.

(e) Notwithstanding subdivision (b), a medium employer, as defined in Section 2122.4 of the Labor Code, may require an enrollee to contribute more than 20 percent of the cost of coverage if both of the following apply:

(1) The coverage provided by the employer includes coverage for dependents.

(2) The employer contributes an amount that exceeds 80 percent of the cost of the coverage for an individual employee.

(f) The policy includes prescription drug coverage, which shall be subject to coinsurance, deductibles, and other out-of-pocket costs consistent with (d).

SEC. 5. Section 12693.55 is added to the Insurance Code, to read:

12693.55. (a) Prior to implementation of the Health Insurance Act of 2003, the board shall to the maximum extent permitted by federal law ensure that persons who are either covered or eligible for Healthy Families will retain the same amount, duration, and scope of benefits that they currently receive or are currently eligible to receive, including dental, vision and mental benefits. The board shall consult with a stakeholder group that shall include all of the following:

(1) Consumer advocate groups that represent persons eligible for Healthy Families.

(2) Organizations that represent persons with disabilities.

(3) Representatives of public hospitals, clinics, safety net providers, and other providers.

(4) Labor organizations that represent employees whose families include persons likely to be eligible for Healthy Families.

(5) Employer organizations.

(b) The board shall develop a Healthy Families premium assistance program for eligible individuals as permitted under federal law to reduce state costs and maximize federal financial participation by providing health care coverage to eligible individuals through a combination of available employer-based coverage and a wraparound benefit that covers any gap between the employer-based coverage and the benefits required by this part.

(c) The board shall do all of the following in implementing the premium assistance program:

(1) Require eligible individuals with access to employer-based coverage to enroll themselves or their family or both in the available employer-based coverage if the board finds that enrollment in that coverage is cost-effective.

(2) Promptly reimburse an eligible individual for his or her share of premium cost under the employer-based coverage, minus any contribution that an individual would be required to pay pursuant to Section 12693.43.

(d) If federal approval of a premium assistance program cannot be obtained, the board in consultation with the stakeholder group shall explore alternatives that provide that persons who are either covered or eligible for Healthy Families retain the same amount, duration and scope of benefits that they currently receive or are currently eligible to receive, including vision, dental and mental health benefits.

SEC. 6. Section 131 of the Unemployment Insurance Code is amended to read:

131. "Contributions" means the money payments to the Unemployment Fund, Employment Training Fund, State Health

Purchasing Fund, or Unemployment Compensation Disability Fund which are required by this division.

SEC. 7. Section 976.7 is added to the Unemployment Insurance Code, to read:

976.7. (a) In addition to other contributions required by this division and consistent with the requirements of Chapter 6 (commencing with Section 2160) of Part 8.7 of Division 2 of the Labor Code, an employer shall pay to the department for deposit into the State Health Purchasing Fund a fee in the amount set by the Managed Risk Medical Insurance Board for the State Health Purchasing Program in accordance with Chapter 4 (commencing with Section 2140) of Part 8.7 of Division 2 of the Labor Code. The fees shall be collected in the same manner and at the same time as any contributions required under Sections 976 and 1088.

(b) In notifying employers of the contributions required under this section, the department shall also provide notice of required employee contribution amounts consistent with Section 2150 of the Labor Code.

(c) An employer shall provide information to all newly hired and existing employees regarding the availability of Medi-Cal coverage for low- and moderate-income employees, including the availability of Medi-Cal premium assistance as well as Medi-Cal coverage for persons receiving coverage through the State Health Purchasing Fund. The Employment Development Department, in consultation with the State Department of Health Services and the Managed Risk Medical Insurance Board shall develop a simple, uniform notice containing that information.

SEC. 8. Section 14105.981 is added to the Welfare and Institutions Code, to read:

14105.981. (a) Prior to the implementation of the Health Insurance Act of 2003, annually for five years after its implementation, and every five years thereafter, the department shall report to the Legislature and the Managed Risk Medical Insurance Board regarding utilization patterns for Medi-Cal pursuant to Chapter 7 (commencing with Section 14000) of Part 3 of Division 6 at county-owned hospitals and clinics, community clinics, and vital institutional safety net providers eligible for Medi-Cal payments under Section 14105.98, including determining the number of Medi-Cal inpatient days and outpatient visits as well as the nature and cost of care provided to Medi-Cal patients.

(b) If Medi-Cal fee-for-service utilization or Medi-Cal fee-for-service payments to county-owned hospitals and clinics, community clinics, and other vital institutional safety net providers eligible for Medi-Cal payments under Section 14105.98 have been reduced, then the department shall review statute, regulations, policies and procedures, payment arrangements or other mechanisms to determine what changes may be necessary to protect Medi-Cal funding and maximize federal financial participation to protect the financial stability of county-owned hospitals and clinics, community clinics, and other vital institutional safety net providers. The department shall consult with representatives of county-owned hospital systems, community clinics, vital institutional safety net providers eligible for Medi-Cal payments under Section 14105.98, legal services advocates, and recognized collective bargaining agents for the specified providers.

SEC. 9. Section 14124.91 of the Welfare and Institutions Code is amended to read:

14124.91. (a) The State Department of Health Services shall, whenever it is cost-effective, pay the premium for third-party health coverage for beneficiaries under this chapter. The State Department of Health Services shall, when a beneficiary's third-party health coverage would lapse due to loss of employment or change in health status, lack of sufficient income or financial resources, or any other reason, continue the health coverage by paying the costs of continuation of group coverage pursuant to federal law or converting from a group to an individual plan, whenever it is cost-effective. Notwithstanding any other provision of a contract or of law, the time period for the department to exercise either of these options shall be 60 days from the date of lapse of the policy.

(b) In addition, contingent on federal financial participation, the department shall implement a Medi-Cal premium assistance program to reduce state costs and maximize allowable federal financial participation by paying the premium for employer-based health care coverage available to persons who are eligible for Medi-Cal, and in combination with employer-based health care coverage providing a wraparound benefit that covers any gap between the employer-based health care coverage and the benefits provided by the Medi-Cal program.

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(c) The department in implementing the premium assistance program shall promptly reimburse an applicant for Medi-Cal for his or her share of premium, minus any share of cost required pursuant to this part. Once enrolled in both the premium assistance program and employer-based health care coverage repayment to Medi-Cal covered enrollees of any share of premium shall coincide with the payment by the enrollee of the premium for the available employer-based health care coverage. Where the applicant or beneficiary avails himself or herself of the wraparound benefit, Medi-Cal shall pay for any copayments, deductibles, and other allowable out-of-pocket medical costs under the employer-based coverage.

(d) The department shall seek all state plan amendments and federal approvals as necessary to maximize the amount of any federal financial participation available.

SEC. 10. Section 14124.915 is added to the Welfare and Institutions Code, to read:

14124.915. (a) Six months prior to implementation of Part 8.7 (commencing with Section 2120) of Division 2 of the Labor Code, the department shall notify Medi-Cal enrollees of the implementation of the Health Insurance Act of 2003, the categories of enrollees covered, the requirements of the program, the availability of Medi-Cal coverage for those persons, including the availability of a premium assistance program for those persons eligible for Medi-Cal who are also covered by employer-based coverage.

(b) Three months prior to the implementation of each phase of the program created by the Health Insurance Act of 2003, those persons enrolled in Medi-Cal shall be offered the opportunity to enroll in a Medi-Cal premium assistance program.

SEC. 11. Section 14124.916 is added to the Welfare and Institutions Code, to read:

14124.916. (a) Prior to the implementation of the Health Insurance Act of 2003, the department shall convene a stakeholder group that includes, but is not limited to, the following members:

- (1) The Managed Risk Medical Insurance Board.
- (2) Representatives of county welfare departments.
- (3) Consumer advocacy groups that represent persons enrolled in or eligible to be enrolled in the Medi-Cal program.
- (4) Organizations that represent persons with disabilities.
- (5) Labor organizations that represent employees and their dependents who are likely to be eligible for enrollment in Medi-Cal.
- (6) Representatives of public hospitals, clinics, provider groups, and safety net providers.

(b) The department in consultation with the stakeholder group shall develop a plan to accomplish the following objectives:

- (1) Provide that enrollees and, if applicable, dependents who receive coverage consistent with the Health Insurance Act of 2003 and who are enrolled in Medi-Cal retain the same amount, duration, and scope of benefits to which those beneficiaries currently are entitled.
- (2) Provide that enrollees and, if applicable, dependents who receive coverage consistent with the Health Insurance Act of 2003 and who are enrolled in Medi-Cal do not incur greater cost-sharing, including premiums, deductibles, and copays, than currently allowed under federal Medicaid law.
- (3) Maximize continuity of care for enrollees and, if applicable, dependents who receive coverage consistent with the Health Insurance Act of 2003 and who are enrolled in Medi-Cal.
- (4) Streamline and simplify eligibility and enrollment requirements for Medi-Cal beneficiaries who also have other coverage.

(c) The department shall report to the Legislature every six months and shall submit its final plan to the Legislature three months prior to initial implementation of the Health Insurance Act of 2003.

(d) The department shall seek all state plan amendments and federal approvals as necessary to maximize the amount of any federal financial participation available.

SEC. 12. Section 6254 of the Government Code is amended to read:

6254. Except as provided in Sections 6254.7 and 6254.13, nothing in this chapter shall be construed to require disclosure of records that are any of the following:

(a) Preliminary drafts, notes, or interagency or intra-agency memorandums that are not retained by the public agency in the ordinary

course of business, provided that the public interest in withholding those records clearly outweighs the public interest in disclosure.

(b) Records pertaining to pending litigation to which the public agency is a party, or to claims made pursuant to Division 3.6 (commencing with Section 810), until the pending litigation or claim has been finally adjudicated or otherwise settled.

(c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.

(d) Contained in or related to any of the following:

(1) Applications filed with any state agency responsible for the regulation or supervision of the issuance of securities or of financial institutions, including, but not limited to, banks, savings and loan associations, industrial loan companies, credit unions, and insurance companies.

(2) Examination, operating, or condition reports prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(3) Preliminary drafts, notes, or interagency or intra-agency communications prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(4) Information received in confidence by any state agency referred to in paragraph (1).

(e) Geological and geophysical data, plant production data, and similar information relating to utility systems development, or market or crop reports, that are obtained in confidence from any person.

(f) Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes, except that state and local law enforcement agencies shall disclose the names and addresses of persons involved in, or witnesses other than confidential informants to, the incident, the description of any property involved, the date, time, and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the victims of an incident, or an authorized representative thereof, an insurance carrier against which a claim has been or might be made, and any person suffering bodily injury or property damage or loss, as the result of the incident caused by arson, burglary, fire, explosion, larceny, robbery, carjacking, vandalism, vehicle theft, or a crime as defined by subdivision (c) of Section 13960, unless the disclosure would endanger the safety of a witness or other person involved in the investigation, or unless disclosure would endanger the successful completion of the investigation or a related investigation. However, nothing in this division shall require the disclosure of that portion of those investigative files that reflect the analysis or conclusions of the investigating officer.

Notwithstanding any other provision of this subdivision, state and local law enforcement agencies shall make public the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation:

(1) The full name and occupation of every individual arrested by the agency, the individual's physical description including date of birth, color of eyes and hair, sex, height and weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds.

(2) Subject to the restrictions imposed by Section 841.5 of the Penal Code, the time, substance, and location of all complaints or requests for assistance received by the agency and the time and nature of the response thereto, including, to the extent the information regarding crimes alleged or committed or any other incident investigated is recorded, the time, date, and location of occurrence, the time and date of the report, the name and age of the victim, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved. The name of a victim of any crime defined by Section 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code may be withheld at the victim's request, or at the request of the

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victim's parent or guardian if the victim is a minor. When a person is the victim of more than one crime, information disclosing that the person is a victim of a crime defined by Section 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code may be deleted at the request of the victim, or the victim's parent or guardian if the victim is a minor, in making the report of the crime, or of any crime or incident accompanying the crime, available to the public in compliance with the requirements of this paragraph.

(3) Subject to the restrictions of Section 841.5 of the Penal Code and this subdivision, the current address of every individual arrested by the agency and the current address of the victim of a crime, where the requester declares under penalty of perjury that the request is made for a scholarly, journalistic, political, or governmental purpose, or that the request is made for investigation purposes by a licensed private investigator as described in Chapter 11.3 (commencing with Section 7512) of Division 3 of the Business and Professions Code, except that the address of the victim of any crime defined by Section 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code shall remain confidential. Address information obtained pursuant to this paragraph shall not be used directly or indirectly to sell a product or service to any individual or group of individuals, and the requester shall execute a declaration to that effect under penalty of perjury.

(g) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination, except as provided for in Chapter 3 (commencing with Section 99150) of Part 65 of the Education Code.

(h) The contents of real estate appraisals or engineering or feasibility estimates and evaluations made for or by the state or local agency relative to the acquisition of property, or to prospective public supply and construction contracts, until all of the property has been acquired or all of the contract agreement obtained. However, the law of eminent domain shall not be affected by this provision.

(i) Information required from any taxpayer in connection with the collection of local taxes that is received in confidence and the disclosure of the information to other persons would result in unfair competitive disadvantage to the person supplying the information.

(j) Library circulation records kept for the purpose of identifying the borrower of items available in libraries, and library and museum materials made or acquired and presented solely for reference or exhibition purposes. The exemption in this subdivision shall not apply to records of fines imposed on the borrowers.

(k) Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.

(l) Correspondence of and to the Governor or employees of the Governor's office or in the custody of or maintained by the Governor's legal affairs secretary, provided that public records shall not be transferred to the custody of the Governor's Legal Affairs Secretary to evade the disclosure provisions of this chapter.

(m) In the custody of or maintained by the Legislative Counsel, except those records in the public database maintained by the Legislative Counsel that are described in Section 10248.

(n) Statements of personal worth or personal financial data required by a licensing agency and filed by an applicant with the licensing agency to establish his or her personal qualification for the license, certificate, or permit applied for.

(o) Financial data contained in applications for financing under Division 27 (commencing with Section 44500) of the Health and Safety Code, where an authorized officer of the California Pollution Control Financing Authority determines that disclosure of the financial data would be competitively injurious to the applicant and the data is required in order to obtain guarantees from the United States Small Business Administration. The California Pollution Control Financing Authority shall adopt rules for review of individual requests for confidentiality under this section and for making available to the public those portions of an application that are subject to disclosure under this chapter.

(p) Records of state agencies related to activities governed by Chapter 10.3 (commencing with Section 3512), Chapter 10.5 (commencing with Section 3525), and Chapter 12 (commencing with Section 3560) of Division 4 of Title 1, that reveal a state agency's deliberative processes, impressions, evaluations, opinions, recommendations, meeting minutes, research, work products, theories, or strategy, or that provide instruction, advice, or training to employees who do not

have full collective bargaining and representation rights under these chapters. Nothing in this subdivision shall be construed to limit the disclosure duties of a state agency with respect to any other records relating to the activities governed by the employee relations acts referred to in this subdivision.

(q) Records of state agencies related to activities governed by Article 2.6 (commencing with Section 14081), Article 2.8 (commencing with Section 14087.5), and Article 2.91 (commencing with Section 14089) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, that reveal the special negotiator's deliberative processes, discussions, communications, or any other portion of the negotiations with providers of health care services, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy, or that provide instruction, advice, or training to employees.

Except for the portion of a contract containing the rates of payment, contracts for inpatient services entered into pursuant to these articles, on or after April 1, 1984, shall be open to inspection one year after they are fully executed. In the event that a contract for inpatient services that is entered into prior to April 1, 1984, is amended on or after April 1, 1984, the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after it is fully executed. If the California Medical Assistance Commission enters into contracts with health care providers for other than inpatient hospital services, those contracts shall be open to inspection one year after they are fully executed.

Three years after a contract or amendment is open to inspection under this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

Notwithstanding any other provision of law, the entire contract or amendment shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments until the time a contract or amendment is fully open to inspection by the public.

(r) Records of Native American graves, cemeteries, and sacred places maintained by the Native American Heritage Commission.

(s) A final accreditation report of the Joint Commission on Accreditation of Hospitals that has been transmitted to the State Department of Health Services pursuant to subdivision (b) of Section 1282 of the Health and Safety Code.

(t) Records of a local hospital district, formed pursuant to Division 23 (commencing with Section 32000) of the Health and Safety Code, or the records of a municipal hospital, formed pursuant to Article 7 (commencing with Section 37600) or Article 8 (commencing with Section 37650) of Chapter 5 of Division 3 of Title 4 of this code, that relate to any contract with an insurer or nonprofit hospital service plan for inpatient or outpatient services for alternative rates pursuant to Section 10133 or 11512 of the Insurance Code. However, the record shall be open to inspection within one year after the contract is fully executed.

(u) (1) Information contained in applications for licenses to carry firearms issued pursuant to Section 12050 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department that indicates when or where the applicant is vulnerable to attack or that concerns the applicant's medical or psychological history or that of members of his or her family.

(2) The home address and telephone number of peace officers, judges, court commissioners, and magistrates that are set forth in applications for licenses to carry firearms issued pursuant to Section 12050 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department.

(3) The home address and telephone number of peace officers, judges, court commissioners, and magistrates that are set forth in licenses to carry firearms issued pursuant to Section 12050 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department.

(v) (1) Records of the Major Risk Medical Insurance Program related to activities governed by Part 6.3 (commencing with Section 12695) and Part 6.5 (commencing with Section 12700) of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

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(2) (A) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Part 6.3 (commencing with Section 12695) or Part 6.5 (commencing with Section 12700) of Division 2 of the Insurance Code, on or after July 1, 1991, shall be open to inspection one year after they have been fully executed.

(B) In the event that a contract for health coverage that is entered into prior to July 1, 1991, is amended on or after July 1, 1991, the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after the amendment has been fully executed.

(3) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(4) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (3).

(w) (1) Records of the Major Risk Medical Insurance Program related to activities governed by Chapter 14 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Chapter 14 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, on or after January 1, 1993, shall be open to inspection one year after they have been fully executed.

(3) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (2).

(x) Financial data contained in applications for registration, or registration renewal, as a service contractor filed with the Director of the Department of Consumer Affairs pursuant to Chapter 20 (commencing with Section 9800) of Division 3 of the Business and Professions Code, for the purpose of establishing the service contractor's net worth, or financial data regarding the funded accounts held in escrow for service contracts held in force in this state by a service contractor.

(y) (1) Records of the Managed Risk Medical Insurance Board related to activities governed by Part 6.2 (commencing with Section 12693) or Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) (A) Except for the portion of a contract that contains the rates of payment, contracts entered into pursuant to Part 6.2 (commencing with Section 12693) or Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code, on or after January 1, 1998, shall be open to inspection one year after they have been fully executed.

(B) In the event that a contract entered into pursuant to Part 6.2 (commencing with Section 12693) or Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code is amended, the amendment shall be open to inspection one year after the amendment has been fully executed.

(3) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(4) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments thereto until the contract or amendments to a contract are open to inspection pursuant to paragraph (2) or (3).

(5) The exemption from disclosure provided pursuant to this subdivision for the contracts, deliberative processes, discussions, communications, negotiations with health plans, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or

strategy of the board or its staff shall also apply to the contracts, deliberative processes, discussions, communications, negotiations with health plans, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of applicants pursuant to Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code.

(z) Records obtained pursuant to paragraph (2) of subdivision (c) of Section 2891.1 of the Public Utilities Code.

(aa) A document prepared by a local agency that assesses its vulnerability to terrorist attack or other criminal acts intended to disrupt the public agency's operations and that is for distribution or consideration in a closed session.

(bb) (1) *Records of the Managed Risk Medical Insurance Board related to activities governed by Part 8.7 (commencing with Section 2120) of Division 2 of the Labor Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with entities contracting or seeking to contract with the board, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.*

(2) (A) *Except for the portion of a contract that contains the rates of payment, contracts entered into pursuant to Part 8.7 (commencing with Section 2120) of Division 2 of the Labor Code on or after January 1, 2004, shall be open to inspection one year after they have been fully executed.*

(B) *In the event that a contract entered into pursuant to Part 8.7 (commencing with Section 2120) of Division 2 of the Labor Code is amended, the amendment shall be open to inspection one year after the amendment has been fully executed.*

(3) *Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.*

(4) *Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments thereto until the contract or amendments to a contract are open to inspection pursuant to paragraph (2) or (3).*

Nothing in this section prevents any agency from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law.

Nothing in this section prevents any health facility from disclosing to a certified bargaining agent relevant financing information pursuant to Section 8 of the National Labor Relations Act.

SEC. 13. (a) The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application, except as provided in subdivision (b) or (c).

(b) In the event that the provisions of Section 2160.1 of the Labor Code are held invalid and this action is affirmed on final appeal, an employer may qualify for a full credit for those amounts spent for providing or reimbursing health care benefits, allowable by state law as a deductible business expense if the amount spent equals or exceeds the lower of the cost for Healthy Families or 150 percent of the cost for Medi-Cal 1931(b) coverage. In no instance shall the amount of the credit exceed the amount of the fee that would otherwise have been paid. The Employment Development Department shall specify the manner and means of submitting proof to obtain the credit.

(c) In the event that Chapter 8.7 (commencing with Section 2120) of Division 2 of the Labor Code is held invalid, Article 3.11 (commencing with Section 1357.20) of Chapter 2.2 of Division 2 of the Health and Safety Code and Chapter 8.1 (commencing with Section 11760) of Part 2 of Division 2 of the Insurance Code shall become inoperative.

SEC. 14. This act shall not become operative unless AB 1528 of the 2003–04 Regular Session is also enacted and becomes operative.

SEC. 15. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CALIFORNIA VOTING SYSTEMS

HOW DIFFERENT TYPES OF VOTING SYSTEMS WORK

The Secretary of State certifies voting systems for use. Each county then chooses which certified system they want to use.

There are currently three different types of voting systems used in California elections.

Optical Scan

This is a system similar to the standardized tests given in school. To cast a ballot, the voter:

- Signs in at the polls and receives a paper ballot along with an approved marking device.
- Marks the appropriate position on the ballot. The names of the candidates may be printed on the actual ballot or on a sheet alongside the ballot. After making his or her selections, reviews the ballot and then places the ballot in a secrecy envelope or folder.
- Returns his or her ballot to the poll worker. The ballot is then counted by an optical scanning machine, either at the polling place or at a central location.

Touchscreen/DRE

Touchscreen, or direct recording electronic, systems are the newest type of voting systems in California. Rather than marking a piece of paper, the voter casts his or her ballot electronically.

To cast a ballot, the voter:

- Signs in at the polls.
- Either individually or with the aid of a poll worker activates the machine.
- Marks the ballot by touching a screen or using a keyboard style interface.
- After making his or her selections, a review screen will appear allowing them to verify his or her choices.
- Casts his or her ballot.

Datavote

Datavote is a punch card voting system, but differs in at least two ways from “chad” producing punch card systems. First, the names of the candidates are printed on the ballots. Second, the system uses a lever punch to prevent chads.

To cast a ballot, the voter:

- Signs in at the polls and receives a paper ballot.
- Inserts the ballot into the tray and under the clear plastic cover from the left side of machine.
- Marks the ballot by moving the punch lever next to each of his or her selections and completely depresses the lever to punch out a cross (+).
- After making his or her selections, reviews the ballot and then places the ballot in a secrecy envelope.
- Returns his or her ballot to the poll worker.

SECURITY MEASURES FOR TOUCHSCREEN/DRE VOTING SYSTEMS

In response to concerns about the security of touchscreen/DRE voting systems, the Secretary of State’s office has required these systems to meet 23 additional security measures before these systems can be used in the November election.

These additional security measures require:

- That every voter be given the option of casting a paper ballot. If you would prefer to use a paper ballot instead of a touchscreen/DRE, you may request one when you sign in at the polls.
- That the system’s source code must be made available for analysis by independent experts.
- That no telephone, wireless, or Internet connections are permitted on the machines.
- That the county engage in a comprehensive poll worker training program.

You can get more information about these security measures on the Internet at www.MyVoteCounts.org or by calling 1-800-345-VOTE.

CALIFORNIA VOTING SYSTEMS

VOTING SYSTEMS USED BY COUNTY

County	Type of System	County	Type of System
Alameda	Touchscreen/DRE	Orange	DRE
Alpine	Datavote	Placer	Optical Scan
Amador	Optical Scan	Plumas	Touchscreen/DRE
Butte	Optical Scan	Riverside	Touchscreen/DRE
Calaveras	Datavote	Sacramento	Optical Scan
Colusa	Optical Scan	San Benito	Datavote
Contra Costa	Optical Scan	San Bernardino	Touchscreen/DRE
Del Norte	Datavote	San Diego	Optical Scan
El Dorado	Datavote	San Francisco	Optical Scan
Fresno	Optical Scan	San Joaquin	Optical Scan
Glenn	Datavote	San Luis Obispo	Optical Scan
Humboldt	Optical Scan	San Mateo	Optical Scan
Imperial	Datavote	Santa Barbara	Optical Scan
Inyo	Datavote	Santa Clara	Touchscreen/DRE
Kern	Optical Scan	Santa Cruz	Optical Scan
Kings	Optical Scan	Shasta	Touchscreen/DRE
Lake	Optical Scan	Sierra	Datavote
Lassen	Optical Scan	Siskiyou	Optical Scan
Los Angeles	Optical Scan	Solano	Optical Scan
Madera	Optical Scan	Sonoma	Optical Scan
Marin	Optical Scan	Stanislaus	Optical Scan
Mariposa	Optical Scan	Sutter	Optical Scan
Mendocino	Optical Scan	Tehama	Touchscreen/DRE
Merced	Touchscreen/DRE	Trinity	Optical Scan
Modoc	Optical Scan	Tulare	Optical Scan
Mono	Optical Scan	Tuolumne	Optical Scan
Monterey	Optical Scan	Ventura	Datavote
Napa	Touchscreen/DRE	Yolo	Datavote
Nevada	Optical Scan	Yuba	Datavote

MORE INFORMATION ON VOTING SYSTEMS

These are the voting systems used at polling places. A different voting system may be used for absentee voting.

Counties using touchscreen/DRE systems are required to have paper ballots available upon request. You can get more information about how to use the specific voting system used in your county on the Internet at www.MyVoteCounts.org, or by calling 1-800-345-VOTE or from your local county elections official.

Secretary of State
1500 11th Street
Sacramento, CA 95814

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General Election

For additional copies of the Voter Information Guide in any of the following languages,
please call:

English: 1-800-345-VOTE (8683)
Español/Spanish: 1-800-232-VOTA (8682)
日本語 /Japanese: 1-800-339-2865
Việt ngữ/Vietnamese: 1-800-339-8163
Tagalog/Tagalog: 1-800-339-2957
中文/Chinese: 1-800-339-2857
한국어/Korean: 1-866-575-1558

www.voterguide.ss.ca.gov

Official Voter Information Guide

In an effort to reduce election costs, the State Legislature has authorized the State and counties to mail only one guide to addresses where more than one voter with the same surname resides. You may obtain additional copies by writing to your county elections official or by calling 1-800-345-VOTE.

