RELATED STATUTES REGARDING DISCIPLINE OF ATTORNEYS AND DUTIES OF MEMBERS OF THE STATE BAR OF CALIFORNIA

[PUBLISHER'S NOTE: Unless otherwise indicated, statutes are effective on January 1 following enactment.]

BUSINESS AND PROFESSIONS CODE

§30. State Bar Members Furnish Social Security Number to State Bar

(a) Notwithstanding any other provision of law, any board, as defined in Section 22, and the State Bar and the Department of Real Estate shall at the time of issuance of the license require that the licensee provide its federal employer identification number, if the licensee is a partnership, or his or her social security number for all others.

(b) Any licensee failing to provide the federal identification number or social security number shall be reported by the licensing board to the Franchise Tax Board and, if failing to provide after notification pursuant to paragraph (1) of subdivision (b) of Section 19528 of the Revenue and Taxation Code, shall be subject to the penalty provided in paragraph (2) of subdivision (b) of Section 19528 of the Revenue and Taxation Code.

(c) In addition to the penalty specified in subdivision (b), a licensing board may not process any application for an original license unless the applicant or licensee provides its federal employer identification number or social security number where requested on the application.

(d) A licensing board shall, upon request of the Franchise Tax Board, furnish to the Franchise Tax Board the following information with respect to every licensee:

(1) Name.

(2) Address or addresses of record.

(3) Federal employer identification number if the entity is a partnership or social security number for all others.

(4) Type of license.

(5) Effective date of license or a renewal.

(6) Expiration date of license.

(7) Whether license is active or inactive, if known.

(8) Whether license is new or a renewal.

(e) For the purposes of this section:

(1) "Licensee" means any entity, other than a corporation, authorized by a license, certificate, registration, or other means to engage in a business or profession regulated by this code or referred to in Section 1000 or 3600.

(2) "License" includes a certificate, registration, or any other authorization needed to engage in a business or profession regulated by this code or referred to in Section 1000 or 3600.

(3) "Licensing board" means any board, as defined in Section 22, the State Bar, and the Department of Real Estate.

(f) The reports required under this section shall be filed on magnetic media or in other machine-readable form, according to standards furnished by the Franchise Tax Board.

(g) Licensing boards shall provide to the Franchise Tax Board the information required by this section at a time that the Franchise Tax Board may require.

(h) Notwithstanding Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, the social security number and federal employer identification number furnished pursuant to this section shall not be deemed to be a public record and shall not be open to the public for inspection.

(i) Any deputy, agent, clerk, officer, or employee of any licensing board described in subdivision (a), or any former officer or employee or other individual who in the course of his or her employment or duty has or has had access to the information required to be furnished under this section, may not disclose or make known in any manner that information, except as provided in this section to the Franchise Tax Board or as provided in subdivision (k).

(j) It is the intent of the Legislature in enacting this section to utilize the social security account number or federal employer identification number for the purpose of establishing the identification of persons affected by state tax laws and for purposes of compliance with Section 17520 of the Family Code and, to that end, the information furnished pursuant to this section shall be used exclusively for those purposes.

(k) If the board utilizes a national examination to issue a license, and if a reciprocity agreement or comity exists between the State of California and the state requesting release of the social security number, any deputy, agent,

clerk, officer, or employee of any licensing board described in subdivision (a) may release a social security number to an examination or licensing entity, only for the purpose of verification of licensure or examination status.

(l) For the purposes of enforcement of Section 17520 of the Family Code, and notwithstanding any other provision of law, any board, as defined in Section 22, and the State Bar and the Department of Real Estate shall at the time of issuance of the license require that each licensee provide the social security number of each individual listed on the license and any person who qualifies the license. For the purposes of this subdivision, "licensee" means any entity that is issued a license by any board, as defined in Section 22, the State Bar, the Department of Real Estate, and the Department of Motor Vehicles. (Added by Stats. 1986, ch. 1361. Amended by Stats. 1988, ch. 1333, effective September 26, 1988; Stats. 1991, ch. 654; Stats. 1994, ch. 1135; Stats. 1997, ch. 604, operative October 3, 1997; Stats. 1997, ch. 605, operative January 1, 1998; Stats 1999, ch. 652; Stats. 2006, ch. 658.)

§125.6 Discrimination in the Performance of Licensed Activity

Every person who holds a license under the provisions of this code is subject to disciplinary action under the disciplinary provisions of this code applicable to such person if, because of the applicant's race, color, sex, religion, ancestry, disability, marital status, or national origin, he or she refuses to perform the licensed activity or aids or incites the refusal to perform such licensed activity by another licensee, or if, because of the applicant's race, color, sex, religion, ancestry, disability, marital status, or national origin, he or she makes any discrimination, or restriction in the performance of the licensed activity. Nothing in this section shall be interpreted to apply to discrimination by employers with regard to employees or prospective employees, nor shall this section authorize action against any club license issued pursuant to Article 4 (commencing with Section 23425) of Chapter 3 of Division 9 because of discriminatory membership policy. The presence of architectural barriers to an individual with physical disabilities which conform to applicable state or local building codes and regulations shall not constitute discrimination under this section.

Nothing in this section requires a person licensed pursuant to Division 2 (commencing with Section 500) to permit an individual to participate in, or benefit from, the licensed activity of the licensee where that individual poses a direct threat to the health or safety of others. For this purpose, the term "direct threat" means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures or by the provision of auxiliary aids and services.

"License," as used in this section, includes "certificate," "permit," "authority," and "registration" or any other indicia giving authorization to engage in a business or profession regulated by this code.

"Applicant," as used in this section means a person applying for licensed services provided by a person licensed under this code.

"Disability" means any of the following with respect to an individual:

(a) A physical or mental impairment that substantially limits one or more of the major life activities of the individual.

(b) A record of such an impairment.

(c) Being regarded as having such an impairment. (Added by Stats. 1992, ch. 913.)

§490.5 Suspension of License; Licensee Failure to Comply with Child Support Order or Judgment

A board may suspend a license pursuant to Section 11350.6 of the Welfare and Institutions Code if a licensee is not in compliance with a child support order or judgment. (Added by Stats. 1994, ch. 906.)

§801. Medical Malpractice Actions Reporting Requirement—Insurers and Attorneys

(a) Every insurer providing professional liability insurance to a person who holds a license, certificate, or similar authority from or under any agency mentioned in subdivision (a) of Section 800, except as provided in subdivisions (b), (c), (d), and (e), shall send a complete report to that agency as to any settlement or arbitration award over three thousand dollars ($3,000) of a claim or action for damages for death or personal injury caused by that person' s negligence, error, or omission in practice, or by his or her rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(b) Every insurer providing professional liability insurance to a physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) or the Osteopathic Initiative Act shall send a complete report to the Medical

Board of California or the Osteopathic Medical Board of California, as appropriate, as to any settlement over thirty thousand dollars ($30,000), arbitration award of any amount, or civil judgment of any amount, whether or not vacated by a settlement after entry of the judgment, that was not reversed on appeal, of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or by his or her rendering of unauthorized professional services. A settlement over thirty thousand dollars ($30,000) shall also be reported if the settlement is based on the licensee's negligence, error, or omission in practice, or by the licensee's rendering of unauthorized professional services, and a party to the settlement is a corporation, medical group, partnership, or other corporate entity in which the licensee has an ownership interest or that employs or contracts with the licensee. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto, within 30 days after service of the arbitration award on the parties, or within 30 days after the date of entry of the civil judgment.

(c) Every insurer providing professional liability insurance to a person licensed pursuant to Chapter 13 (commencing with Section 4980) or Chapter 14 (commencing with Section 4990) shall send a complete report to the Board of Behavioral Science Examiners as to any settlement or arbitration award over ten thousand dollars ($10,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or by his or her rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(d) Every insurer providing professional liability insurance to a dentist licensed pursuant to Chapter 4 (commencing with Section 1600) shall send a complete report to the Dental Board of California as to any settlement or arbitration award over ten thousand dollars ($10,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(e) Every insurer providing liability insurance to a veterinarian licensed pursuant to Chapter 11 (commencing with Section 4800) shall send a complete report to the Veterinary Medical Board of any settlement or arbitration award over ten thousand dollars ($10,000) of a claim or action for damages for death or injury caused by that person's negligence, error, or omission in practice, or rendering of unauthorized professional service. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(f) The insurer shall notify the claimant, or if the claimant is represented by counsel, the insurer shall notify the claimant's attorney, that the report required by subdivision (a), (b), (c), or (d) has been sent to the agency. If the attorney has not received this notice within 45 days after the settlement was reduced to writing and signed by all of the parties, the arbitration award was served on the parties, or the date of entry of the civil judgment, the attorney shall make the report to the agency.

(g) Notwithstanding any other provision of law, no insurer shall enter into a settlement without the written consent of the insured, except that this prohibition shall not void any settlement entered into without that written consent. The requirement of written consent shall only be waived by both the insured and the insurer. This section shall only apply to a settlement on a policy of insurance executed or renewed on or after January 1, 1971. (Added by Stats. 1975, ch. 1. Amended by Stats. 1979, ch. 923; Stats. 1989, ch. 886; Stats. 1989, ch. 398; Stats. 1991, ch. 1091, Stats. 1991, ch. 359; Stats. 1994, ch. 468; Stats. 1994, ch. 1206; Stats. 1995, ch. 5; Stats. 1997, ch. 359; Stats. 2002, ch. 1085; Stats. 2004, ch. 467; Stats. 2006, ch. 538.)

§5499.30 Unlawful Advertising of Legal Services to Obtain Workers' Compensation Benefits

(a) Any individual, firm, corporation, partnership, organization, or association which prints, displays, publishes, distributes, or broadcasts or causes or permits to be advertised, printed, displayed, published, distributed, or broadcast any advertising which purports to provide legal services for obtaining workers' compensation benefits shall include the name of at least one attorney associated with the individual, firm, corporation, partnership, organization, or association in all such advertising.

(b) As used in this section, the term "legal services" includes any service which refers potential clients to any attorney.

(c) A violation of this section is a misdemeanor, punishable by imprisonment in the county jail for not more than one year, or by a fine not exceeding ten thousand dollars ($10,000), or both. (Added by Stats. 1993, ch. 120.)

§6400. Definitions

(a) "Unlawful detainer assistant" means any individual who for compensation renders assistance or advice in the prosecution or defense of an unlawful detainer claim or action, including any bankruptcy petition that may affect the unlawful detainer claim or action.

(b) "Unlawful detainer claim" means a proceeding, filing, or action affecting rights or liabilities of any person that arises under Chapter 4 (commencing with Section 1159) of Title 3 of Part 3 of the Code of Civil Procedure and that contemplates an adjudication by a court.

(c) "Legal document assistant" means:

(1) Any person who is not exempted under Section 6401 and who provides, or assists in providing, or offers to provide, or offers to assist in providing, for compensation, any self-help service to a member of the public who is representing himself or herself in a legal matter, or who holds himself or herself out as someone who offers that service or has that authority. This paragraph does not apply to any individual whose assistance consists merely of secretarial or receptionist services.

(2) A corporation, partnership, association, or other entity that employs or contracts with any person not exempted under Section 6401 who, as part of his or her responsibilities, provides, or assists in providing, or offers to provide, or offers to assist in providing, for compensation, any self-help service to a member of the public who is representing himself or herself in a legal matter or holds himself or herself out as someone who offers that service or has that authority. This paragraph does not apply to an individual whose assistance consists merely of secretarial or receptionist services.

(d) "Self-help service" means all of the following:

(1) Completing legal documents in a ministerial manner, selected by a person who is representing himself or herself in a legal matter, by typing or otherwise completing the documents at the person's specific direction.

(2) Providing general published factual information that has been written or approved by an attorney, pertaining to legal procedures, rights, or obligations to a person who is representing himself or herself in a legal matter, to assist the person in representing himself or herself. This service in and of itself, shall not require registration as a legal document assistant.

(3) Making published legal documents available to a person who is representing himself or herself in a legal matter.

(4) Filing and serving legal forms and documents at the specific direction of a person who is representing himself or herself in a legal matter.

(e) "Compensation" means money, property, or anything else of value.

(f) A legal document assistant, including any legal document assistant employed by a partnership or corporation, may not provide any self-help service for compensation, unless the legal document assistant is registered in the county in which his or her principal place of business is located and in any other county in which he or she performs acts for which registration is required.

(g) A legal document assistant may not provide any kind of advice, explanation, opinion, or recommendation to a consumer about possible legal rights, remedies, defenses, options, selection of forms, or strategies. A legal document assistant shall complete documents only in the manner prescribed by paragraph (1) of subdivision (d). (Added by Stats. 2002, ch. 1018.)

§6401. Chapter application exceptions

This chapter does not apply to any person engaged in any of the following occupations, provided that the person does not also perform the duties of a legal document assistant in addition to those occupations:

(a) Any government employee who is acting in the course of his or her employment.

(b) A member of the State Bar of California, or his or her employee, paralegal, or agent, or an independent contractor while acting on behalf of a member of the State Bar.

(c) Any employee of a nonprofit, tax-exempt corporation who either assists clients free of charge or is supervised by a member of the State Bar of California who has malpractice insurance.

(d) A licensed real estate broker or licensed real estate salesperson, as defined in Chapter 3 (commencing with Section 10130) of Part 1 of Division 4, who acts pursuant to subdivision (b) of Section 10131 on an unlawful detainer claim as defined in subdivision (b) of Section 6400, and who is a party to the unlawful detainer action.

(e) An immigration consultant, as defined in Chapter 19.5 (commencing with Section 22441) of Division 8.

(f) A person registered as a process server under Chapter 16 (commencing with Section 22350) or a person registered as a professional photocopier under Chapter 20 (commencing with Section 22450) of Division 8.

(g) A person who provides services relative to the preparation of security instruments or conveyance documents as an integral part of the provision of title or escrow service.

(h) A person who provides services that are regulated by federal law.

(i) A person who is employed by, and provides services to, a supervised financial institution, holding company, subsidiary, or affiliate. (Added by Stats. 2002, ch. 1018.)

§6401.5. Practice of law by nonlawyers

This chapter does not sanction, authorize, or encourage the practice of law by nonlawyers. Registration under this chapter, or an exemption from registration, does not immunize any person from prosecution or liability pursuant to Section 6125, 6126, 6126.5, or 6127. (Added by Stats. 2002, ch. 1018.)

§6401.6 Legal document assistant; limitation on service; services of attorney

A legal document assistant may not provide service to a client who requires assistance that exceeds the definition of self-help service in subdivision (d) of Section 6400, and shall inform the client that the client requires the services of an attorney. (Added by Stats. 2002, ch. 1018.)

§6402. Registration requirement; registration of disbarred and suspended lawyers prohibited

A legal document assistant or unlawful detainer assistant shall be registered pursuant to this chapter by the county clerk in the county in which his or her principal place of business is located (deemed primary registration), and in any other county in which he or she performs acts for which registration is required (deemed secondary registration). Any registration in a county, other than the county of the person's place of business, shall state the person' s principal place of business and provide proof that the registrant has satisfied the bonding requirement of Section 6405. No person who has been disbarred or suspended from the practice of law pursuant to Article 6 (commencing with Section 6100) of Chapter 4 may, during the period of any disbarment or suspension, register as a legal document assistant or unlawful detainer assistant. The Department of Consumer Affairs shall develop the application required to be completed by a person for purposes of registration as a legal document assistant. The application shall specify the types of proof that the applicant shall provide to the county clerk in order to demonstrate the qualifications and requirements of Section 6402.1. (Added by Stats. 2002, ch. 1018.)

§6402.1. Registration eligibility

To be eligible to apply for registration under this chapter as a legal document assistant, the applicant shall possess at least one of the following:

(a) A high school diploma or general equivalency diploma, and either a minimum of two years of law-related experience under the supervision of a licensed attorney, or a minimum of two years experience, prior to January 1, 1999, providing self-help service.

(b) A baccalaureate degree in any field and either a minimum of one year of law-related experience under the supervision of a licensed attorney, or a minimum of one year of experience, prior to January 1, 1999, providing self-help service.

(c) A certificate of completion from a paralegal program that is institutionally accredited but not approved by the American Bar Association, that requires successful completion of a minimum of 24 semester units, or the equivalent, in legal specialization courses.

(d) A certificate of completion from a paralegal program approved by the American Bar Association. (Added by Stats. 2002, ch. 1018.)

§6403. Contents of registration applications

(a) The application for registration of a natural person shall contain all of the following statements about the applicant:

(1) Name, age, address, and telephone number.

(2) Whether he or she has been convicted of a felony, or of a misdemeanor under Section 6126 or 6127, or found liable under Section 6126.5.

(3) Whether he or she has been held liable in a civil action by final judgment or entry of a stipulated judgment, if the action alleged fraud, the use of an untrue or misleading representation, or the use of an unfair, unlawful, or deceptive business practice.

(4) Whether he or she has ever been convicted of a misdemeanor violation of this chapter.

(5) Whether he or she has had a civil judgment entered against him or her in an action arising out of the applicant's negligent, reckless, or willful failure to properly perform his or her obligation as a legal document assistant or unlawful detainer assistant.

(6) Whether he or she has had a registration revoked pursuant to Section 6413.

(7) Whether this is a primary or secondary registration. If it is a secondary registration, the county in which the primary registration is filed.

(b) The application for registration of a natural person shall be accompanied by the display of personal identification, such as a California driver's license, birth certificate, or other identification acceptable to the county clerk to adequately determine the identity of the applicant.

(c) The application for registration of a partnership or corporation shall contain all of the following statements about the applicant:

(1) The names, ages, addresses, and telephone numbers of the general partners or officers.

(2) Whether the general partners or officers have ever been convicted of a felony, or a misdemeanor under Section 6126 or 6127 or found liable under Section 6126.5.

(3) Whether the general partners or officers have ever been held liable in a civil action by final judgment or entry of a stipulated judgment, if the action alleged fraud, the use of an untrue or misleading representation, or the use of an unfair, unlawful, or deceptive business practice.

(4) Whether the general partners or officers have ever been convicted of a misdemeanor violation of this chapter.

(5) Whether the general partners or officers have had a civil judgment entered against them in an action arising out of a negligent, reckless, or willful failure to properly perform the obligations of a legal document assistant or unlawful detainer assistant.

(6) Whether the general partners or officers have ever had a registration revoked pursuant to Section 6413.

(7) Whether this is a primary or secondary registration. If it is a secondary registration, the county in which the primary registration is filed.

(d) The applications made under this section shall be made under penalty of perjury.

(e) The county clerk shall retain the application for registration for a period of three years following the expiration date of the application, after which time the application may be destroyed if it is scanned or if the conditions specified in Section 26205.1 of the Government Code are met. If the application is scanned, the scanned image shall be retained for a period of 10 years, after which time that image may be destroyed and, notwithstanding Section 26205.1 of the Government Code, no reproduction thereof need be made or preserved. (Added by Stats. 2002, ch. 1018. Amended by Stats. 2007, ch. 402.)

§6404. Fees

An applicant shall pay a fee of one hundred seventy-five dollars ($175) to the county clerk at the time he or she files an application for initial registration, including a primary or secondary registration, or renewal of registration. An additional fee of ten dollars ($10) shall be paid to the county clerk for each additional identification card. (Added by Stats. 2002, ch. 1018.)

§6405. Bonds

(a) (1) An application for a certificate of registration by an individual shall be accompanied by a bond of twenty-five thousand dollars ($25,000) executed by a corporate surety qualified to do business in this state and conditioned upon compliance with this chapter. The total aggregate liability on the bond shall be limited to twenty-five thousand dollars ($25,000). An application for secondary registration shall meet all of the requirements of this subdivision, except that in place of posting another original bond or cash deposit, the applicant shall include a certified copy of the bond or cash deposit posted in the county in which the applicant filed the primary registration.

(2) An application for a certificate of registration by a partnership or corporation shall be accompanied by a bond executed by a corporate surety qualified to do business in this state and conditioned upon compliance with this chapter in the following amount, based on the total number of legal document assistants and unlawful detainer assistants employed by the partnership or corporation:

(A) Twenty-five thousand dollars ($25,000) for one to four assistants.

(B) Fifty thousand dollars ($50,000) for five to nine assistants.

(C) One hundred thousand dollars ($100,000) for 10 or more assistants. An application for a certificate of registration by a person employed by a partnership or corporation shall be accompanied by a bond of twenty-five thousand dollars ($25,000) only if the partnership or corporation has not posted a bond in the amount required by this subdivision. An application for secondary registration shall meet all of the requirements of this subdivision, except that in place of posting another original bond or cash deposit, the applicant shall include a certified copy of the bond or cash deposit posted in the county in which the applicant filed the primary registration.

(3) If a partnership or corporation increases the number of assistants it employs above the number stated in its application for a certificate of registration, the partnership or corporation shall promptly increase the bond to the applicable amount in subparagraphs (B) or (C) of paragraph (2) based on the actual number of assistants it employs, and shall promptly submit the increased bond to the county clerk. The partnership or corporation shall promptly send a certified copy of the increased bond to the county clerk in any county of secondary registration.

(4) The bond may be terminated pursuant to Section 995.440 of, and Article 13 (commencing with Section 996.310) of Chapter 2 of Title 14 of Part 2 of, the Code of Civil Procedure.

(b) The county clerk shall, upon filing of the bond, deliver the bond forthwith to the county recorder for recording. The recording fee specified in Section 27361 of the Government Code shall be paid by the registrant. The fee may be paid to the county clerk who shall transmit it to the recorder.

(c) The fee for filing, canceling, revoking, or withdrawing the bond is seven dollars ($7).

(d) The county recorder shall record the bond and any notice of cancellation, revocation, or withdrawal of the bond, and shall thereafter mail the instrument, unless specified to the contrary, to the person named in the instrument and, if no person is named, to the party leaving it for recording. The recording fee specified in Section 27361 of the Government Code for notice of cancellation, revocation, or withdrawal of the bond shall be paid to the county clerk, who shall transmit it to the county recorder.

(e) In lieu of the bond required by subdivision (a), a registrant may deposit the amount required by subdivision (a) in cash with the county clerk.

(f) If the certificate is revoked, the bond or cash deposit shall be returned to the bonding party or depositor subject to subdivision (g) and the right of a person to recover against the bond or cash deposit under Section 6412.

(g) The county clerk may retain a cash deposit until the expiration of three years from the date the registrant has ceased to do business, or three years from the expiration or revocation date of the registration, in order to ensure there are no outstanding claims against the deposit. A judge may order the return of the deposit prior to the expiration of three years upon evidence satisfactory to the judge that there are no outstanding claims against the deposit.

(h) The bond required by this section shall be in favor of the State of California for the benefit of any person who is damaged as a result of the violation of this chapter or by the fraud, dishonesty, or incompetency of an individual, partnership, or corporation registered under this chapter. The bond required by this section shall also indicate the name of the county in which it will be filed. (Added by Stats. 2002, ch. 1018.)

§6406. Certificates of registration; duration; renewal

(a) If granted, a certificate of registration shall be effective for a period of two years, until the date the bond expires, or until the total number of legal document assistants and unlawful detainer assistants employed by a partnership or corporation exceeds the number allowed for the amount of the bond in effect, whichever occurs first. Thereafter, a registrant shall file a new certificate of registration or a renewal of the certificate of registration and pay the fee required by Section 6404, and increase the amount of the bond if required to comply with subdivision (a) of Section 6405. A certificate of registration that is currently effective may be renewed up to 60 days prior to its expiration date and the effective date of the renewal shall be the date the current registration expires. The renewal shall be effective for a period of two years from the effective date or until the expiration date of the bond, or until the total number of legal document assistants and unlawful detainer assistants employed by a partnership or corporation exceeds the number allowed for the dollar amount of the bond in effect, whichever occurs first.

(b) Except as provided in subdivisions (d) to (f), inclusive, an applicant shall be denied registration or renewal of registration if the applicant has been any of the following:

(1) Convicted of a felony, or of a misdemeanor under Section 6126 or 6127, or found liable under Section 6126.5.

(2) Held liable in a civil action by final judgment or entry of a stipulated judgment, if the action alleged fraud, or the use of an untrue or misleading representation, or the use of an unfair, unlawful, or deceptive business practice.

(3) Convicted of a misdemeanor violation of this chapter.

(4) Had a civil judgment entered against him or her in an action arising out of the applicant's negligent, reckless, or willful failure to properly perform his or her obligation as a legal document assistant or unlawful detainer assistant.

(5) Had his or her registration revoked pursuant to Section 6413.

(c) If the county clerk finds that the applicant has failed to demonstrate having met the requisite requirements of Section 6402 or 6402.1, or that any of the paragraphs of subdivision (b) apply, the county clerk, within three business days of submission of the application and fee, shall return the application and fee to the applicant with a notice to the applicant indicating the reason for the denial and the method of appeal.

(d) The denial of an application may be appealed by the applicant by submitting, to the director, the following:

(1) The completed application and notice from the county clerk specifying the reasons for the denial of the application.

(2) A copy of any final judgment or order that resulted from any conviction or civil judgment listed on the application.

(3) Any relevant information the applicant wishes to include for the record.

(e) The director shall order the applicant's certificate of registration to be granted if the director determines that the issuance of a certificate of registration is not likely to expose consumers to a significant risk of harm based on a review of the application and any other information relating to the applicant's unlawful act or unfair practice described in paragraphs (1) to (5), inclusive, of subdivision (b). The director shall order the applicant's certificate of registration to be denied if the director determines that issuance of a certificate of registration is likely to expose consumers to a significant risk of harm based on a review of the application and any other information relating to the applicant's unlawful act or unfair practice described in paragraphs (1) to (5), inclusive, of subdivision (b). The director shall send to the applicant and the county clerk a written decision listing the reasons registration shall be granted or denied within 30 days of the submission of the matter.

(f) If the director orders that the certificate of registration be granted, the applicant may resubmit the application, with the appropriate application fee and the written decision of the director. The county clerk shall grant the certificate of registration to the applicant within three business days of being supplied this information. (Added by Stats. 2002, ch. 1018.)

§6407. Register; identification cards

(a) The county clerk shall maintain a register of legal document assistants, and a register of unlawful detainer assistants, assign a unique number to each legal document assistant, or unlawful detainer assistant, and issue an identification card to each one. Additional cards for employees of legal document assistants or unlawful detainer assistants shall be issued upon the payment of ten dollars ($10) for each card. Upon renewal of registration, the same number shall be assigned, provided there is no lapse in the period of registration.

(b) The identification card shall be a card 31/2 by 21/4 inches, and shall contain at the top, the title "Legal Document Assistant" or "Unlawful Detainer Assistant," as appropriate, followed by the registrant's name, address, registration number, date of expiration, and county of registration. It shall also contain a photograph of the registrant in the lower left corner. The front of the card, above the title, shall also contain the following statement in 12-point boldface type: "This person is not a lawyer." The front of the card, at the bottom, shall also contain the following statement in 12-point boldface type: "The county clerk has not evaluated this person's knowledge, experience, or services." (Added by Stats. 2002, ch. 1018.)

§6408. Disclosure of registration required

The registrant's name, business address, telephone number, registration number, expiration date of the registration, and county of registration shall appear in any solicitation or advertisement, and on any papers or documents prepared or used by the registrant, including, but not limited to, contracts, letterhead, business cards, correspondence, documents, forms, claims, petitions, checks, receipts, money orders, and pleadings. (Added by Stats. 2002, ch. 1018.)

§6408.5 Advertisements and solicitation; required disclaimers

(a) All advertisements or solicitations published, distributed, or broadcast offering legal document assistant or unlawful detainer assistant services shall include the following statement: "I am not an attorney. I can only provide self help services at your specific direction." This subdivision does not apply to classified or "yellow pages" listings in a telephone or business directory of three lines or less that state only the name, address, and telephone number of the legal document assistant or unlawful detainer assistant.

(b) If the advertisement or solicitation is in a language other than English, the statement required by subdivision (a) shall be in the same language as the advertisement or solicitation. (Added by Stats. 2002, ch. 1018.)

§6409. Retention of original documents prohibited

No legal document assistant or unlawful detainer assistant shall retain in his or her possession original documents of a client. A legal document assistant or an unlawful detainer assistant shall immediately return all of a client's original documents to the client in any one or more of the following circumstances:

(a) If the client so requests at any time.

(b) If the written contract required by Section 6410 is not executed or is rescinded, canceled, or voided for any reason.

(c) If the services described pursuant to paragraph (1) of subdivision (b) of Section 6410 have been completed. (Added by Stats. 2002, ch. 1018.)

§6410. Written contracts; contents; rescinding and voiding

(a) Every legal document assistant or unlawful detainer assistant who enters into a contract or agreement with a client to provide services shall, prior to providing any services, provide the client with a written contract, the contents of which shall be prescribed by regulations adopted by the Department of Consumer Affairs.

(b) The written contract shall include all of the following provisions:

(1) The services to be performed.

(2) The costs of the services to be performed.

(3) There shall be printed on the face of the contract in 12-point boldface type a statement that the legal document assistant or unlawful detainer assistant is not an attorney and may not perform the legal services that an attorney performs.

(4) The contract shall contain a statement in 12-point boldface type that the county clerk has not evaluated or approved the registrant's knowledge or experience, or the quality of the registrant's services.

(5) The contract shall contain a statement in 12-point boldface type that the consumer may obtain information regarding free or low-cost representation through a local bar association or legal aid foundation and that the consumer may contact local law enforcement, a district attorney, or a legal aid foundation if the consumer believes that he or she has been a victim of fraud, the unauthorized practice of law, or any other injury.

(6) The contract shall contain a statement in 12-point boldface type that a legal document assistant or unlawful detainer assistant is not permitted to engage in the practice of law, including providing any kind of advice, explanation, opinion, or recommendation to a consumer about possible legal rights, remedies, defenses, options, selection of forms, or strategies.

(c) The contract shall be written both in English and in any other language comprehended by the client and principally used in any oral sales presentation or negotiation leading to execution of the contract. The legal document assistant or the unlawful detainer assistant is responsible for translating the contract into the language principally used in any oral sales presentation or negotiation leading to the execution of the contract.

(d) Failure of a legal document assistant or unlawful detainer assistant to comply with subdivisions (a), (b), and (c) shall make the contract or agreement for services voidable at the option of the client. Upon the voiding of the contract, the legal document assistant or unlawful detainer assistant shall immediately return in full any fees paid by the client.

(e) In addition to any other right to rescind, the client shall have the right to rescind the contract within 24 hours of the signing of the contract. The client may cancel the contract by giving the legal document assistant or the unlawful detainer assistant any written statement to the effect that the contract is canceled. If the client gives notice of cancellation by mail addressed to the legal document assistant or unlawful detainer assistant, with first-class

postage prepaid, cancellation is effective upon the date indicated on the postmark. Upon the voiding or rescinding of the contract or agreement for services, the legal document assistant or unlawful detainer assistant shall immediately return to the client any fees paid by the client, except fees for services that were actually, necessarily, and reasonably performed on the client's behalf by the legal document assistant or unlawful detainer assistant with the client's knowing and express written consent. The requirements of this subdivision shall be conspicuously set forth in the written contract. (Added by Stats. 2002, ch. 1018.)

§6410.5 First in-person or telephonic solicitation; disclaimers and statements prior to conversation

(a) It is unlawful for any legal document assistant or unlawful detainer assistant, in the first in-person or telephonic solicitation of a prospective client of legal document or unlawful detainer assistant services, to enter into a contract or agreement for services or accept any compensation unless the legal document assistant or the unlawful detainer assistant states orally, clearly, affirmatively and expressly all of the following, before making any other statement, except statements required by law in telephonic or home solicitations, and a greeting, or asking the prospective client any questions:

(1) The identity of the person making the solicitation.

(2) The trade name of the person represented by the person making the solicitation, if any.

(3) The kind of services being offered for sale.

(4) The statement: "I am not an attorney" and, if the person offering legal document assistant or unlawful detainer assistant services is a partnership or a corporation, or uses a fictitious business name, "(name) is not a law firm. I/we cannot represent you in court, advise you about your legal rights or the law, or select legal forms for you."

(b) If the first contact between a legal document assistant or an unlawful detainer assistant and a prospective client is initiated by the prospective client, it is unlawful for the legal document assistant or unlawful detainer assistant to enter into a contract or agreement for services or accept any compensation unless the legal document assistant or the unlawful detainer assistant states orally, clearly, affirmatively and expressly, during that first contact, and before offering any contract or agreement for services to the prospective client, the following: "I am not an attorney (and, if the person offering legal document assistant or unlawful detainer assistant services is a partnership or a corporation, or uses a fictitious business name, "(name) is not a law firm.") (I/We) cannot (1) represent you in court, (2) advise you about your legal rights or the law, or (3) select legal forms for you." After making this statement, and before offering the prospective client a contract or agreement for services, a legal document assistant or unlawful detainer assistant who has made the statement in accordance with this subsection may ask the prospective client to read the "Notice to Consumer" set forth below, and after allowing the prospective client time to read the notice, may ask the prospective client to sign and date the notice. The notice shall be set forth in black, bold, 14-point type on a separate, white, 81/2 by 11 inch sheet of paper which contains no other print or graphics, and shall be in the following form. The notice shall contain only the appropriate name or other designation from those indicated in brackets below. At the time a prospective client signs the notice and before that prospective client is offered any contract or agreement for signature, the legal document assistant or unlawful detainer assistant shall give the prospective client a clearly legible copy of the signed notice. A legal document assistant or unlawful detainer assistant shall not ask or require a prospective client or a client to sign any other form of acknowledgment regarding this notice.

NOTICE TO CONSUMER

DO NOT SIGN ANYTHING
BEFORE YOU READ THIS PAGE

In the first conversation when you contacted [the unlawful detainer assistant or the legal document assistant], did [he or she] explain . . . . . .

[Name of unlawful detainer assistant or legal document assistant] is not an attorney.

[Name of corporation or partnership, if any, that is offering legal document assistant services or unlawful detainer assistant services] is not a law firm.

[He/she/name of the business] cannot represent you in court.

[He/she/name of the business] cannot advise you about your legal rights or the law.

[He/she/name of the business] cannot select legal forms for you.

Choose one:

Yes, [he/she] explained.

No, [he/she] did not explain.

Date:

Signature:

(Added by Stats. 2002, ch. 1018.)

§6411. Unlawful acts

It is unlawful for any person engaged in the business or acting in the capacity of a legal document assistant or unlawful detainer assistant to do any of the following:

(a) Make false or misleading statements to the consumer concerning the subject matter, legal issues, or self-help service being provided by the legal document assistant or unlawful detainer assistant.

(b) Make any guarantee or promise to a client or prospective client, unless the guarantee or promise is in writing and the legal document assistant or unlawful detainer assistant has a reasonable factual basis for making the guarantee or promise.

(c) Make any statement that the legal document assistant or unlawful detainer assistant can or will obtain favors or has special influence with a court, or a state or federal agency.

(d) Provide assistance or advice which constitutes the unlawful practice of law pursuant to Section 6125, 6126, or 6127.

(e) Engage in the unauthorized practice of law, including, but not limited to, giving any kind of advice, explanation, opinion, or recommendation to a consumer about possible legal rights, remedies, defenses, options, selection of forms, or strategies. A legal document assistant shall complete documents only in the manner prescribed by subdivision (d) of Section 6400.

(f) Use in the person's business name or advertising the words "legal aid," "legal services," or any similar term that has the capacity, tendency, or likelihood to mislead members of the public about that person's status as a nonprofit corporation or governmentally supported organization offering legal services without charge to indigent people, or employing members of the State Bar to provide those services. (Added by Stats. 2002, ch. 1018.)

§6412. Recovery of damages from bonds; filing of new bonds required

(a) Any owner or manager of residential or commercial rental property, tenant, or other person who is awarded damages in any action or proceeding for injuries caused by the acts of a registrant while in the performance of his or her duties as a legal document assistant or unlawful detainer assistant may recover damages from the bond or cash deposit required by Section 6405.

(b) If there has been a recovery against a bond or cash deposit under subdivision (a) and the registration has not been revoked pursuant to Section 6413, the registrant shall file a new bond or deposit an additional amount of cash within 30 days to reinstate the bond or cash deposit to the amount required by Section 6405. If the registrant does not file a bond, or deposit this amount within 30 days, his or her certificate of registration shall be revoked. (Added by Stats. 2002, ch. 1018.)

§6412.1. Remedies for violation; attorney's fees

(a) Any person injured by the unlawful act of a legal document assistant or unlawful detainer assistant shall retain all rights and remedies cognizable under law. The penalties, relief, and remedies provided in this chapter are not exclusive, and do not affect any other penalties, relief, and remedies provided by law.

(b) Any person injured by a violation of this chapter by a legal document assistant or unlawful detainer assistant may file a complaint and seek redress in any superior court for injunctive relief, restitution, and damages. Attorney's fees shall be awarded to the prevailing plaintiff. A claim under this chapter may be maintained in small claims court, if the claim and relief sought are within the small claims court's jurisdiction. (Added by Stats. 2002, ch. 1018.)

§6412.5. Waivers from client

A legal document assistant or an unlawful detainer assistant may neither seek nor obtain a client's waiver of any of the provisions of this chapter. Any waiver of the provisions of this chapter is contrary to public policy, and is void and unenforceable. (Added by Stats. 2002, ch. 1018.)

§6413. Revocation of registration

The county clerk shall revoke the registration of a legal document assistant or unlawful detainer assistant upon receipt of an official document or record stating that the registrant has been found guilty of the unauthorized practice of law pursuant to Section 6125, 6126, or 6127, has been found guilty of a misdemeanor violation of this chapter, has been found liable under Section 6126.5, or that a civil judgment has been entered against the registrant in an action arising out of the registrant's negligent, reckless, or willful failure to properly perform his or her obligation as a legal document assistant or unlawful detainer assistant. The county clerk shall be given notice of the disposition in any court action by the city attorney, district attorney, or plaintiff, as applicable. A registrant whose registration is revoked pursuant to this section may reapply for registration three years after the revocation. (Added by Stats. 2002, ch. 1018.)

§6414. Appeal of revocation of registration

A registrant whose certificate is revoked shall be entitled to challenge the decision in a court of competent jurisdiction. (Added by Stats. 2002, ch. 1018.)

§6415. Penalties

A failure, by a person who engages in acts of a legal document assistant or unlawful detainer assistant, to comply with any of the requirements of Section 6401.6, 6402, 6408, or 6410, subdivision (a), (b), or (c) of Section 6411, or Section 6412.5 is a misdemeanor punishable by a fine of not less than one thousand dollars ($1,000) or more than two thousand dollars ($2,000), as to each client with respect to whom a violation occurs, or imprisonment for not more than one year, or by both that fine and imprisonment. Payment of restitution to a client shall take precedence over payment of a fine. (Added by Stats. 2002, ch. 1018.)

§6450. Paralegals—Definition; Scope and Limitations of Lawful Activities; Qualifications; Certification

(a) "Paralegal" means a person who holds himself or herself out to be a paralegal, who is qualified by education, training, or work experience, who either contracts with or is employed by an attorney, law firm, corporation, governmental agency, or other entity, and who performs substantial legal work under the direction and supervision of an active member of the State Bar of California, as defined in Section 6060, or an attorney practicing law in the federal courts of this state, that has been specifically delegated by the attorney to him or her. Tasks performed by a paralegal include, but are not limited to, case planning, development, and management; legal research; interviewing clients; fact gathering and retrieving information; drafting and analyzing legal documents; collecting, compiling, and utilizing technical information to make an independent decision and recommendation to the supervising attorney; and representing clients before a state or federal administrative agency if that representation is permitted by statute, court rule, or administrative rule or regulation.

(b) Notwithstanding subdivision (a), a paralegal shall not do the following:

(1) Provide legal advice.

(2) Represent a client in court.

(3) Select, explain, draft, or recommend the use of any legal document to or for any person other than the attorney who directs and supervises the paralegal.

(4) Act as a runner or capper, as defined in Sections 6151 and 6152.

(5) Engage in conduct that constitutes the unlawful practice of law.

(6) Contract with, or be employed by, a natural person other than an attorney to perform paralegal services.

(7) In connection with providing paralegal services, induce a person to make an investment, purchase a financial product or service, or enter a transaction from which income or profit, or both, purportedly may be derived.

(8) Establish the fees to charge a client for the services the paralegal performs, which shall be established by the attorney who supervises the paralegal's work. This paragraph does not apply to fees charged by a paralegal in a contract to provide paralegal services to an attorney, law firm, corporation, governmental agency, or other entity as provided in subdivision (a).

(c) A paralegal shall possess at least one of the following:

(1) A certificate of completion of a paralegal program approved by the American Bar Association.

(2) A certificate of completion of a paralegal program at, or a degree from, a postsecondary institution that requires the successful completion of a minimum of 24 semester, or equivalent, units in law-related courses and that has been accredited by a national or regional accrediting organization or approved by the Bureau for Private Postsecondary and Vocational Education.

(3) A baccalaureate degree or an advanced degree in any subject, a minimum of one year of law-related experience under the supervision of an attorney who has been an active member of the State Bar of California for at least the preceding three years or who has practiced in the federal courts of this state for at least the preceding three years, and a written declaration from this attorney stating that the person is qualified to perform paralegal tasks.

(4) A high school diploma or general equivalency diploma, a minimum of three years of law-related experience under the supervision of an attorney who has been an active member of the State Bar of California for at least the preceding three years or who has practiced in the federal courts of this state for at least

the preceding three years, and a written declaration from this attorney stating that the person is qualified to perform paralegal tasks. This experience and training shall be completed no later than December 31, 2003.

(d) Every two years, commencing January 1, 2007, any person that is working as a paralegal shall be required to certify completion of four hours of mandatory continuing legal education in legal ethics and four hours of mandatory continuing legal education in either general law on in an area of specialized law. All continuing legal education courses shall meet the requirements of Section 6070. Certification of these continuing education requirements shall be made with the paralegal's supervising attorney. The paralegal shall be responsible for keeping a record of the paralegal' s certifications.

(e) A paralegal does not include a nonlawyer who provides legal services directly to members of the public, or a legal document assistant or unlawful detainer assistant as defined in Section 6400, unless the person is a person described in subdivision (a).

(f) This section shall become operative on January 1, 2004. (Added by Stats. 2000, ch. 439. Amended by Stats. 2001, ch. 311; Stats. 2002, ch. 664; Stats. 2006, ch. 567.)

§6451. Paralegals—Attorney Supervision

It is unlawful for a paralegal to perform any services for a consumer except as performed under the direction and supervision of the attorney, law firm, corporation, government agency, or other entity that employs or contracts with the paralegal. Nothing in this chapter shall prohibit a paralegal who is employed by an attorney, law firm, governmental agency, or other entity from providing services to a consumer served by one of these entities if those services are specifically allowed by statute, case law, court rule, or federal or state administrative rule or regulation. "Consumer" means a natural person, firm, association, organization, partnership, business trust, corporation, or public entity. (Added by Stats. 2000, ch. 439. Amended by Stats. 2001, ch. 311.)

§6452. Paralegals—Identification Requirements; Liability of Supervising Attorney

(a) It is unlawful for a person to identify himself or herself as a paralegal on any advertisement, letterhead, business card or sign, or elsewhere unless he or she has met the qualifications of subdivision (c) of Section 6450 and performs all services under the direction and supervision of an attorney who is an active member of the State Bar of California or an attorney practicing law in the federal courts of this state who is responsible for all of the services performed by the paralegal. The business card of a paralegal shall include the name of the law firm where he or she is employed or a statement that he or she is employed by or contracting with a licensed attorney.

(b) An attorney who uses the services of a paralegal is liable for any harm caused as the result of the paralegal's negligence, misconduct, or violation of this chapter. (Added by Stats. 2000, ch. 439.)

§6453. Paralegals—Duty of Confidentiality

A paralegal is subject to the same duty as an attorney specified in subdivision (e) of Section 6068 to maintain inviolate the confidentiality, and at every peril to himself or herself to preserve the attorney-client privilege, of a consumer for whom the paralegal has provided any of the services described in subdivision (a) of Section 6450. (Added by Stats. 2000, ch. 439.)

§6454. Paralegals—Terminology

The terms "paralegal," "legal assistant," "attorney assistant," "freelance paralegal," "independent paralegal," and "contract paralegal" are synonymous for purposes of this chapter. (Added by Stats. 2000, ch. 439.)

§6455. Paralegals—Violations; Civil and Criminal Remedies; Attorney Fees

(a) Any consumer injured by a violation of this chapter may file a complaint and seek redress in superior court for injunctive relief, restitution, and damages. Attorney's fees shall be awarded in this action to the prevailing plaintiff.

(b) Any person who violates the provisions of Section 6451 or 6452 is guilty of an infraction for the first violation, which is punishable upon conviction by a fine of up to two thousand five hundred dollars ($2,500) as to each consumer with respect to whom a violation occurs, and is guilty of a misdemeanor for the second and each subsequent violation, which is punishable upon conviction by a fine of two thousand five hundred dollars ($2,500) as to each consumer with respect to whom a violation occurs, or imprisonment in a county jail for not more than one year, or by both that fine and imprisonment. Any person convicted of a violation of this section shall be ordered by the court to pay restitution to the victim pursuant to Section 1202.4 of the Penal Code. (Added by Stats. 2000, ch. 439. Amended by Stats. 2007, ch. 43.)

§6456. Paralegals—Exemptions

An individual employed by the state as a paralegal, legal assistant, legal analyst, or similar title, is exempt from the provisions of this chapter. (Added by Stats. 2000, ch. 439.)

§7190. Advertisement or Promotional Materials; Use of Public Official's Name or Position; Disclaimer

(a) The name or position of a public official may not be used in an advertisement or any promotional material by a person licensed under this chapter, without the written authorization of the public official. A printed advertisement or promotional material that uses the name or position of a public official with that public official's written authorization, shall also include a disclaimer in at least 10-point roman boldface type, that shall be in a color or print which contrasts with the background so as to be easily legible, and set apart from any other printed matter. The disclaimer shall consist of a statement that reads "The name of (specify name of public official) does not imply that (specify name of public official) endorses this product or service in (his or her) official capacity and does not imply an endorsement by any governmental entity." If the advertisement is broadcast, this statement shall be read in a clearly audible tone of voice.

(b) For purposes of this section, "public official" means a member, officer, employee, or consultant of a local government agency, as defined in Section 82041 of the Government Code, or state agency, as defined in Section 82049 of the Government Code. (Added by Stats. 1994, ch. 1135.)

§17529. Unsolicited Commercial E-mail—Legislative Findings and Declarations

The Legislature hereby finds and declares all of the following:

(a) Roughly 40 percent of all e-mail traffic in the United States is comprised of unsolicited commercial e-mail advertisements (hereafter spam) and industry experts predict that by the end of 2003 half of all e-mail traffic will be comprised of spam.

(b) The increase in spam is not only an annoyance but is also an increasing drain on corporate budgets and possibly a threat to the continued usefulness of the most successful tool of the computer age.

(c) Complaints from irate business and home-computer users regarding spam have skyrocketed, and polls have reported that 74 percent of respondents favor making mass spamming illegal and only 12 percent are opposed, and that 80 percent of respondents consider spam very annoying.

(d) According to Ferris Research Inc., a San Francisco consulting group, spam will cost United States organizations more than ten billion dollars ($10,000,000,000) this year, including lost productivity and the additional equipment, software, and manpower needed to combat the problem. California is 12 percent of the United States population with an emphasis on technology business, and it is therefore estimated that spam costs California organizations well over 1.2 billion dollars ($1,200,000,000).

(e) Like junk faxes, spam imposes a cost on users, using up valuable storage space in e-mail inboxes, as well as costly computer band width, and on networks and the computer servers that power them, and discourages people from using e-mail.

(f) Spam filters have not proven effective.

(g) Like traditional paper "junk" mail, spam can be annoying and waste time, but it also causes many additional problems because it is easy and inexpensive to create, but difficult and costly to eliminate.

(h) The "cost shifting" from deceptive spammers to Internet business and e-mail users has been likened to sending junk mail with postage due or making telemarketing calls to someone's pay-per-minute cellular phone.

(i) Many spammers have become so adept at masking their tracks that they are rarely found, and are so technologically sophisticated that they can adjust their systems to counter special filters and other barriers against spam and can even electronically commandeer unprotected computers, turning them into spam-launching weapons of mass production.

(j) There is a need to regulate the advertisers who use spam, as well as the actual spammers, because the actual spammers can be difficult to track down due to some return addresses that show up on the display as "unknown" and many others being obvious fakes and they are often located offshore.

(k) The true beneficiaries of spam are the advertisers who benefit from the marketing derived from the advertisements.

(l) In addition, spam is responsible for virus proliferation that can cause tremendous damage both to individual computers and to business systems.

(m) Because of the above problems, it is necessary that spam be prohibited and that commercial advertising e-mails be regulated as set forth in this article. (Added by Stats. 2003, ch. 487.)

§17529.1 Unsolicited Commercial E-mail—Definitions

For the purpose of this article, the following definitions apply:

(a) "Advertiser" means a person or entity that advertises through the use of commercial e-mail advertisements.

(b) "California electronic mail address" or "California e-mail address" means any of the following:

(1) An e-mail address furnished by an electronic mail service provider that sends bills for furnishing and maintaining that e-mail address to a mailing address in this state.

(2) An e-mail address ordinarily accessed from a computer located in this state.

(3) An e-mail address furnished to a resident of this state.

(c) "Commercial e-mail advertisement" means any electronic mail message initiated for the purpose of advertising or promoting the lease, sale, rental, gift offer, or other disposition of any property, goods, services, or extension of credit.

(d) "Direct consent" means that the recipient has expressly consented to receive e-mail advertisements from the advertiser, either in response to a clear and conspicuous request for the consent or at the recipient's own initiative.

(e) "Domain name" means any alphanumeric designation that is registered with or assigned by any domain name registrar as part of an electronic address on the Internet.

(f) "Electronic mail" or "e-mail" means an electronic message that is sent to an e-mail address and transmitted between two or more telecommunications devices, computers, or electronic devices capable of receiving electronic messages, whether or not the message is converted to hard copy format after receipt, viewed upon transmission, or stored for later retrieval. "Electronic mail" or "e-mail" includes electronic messages that are transmitted through a local, regional, or global computer network.

(g) "Electronic mail address" or "e-mail address" means a destination, commonly expressed as a string of characters, to which electronic mail can be sent or delivered. An "electronic mail address" or "e-mail address" consists of a user name or mailbox and a reference to an Internet domain.

(h) "Electronic mail service provider" means any person, including an Internet service provider, that is an intermediary in sending or receiving electronic mail or that provides to end users of the electronic mail service the ability to send or receive electronic mail.

(i) "Initiate" means to transmit or cause to be transmitted a commercial e-mail advertisement or assist in the transmission of a commercial e-mail advertisement by providing electronic mail addresses where the advertisement may be sent, but does not include the routine transmission of the advertisement through the network or system of a telecommunications utility or an electronic mail service provider through its network or system.

(j) "Incident" means a single transmission or delivery to a single recipient or to multiple recipients of an unsolicited commercial e-mail advertisement containing substantially similar content.

(k) "Internet" has the meaning set forth in paragraph (6) of subdivision (e) of Section 17538.

(l) "Preexisting or current business relationship," as used in connection with the sending of a commercial e-mail advertisement, means that the recipient has made an inquiry and has provided his or her e-mail address, or has made an application, purchase, or transaction, with or without consideration, regarding products or services offered by the advertiser. Commercial e-mail advertisements sent pursuant to the exemption provided for a preexisting or current business relationship shall provide the recipient of the commercial e-mail advertisement with the ability to "opt-out" from receiving further commercial e-mail advertisements by calling a toll-free telephone number or by sending an "unsubscribe" e-mail to the advertiser offering the products or services in the commercial e-mail advertisement. This opt-out provision does not apply to recipients who are receiving free e-mail service with regard to commercial e-mail advertisements sent by the provider of the e-mail service.

(m) "Recipient" means the addressee of an unsolicited commercial e-mail advertisement. If an addressee of an unsolicited commercial e-mail advertisement has one or more e-mail addresses to which an unsolicited commercial e-mail advertisement is sent, the addressee shall be deemed to be a separate recipient for each e-mail address to which the e-mail advertisement is sent.

(n) "Routine transmission" means the transmission, routing, relaying, handling, or storing of an electronic mail message through an automatic technical process. "Routine transmission" shall not include the sending, or the knowing participation in the sending, of unsolicited commercial e-mail advertisements.

(o) "Unsolicited commercial e-mail advertisement" means a commercial e-mail advertisement sent to a recipient who meets both of the following criteria:

(1) The recipient has not provided direct consent to receive advertisements from the advertiser.

(2) The recipient does not have a preexisting or current business relationship, as defined in subdivision (l), with the advertiser promoting the lease, sale, rental, gift offer, or other disposition of any property, goods, services, or extension of credit. (Added by Stats. 2003, ch. 487. Amended by Stats. 2004, ch. 183.)

§17529.2 Unsolicited Commercial E-mail—Restrictions

Notwithstanding any other provision of law, a person or entity may not do any of the following:

(a) Initiate or advertise in an unsolicited commercial e-mail advertisement from California or advertise in an unsolicited commercial e-mail advertisement sent from California.

(b) Initiate or advertise in an unsolicited commercial e-mail advertisement to a California electronic mail address, or advertise in an unsolicited commercial e-mail advertisement sent to a California electronic mail address.

(c) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect any other provision or application that can be given effect without the invalid provision or application. (Added by Stats. 2003, ch. 487.)

§17529.3 Unsolicited Commercial E-mail—Internet Service Provider Policy

Nothing in this article shall be construed to limit or restrict the adoption, implementation, or enforcement by a provider of Internet access service of a policy of declining to transmit, receive, route, relay, handle, or store certain types of electronic mail messages. (Added by Stats. 2003, ch. 487.)

§17529.4 Unlawful Collection of E-mail Addresses

(a) It is unlawful for any person or entity to collect electronic mail addresses posted on the Internet if the purpose of the collection is for the electronic mail addresses to be used to do either of the following:

(1) Initiate or advertise in an unsolicited commercial e-mail advertisement from California, or advertise in an unsolicited commercial e-mail advertisement sent from California.

(2) Initiate or advertise in an unsolicited commercial e-mail advertisement to a California electronic mail address, or advertise in an unsolicited commercial e-mail advertisement sent to California electronic mail address.

(b) It is unlawful for any person or entity to use an electronic mail address obtained by using automated means based on a combination of names, letters, or numbers to do either of the following:

(1) Initiate or advertise in an unsolicited commercial e-mail advertisement from California, or advertise in an unsolicited commercial e-mail advertisement sent from California.

(2) Initiate or advertise in an unsolicited commercial e-mail advertisement to a California electronic mail address, or advertise in an unsolicited commercial e-mail advertisement sent to a California electronic mail address.

(c) It is unlawful for any person to use scripts or other automated means to register for multiple electronic mail accounts from which to do, or to enable another person to do, either of the following:

(1) Initiate or advertise in an unsolicited commercial e-mail advertisement from California, or advertise in an unsolicited commercial e-mail advertisement sent from California.

(2) Initiate or advertise in an unsolicited commercial e-mail advertisement to a California electronic mail address, or advertise in an unsolicited commercial e-mail advertisement sent to a California electronic mail address. (Added by Stats. 2003, ch. 487.)

§17529.5 Commercial E-mail Containing Falsified or Misleading Information

(a) It is unlawful for any person or entity to advertise in a commercial e-mail advertisement either sent from California or sent to a California electronic mail address under any of the following circumstances:

(1) The e-mail advertisement contains or is accompanied by a third-party's domain name without the permission of the third party.

(2) The e-mail advertisement contains or is accompanied by falsified, misrepresented, or forged header information. This paragraph does not apply to truthful information used by a third party who has been lawfully authorized by the advertiser to use that information.

(3) The e-mail advertisement has a subject line that a person knows would be likely to mislead a recipient, acting reasonably under the circumstances, about a material fact regarding the contents or subject matter of the message.

(b) (1) (A) In addition to any other remedies provided by any other provision of law, the following may bring an action against a person or entity that violates any provision of this section:

(i) The Attorney General.

(ii) An electronic mail service provider.

(iii) A recipient of an unsolicited commercial e-mail advertisement, as defined in Section 17529.1.

(B) A person or entity bringing an action pursuant to subparagraph (A) may recover either or both of the following:

(i) Actual damages.

(ii) Liquidated damages of one thousand dollars ($1,000) for each unsolicited commercial e-mail advertisement transmitted in violation of this section, up to one million dollars ($1,000,000) per incident.

(C) The recipient, an electronic mail service provider, or the Attorney General, if the prevailing plaintiff, may also recover reasonable attorney's fees and costs.

(D) However, there shall not be a cause of action under this section against an electronic mail service provider that is only involved in the routine transmission of the e-mail advertisement over its computer network.

(2) If the court finds that the defendant established and implemented, with due care, practices and procedures reasonably designed to effectively prevent unsolicited commercial e-mail advertisements that are in violation of this section, the court shall reduce the liquidated damages recoverable under paragraph (1) to a maximum of one hundred dollars ($100) for each unsolicited commercial e-mail advertisement, or a maximum of one hundred thousand dollars ($100,000) per incident.

(3) (A) A person who has brought an action against a party under this section shall not bring an action against that party under Section 17529.8 or 17538.45 for the same commercial e-mail advertisement, as defined in subdivision (c) of Section 17529.1.

(B) A person who has brought an action against a party under Section 17529.8 or 17538.45 shall not bring an action against that party under this section for the same commercial e-mail advertisement, as defined in subdivision (c) of Section 17529.1.

(c) A violation of this section is a misdemeanor, punishable by a fine of not more than one thousand dollars ($1,000), imprisonment in a county jail for not more than six months, or both that fine and imprisonment. (Added by Stats. 2003, ch. 487. Amended by Stats. 2004, ch. 571; Stats. 2005, ch. 247.)

§17529.8 Unsolicited Commercial E-mail—Remedies

(a) (1) In addition to any other remedies provided by this article or by any other provisions of law, a recipient of an unsolicited commercial e-mail advertisement transmitted in violation of this article, an electronic mail service provider, or the Attorney General may bring an action against an entity that violates any provision of this article to recover either or both of the following:

(A) Actual damages.

(B) Liquidated damages of one thousand dollars ($1,000) for each unsolicited commercial e-mail advertisement transmitted in violation of Section

17529.2, up to one million dollars ($1,000,000) per incident.

(2) The recipient, an electronic mail service provider, or the Attorney General, if the prevailing plaintiff, may also recover reasonable attorney's fees and costs.

(3) However, there shall not be a cause of action against an electronic mail service provider that is only involved in the routine transmission of the unsolicited commercial e-mail advertisement over its computer network.

(b) If the court finds that the defendant established and implemented, with due care, practices and procedures reasonably designed to effectively prevent unsolicited commercial e-mail advertisements that are in violation of this article, the court shall reduce the liquidated damages recoverable under subdivision (a) to a maximum of one hundred dollars ($100) for each unsolicited commercial e-mail advertisement, or a maximum of one hundred thousand dollars ($100,000) per incident. (Added by Stats. 2003, ch. 487.)

§17529.9 Unsolicited Commercial E-mail—Severable Provisions

The provisions of this article are severable. If any provision of this article or its application is held invalid, that invalidity shall not affect any other provision or application that can be given effect without the invalid provision or application. (Added by Stats. 2003, ch. 487.)

§17538.41 Advertisement Transmitted by Text Message

(a) (1) Except as provided in subdivision (b), (c), (d), or (e), no person, entity conducting business, candidate, or political committee in this state shall transmit, or cause to be transmitted, a text message advertisement to a mobile telephony services handset, pager, or two-way messaging device that is equipped with short message capability or any similar capability allowing the transmission of text messages. A text message advertisement is a message, the principal purpose of which is to promote the sale of goods or services, or to promote a political purpose or objective, to the recipient, and consisting of advertising material for the lease, sale, rental, gift offer, or other disposition of any realty, goods, services, or extension of credit, or advertising material for political purposes.

(2) This section shall apply when a text message advertisement is transmitted to a number assigned for mobile telephony service, pager service, or two-way messaging service to a California resident.

(b) This section shall not apply to text messages transmitted at the direction of a person or entity offering mobile telephony service, pager service, or two-way messaging service if the subscriber is offered an option to not receive those text messages.

(c) This section shall not apply to text messages transmitted by a business, candidate, or political committee that has an existing relationship with the subscriber if the subscriber is offered an option not to receive text messages from that business, candidate, or political committee.

(d) This section shall not apply to text messages transmitted by an affiliate of a business that has an existing relationship with the subscriber, but only if the subscriber has provided consent to the business with which he or she has that relationship to receive text messages from affiliates of that business. "Affiliate" means any company that controls, is controlled by, or is under common control with, another company.

(e) This section shall not apply to electronic mail messages that are forwarded, without the knowledge of the sender, to a mobile telephony services handset, pager, or two-way messaging device.

(f) Subdivision (a) shall not impose an obligation on a person or entity offering mobile telephony service, pager service, or two-way messaging service to control the transmission of a text message unless the message is transmitted at the direction of that person or entity.

(g) For purposes of this section, "mobile telephony service" means commercially available interconnected mobile phone services that provide access to the public switched telephone network (PSTN) via mobile communication devices employing radiowave technology to transmit calls, including cellular radiotelephone, broadband Personal Communications Services (PCS), and digital Specialized Mobile Radio (SMR). (Added by Stats. 2002, ch. 699. Amended by Stats. 2005, ch. 711.)

§17538.43 Unsolicited Advertisement Transmitted by Telephone Facsimile Machine

(a) As used in this section, the following terms have the following meanings:

(1) "Telephone facsimile machine" means equipment that has the capacity to do either or both of the following:

(A) Transcribe text or images, or both, from paper into an electronic signal and to transmit that signal over a regular telephone line.

(B) Transcribe text or images, or both, from an electronic signal received over a regular telephone line onto paper.

(2) "Unsolicited advertisement" means any material advertising the commercial availability or quality of any property, goods, or services that is transmitted to any person or entity without that person's or entity's prior express invitation or permission. Prior express invitation or permission may be obtained for a specific or unlimited number of advertisements and may be obtained for a specific or unlimited period of time.

(b) (1) It is unlawful for a person or entity, if either the person or entity or the recipient is located within California, to use any telephone facsimile machine, computer, or other device to send, or cause another person or entity to use such a device to send, an unsolicited advertisement to a telephone facsimile machine.

(2) In addition to any other remedy provided by law, including a remedy provided by the Telephone Consumer Act (47 U.S.C. Sec. 227 and following), a person or entity may bring an action for a violation of this subdivision seeking the following relief:

(A) Injunctive relief against further violations.

(B) Actual damages or statutory damages of five hundred dollars ($500) per violation, whichever amount is greater.

(C) Both injunctive relief and damages as set forth in subparagraphs (A) and (B). If the court finds that the defendant willfully or knowingly violated this subdivision, the court may, in its discretion, increase the amount of the award to an amount equal to not more than three times the amount otherwise available under subparagraph (B).

(c) It is unlawful for a person or entity, if either the person or entity or the recipient is located in California, to do either of the following:

(1) Initiate any communication using a telephone facsimile machine that does not clearly mark, in a margin at the top or bottom of each transmitted page or on the first page of each transmission, the date and time sent, an identification of the business, other entity, or individual sending the message, and the telephone number of the sending machine or of the business, other entity, or individual.

(2) Use a computer or other electronic device to send any message via a telephone facsimile machine unless it is clearly marked, in a margin at the top or bottom of each transmitted page of the message or on the first page of the transmission, the date and time it is sent and the identification of the business, other entity, or individual sending the message and the telephone number of the sending machine or of the business, other entity, or individual.

(d) This section shall not apply to a facsimile sent by or on behalf of a professional or trade association that is a tax-exempt nonprofit organization and in furtherance of the association's tax-exempt purpose to a member of the association, provided that all of the following conditions are met:

(1) The member voluntarily provided the association the facsimile number to which the facsimile was sent.

(2) The facsimile is not primarily for the purpose of advertising the commercial availability or quality of any property, goods, or services of one or more third parties.

(3) The member who is sent the facsimile has not requested that the association stop sending facsimiles for the purpose of advertising the commercial availability or quality of any property, goods, or services of one or more third parties. (Added by Stats. 2005, ch. 667.)

§17538.45 Electronic Mail Advertisement—Definitions

(a) For purposes of this section, the following words have the following meanings:

(1) "Electronic mail advertisement" means any electronic mail message, the principal purpose of which is to promote, directly or indirectly, the sale or other distribution of goods or services to the recipient.

(2) "Unsolicited electronic mail advertisement" means any electronic mail advertisement that meets both of the following requirements:

(A) It is addressed to a recipient with whom the initiator does not have an existing business or personal relationship.

(B) It is not sent at the request of or with the express consent of the recipient.

(3) "Electronic mail service provider" means any business or organization qualified to do business in California that provides registered users the ability to send or receive electronic mail through equipment located in this state and that is an intermediary in sending or receiving electronic mail.

(4) "Initiation" of an unsolicited electronic mail advertisement refers to the action by the initial sender of the electronic mail advertisement. It does not refer to the actions of any intervening electronic mail service provider that may handle or retransmit the electronic message.

(5) "Registered user" means any individual, corporation, or other entity that maintains an electronic mail address with an electronic mail service provider.

(b) No registered user of an electronic mail service provider shall use or cause to be used that electronic mail service provider's equipment located in this state in violation of that electronic mail service provider's policy prohibiting or restricting the use of its service or equipment for the initiation of unsolicited electronic mail advertisements.

(c) No individual, corporation, or other entity shall use or cause to be used, by initiating an unsolicited electronic mail advertisement, an electronic mail service provider's equipment located in this state in violation of that electronic mail service provider's policy prohibiting or restricting the use of its equipment to deliver unsolicited electronic mail advertisements to its registered users.

(d) An electronic mail service provider shall not be required to create a policy prohibiting or restricting the use of its equipment for the initiation or delivery of unsolicited electronic mail advertisements.

(e) Nothing in this section shall be construed to limit or restrict the rights of an electronic mail service provider under Section 230(c)(1) of Title 47 of the United States Code, any decision of an electronic mail service provider to permit or to restrict access to or use of its system, or any exercise of its editorial function.

(f) (1) In addition to any other action available under law, any electronic mail service provider whose policy on unsolicited electronic mail advertisements is violated as provided in this section may bring a civil action to recover the actual monetary loss suffered by that provider by reason of that violation, or liquidated damages of fifty dollars ($50) for each electronic mail message initiated or delivered in violation of this section, up to a maximum of twenty-five thousand dollars ($25,000) per day, whichever amount is greater.

(2) In any action brought pursuant to paragraph (1), the court may award reasonable attorney's fees to a prevailing party.

(3) (A) In any action brought pursuant to paragraph (1), the electronic mail service provider shall be required to establish as an element of its cause of action that prior to the alleged violation, the defendant had actual notice of both of the following:

(i) The electronic mail service provider's policy on unsolicited electronic mail advertising.

(ii) The fact that the defendant's unsolicited electronic mail advertisements would use or cause to be used the electronic mail service provider's equipment located in this state.

(B) In this regard, the Legislature finds that with rapid advances in Internet technology, and electronic mail technology in particular, Internet service providers are already experimenting with embedding policy statements directly into the software running on the computers used to provide electronic mail services in a manner that displays the policy statements every time an electronic mail delivery is requested. While the state of the technology does not support this finding at present, the Legislature believes that, in a given case at some future date, a showing that notice was supplied via electronic means between the sending and receiving computers could be held to constitute actual notice to the sender for purposes of this paragraph.

(4) (A) An electronic mail service provider who has brought an action against a party for a violation under Section 17529.8 shall not bring an action against that party under this section for the same unsolicited commercial electronic mail advertisement.

(B) An electronic mail service provider who has brought an action against a party for a violation of this section shall not bring an action against that party under Section 17529.8 for the same unsolicited commercial electronic mail advertisement. (Added by Stats. 1998, ch. 863. Amended by Stats. 2003, ch. 487; Stats. 2004, ch. 183.)

§22440. Engaging in the Business or Acting in the Capacity of an Immigration Consultant

It is unlawful for any person, for compensation, other than persons authorized to practice law or authorized by federal law to represent persons before the Board of Immigration Appeals or the United States Citizenship and Immigration Services, to engage in the business or act in the capacity of an immigration consultant within this state except as provided by this chapter. (Added by Stats. 1986, ch. 248. Amended by Stats. 2004, ch. 557.)

§22441. Immigration Consultants; Definitions

(a) A person engages in the business or acts in the capacity of an immigration consultant when that person gives nonlegal assistance or advice on an immigration matter. That assistance or advice includes, but is not limited to, the following:

(1) Completing a form provided by a federal or state agency but not advising a person as to their answers on those forms.

(2) Translating a person's answers to questions posed in those forms.

(3) Securing for a person supporting documents, such as birth certificates, which may be necessary to complete those forms.

(4) Submitting completed forms on a person's behalf and at their request to the United States Citizenship and Immigration Services.

(5) Making referrals to persons who could undertake legal representation activities for a person in an immigration matter.

(b) "Immigration matter" means any proceeding, filing, or action affecting the immigration or citizenship status of any person which arises under immigration and naturalization law, executive order or presidential proclamation, or action of the United States Citizenship and Immigration Services, the United States Department of State, or the United States Department of Labor.

(c) "Compensation" means money, property, or anything else of value.

(d) Every person engaged in the business or acting in the capacity of an immigration consultant shall only offer nonlegal assistance or advice in an immigration matter as defined in subdivision (a). Any act in violation of subdivision (a) is a violation of this chapter. (Added by Stats. 1986, ch. 248. Amended by Stats. 1987, ch. 484; Stats. 2004, ch. 557.)

§22441.1 Immigration Consultants—Requirement for Background Check

(a) A person engaged in the business or acting in the capacity of an immigration consultant shall satisfactorily pass a background check conducted by the Secretary of State.

(b) The Secretary of State shall disqualify an individual from acting as an immigration consultant for any of the following reasons:

(1) Conviction of a felony.

(2) Conviction of a disqualifying misdemeanor where not more than 10 years have passed since the completion of probation. A conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of this paragraph. The list of disqualifying misdemeanors shall be the same as the disqualifying misdemeanors applicable to notaries public appointed and commissioned pursuant to Chapter 3 (commencing with Section 8200) of Division 1 of Title 2 of the Government Code.

(3) Failure to disclose any arrest or conviction in the disclosure form required pursuant to subdivision (c) of Section 22443.1.

(c) The Secretary of State shall complete a background check on every person engaged in the business or acting in the capacity of an immigration consultant who was bonded and qualified pursuant to this chapter on or before December 31, 2006.

(d) The Secretary of State shall not file a bond, disclosure form, or photograph from a person who has failed to pass the background check required by this section. (Added by Stats. 2006, ch. 605.)

§22442. Immigration Consultants—Written Contract; Requisite Provisions

(a) Every person engaged in the business or acting in the capacity of an immigration consultant who enters into a contract or agreement with a client to provide services shall, prior to providing any services, provide the client with a written contract, the contents of which shall be prescribed by the Department of Consumer Affairs in regulations.

(b) The written contract shall include all provisions relating to the following:

(1) The services to be performed.

(2) The costs of the services to be performed.

(3) There shall be printed on the face of the contract in 10-point boldface type a statement that the immigration consultant is not an attorney and may not perform the legal services that an attorney performs.

(4) The written contract shall list the documents to be prepared by the immigration consultant, and shall explain the purpose and process of each document.

(5) The written contract shall state the purpose for which the immigration consultant has been hired and the actions to be taken by the immigration consultant regarding each document, including the agency and office where each document will be filed and the approximate processing times according to current published agency guidelines.

(6) The written contract shall include a provision that informs the client that he or she may report complaints relating to immigration consultants to the Office of Immigrant Assistance of the Department of Justice. The written contract shall also include a provision stating that complaints concerning the unauthorized practice of law may be reported to the State Bar of California. These required provisions shall include the toll-free telephone numbers and Internet Web sites of those entities.

(c) An immigration consultant may not include provisions in the written contract relating to the following:

(1) Any guarantee or promise, unless the immigration consultant has some basis in fact for making the guarantee or promise.

(2) Any statement that the immigration consultant can or will obtain special favors from or has special influence with the United States Citizenship and Immigration Services, or any other governmental agency, employee, or official, that may have a bearing on a client's immigration matter.

(d) The provisions of the written contract shall be stated both in English and in the client's native language.

(e) A written contract is void if it is not written pursuant to subdivision (d).

(f) The client shall have the right to rescind the contract within 72 hours of signing the contract. The contents of this subdivision shall be conspicuously set forth in the written contract in both English and the client's native language.

(g) An immigration consultant may not make the statements described in subdivision (c) orally to a client.

(h) This section does not apply to employees of nonprofit, tax-exempt corporations who help clients complete application forms in an immigration matter free of charge or for a fee, including reasonable costs, consistent with that authorized by the Board of Immigration Appeals under Section 292.2 of Title 8 of the Code of Federal Regulations. (Added by Stats. 1986, ch. 248. Amended by Stats. 1987, ch. 484; Stats. 2003, ch. 384; Stats. 2004, ch. 557; Stats. 2006, ch. 605.)

§22442.1 Immigration Consultants—Required Receipts and Accounting

(a) A person engaged in the business or acting in the capacity of an immigration consultant shall provide a signed receipt to a client for each payment made by that client. The receipt shall be typed or computer generated on the consultant's letterhead.

(b) A statement of accounting for the services rendered and payments made shall be provided to the client every two months, shall be typed or computer generated on the immigration consultant's letterhead, and shall display the individual charges and total charges for services and the client's payments offsetting those charges. The consultant shall provide the client a written translation of the statement in the client's native language. (Added by Stats. 2003, ch. 384.)

§22442.2 Immigration Consultants—Posted Notice; Advertisement Notice; Required Information; Written Disclosure

(a) An immigration consultant shall conspicuously display in his or her office a notice that shall be at least 12 by 20 inches with boldface type or print with each character at least one inch in height and width in English and in the native language of the immigration consultant's clientele, that contains the following information:

(1) The full name, address, and evidence of compliance with any applicable bonding requirement including the bond number, if any.

(2) A statement that the immigration consultant is not an attorney.

(3) The services that the immigration consultant provides and the current and total fee for each service.

(4) The name of each immigration consultant employed at each location.

(b) Prior to providing any services, an immigration consultant shall provide the client with a written disclosure in the native language of the client that shall include the following information:

(1) The immigration consultant's name, address, and telephone number.

(2) The immigration consultant's agent for service of process.

(3) The legal name of the employee who consulted with the client, if different from the immigration consultant.

(4) Evidence of compliance with any applicable bonding requirement, including the bond number, if any.

(c) (1) Except as provided in paragraph (2) or (3), an immigration consultant who prints, displays, publishes, distributes, or broadcasts, or who causes to be printed, displayed, published, distributed, or broadcasted, any advertisement for services as an immigration consultant, within the meaning of Section 22441, shall include in that advertisement a clear and conspicuous statement that the immigration consultant is not an attorney.

(2) Notwithstanding paragraph (1), a person engaging in the business or acting in the capacity of an immigration consultant who is not licensed as an attorney in any state or territory of the United States, but is authorized by federal law to represent persons before the Board of Immigration Appeals or the United States Citizenship and Immigration Services, shall include in any advertisement for services as an immigration consultant a clear and conspicuous statement that the immigration consultant is not an attorney but is authorized by federal law to represent persons before the Board of Immigration Appeals or the United States Citizenship and Immigration Services.

(3) Notwithstanding paragraph (1), a person who is not an active member of the State Bar of California,but is an attorney licensed in another state or territory of the United States and is admitted to practice before the Board of Immigration Appeals or the United States Citizenship and Immigration Services, shall include in any advertisement for immigration services a clear and conspicuous statement that he or she is not an attorney licensed to practice law in California but is an attorney licensed in another state or territory of the United States and is authorized by federal law to represent persons before the Board of Immigration Appeals or the United States Citizenship and Immigration Services.

(4) If an advertisement subject to this subdivision is in a language other than English, the statement required by this subdivision shall be in the same language as the advertisement. (Added by Stats. 1994, ch. 561. Amended by Stats. 2000, ch. 674; Stats. 2003, ch. 384; Stats. 2004, ch. 557.)

§22442.3 Immigration Consultants—Misleading Use of Literal Translations in Documents; Bonding Requirements

(a) An immigration consultant shall not, with the intent to mislead, literally translate, from English into another language, the words or titles, including, but not limited to, "notary public," "notary," "licensed," "attorney," "lawyer," or any other terms that imply that the person is an attorney, in any document, including an advertisement, stationery, letterhead, business card, or other comparable written material describing the immigration consultant.

(b) For purposes of this section, "literal translation" of a word or phrase from one language means the translation of a word or phrase without regard to the true meaning of the word or phrase in the language that is being translated.

(c) An immigration consultant may not make or authorize the making of any verbal or written references to his or her compliance with the bonding requirements of Section 22443.1 except as provided in this chapter. (Added by Stats. 1994, ch. 561.)

§22442.4 Immigration Consultants—Provision of Fingerprint Images and Other Information to Department of Justice

(a) A person engaged in the business or acting in the capacity of an immigration consultant shall submit to the Department of Justice, fingerprint images and related information required by the Department of Justice for the purpose of obtaining information as to the existence and content of a record of state and federal convictions and arrests and information as to the existence and content of a record of state and federal arrests for which the Department of Justice establishes that the person is free on bail, or on his or her recognizance, pending trial or appeal. An immigration consultant who has been issued a bond as described in Section 22443.1 on or before December 31, 2006, shall submit the fingerprint images and related information to the Department of Justice on or before July 1, 2007.

(b) The Department of Justice shall forward the fingerprint images and related information received pursuant to subdivision (a) to the Federal Bureau of Investigation and request a federal summary of criminal information.

(c) The Department of Justice shall review the information returned from the Federal Bureau of Investigation and compile and disseminate a response to the Secretary of State pursuant to paragraph (1) of subdivision (p) of Section 11105 of the Penal Code.

(d) The Secretary of State shall request from the Department of Justice subsequent arrest notification service, pursuant to Section 11105.2 of the Penal Code, for each person who submitted information pursuant to subdivision (a).

(e) The Department of Justice shall charge a fee sufficient to cover the cost of processing the requests described in this section.

(f) The Secretary of State shall not post on its Internet Web site information received from the Department of Justice. (Added by Stats. 2006, ch. 605.)

§22443. Immigration Consultants—Forms and Documents; Client Copies; Retention

(a) A person engaged in the business or acting in the capacity of an immigration consultant shall deliver to a client a copy of each document or form completed on behalf of the client. Each document and form delivered must include the name and address of the immigration consultant.

(a) (1) A person engaged in the business or acting in the capacity of an immigration consultant shall retain copies of all documents and forms of a client for not less than three years from the date of the last service to the client.

(2) Upon presentation of a written consent signed by a client, an immigration consultant shall provide a copy of the client file to law enforcement without a warrant or a subpoena.

(b) (1) A person engaged in the business or acting in the capacity of an immigration consultant shall return to a client all original documents, including, but not limited to, original birth certificates, rental agreements, utility bills, employment stubs, Department of Motor Vehicle licenses with dates of entry, and passports, that the client has provided to the consultant in support of the client's application.

(2) Any original document that does not need to be submitted to immigration authorities as an original document shall be returned by the immigration consultant immediately after making a copy or reproduction thereof. (Added by Stats. 1986, ch. 248. Amended by Stats. 1994, ch. 562; Stats. 2003, ch. 384.)

§22443.1 Immigration Consultants—Bond; Requirements; Fees; Claim Payments

(a) (1) Prior to engaging in the business or acting in the capacity of an immigration consultant, each person shall file with the Secretary of State a bond of fifty thousand dollars ($50,000) executed by a corporate surety admitted to do business in this state and conditioned upon compliance with this chapter. The total aggregate liability on the bond shall be limited to fifty thousand dollars ($50,000).

(2) The bond may be terminated pursuant to Section 995.440 of, and Article 13 (commencing with Section 996.310) of Chapter 2 of Title 14 of Part 2 of, the Code of Civil Procedure.

(b) The bond required by this section shall be in favor of, and payable to, the people of the State of California and shall be for the benefit of any person damaged by any fraud, misstatement, misrepresentation, unlawful act or omission, or failure to provide the services of the immigration consultant or the agents, representatives, or employees of the immigration consultant while acting within the scope of that employment or agency.

(c) An immigration consultant who is required to file a surety bond with the Secretary of State shall also file a disclosure form with the Secretary of State that contains all of the following information:

(1) The immigration consultant's name, date of birth, residence address, business address, residence telephone number, and business telephone number.

(2) The name and address of the immigration consultant's agent for service of process if one is required to be or has been appointed.

(3) Whether the immigration consultant has ever been convicted of a violation of this chapter or of Section 6126.

(4) Whether the immigration consultant has ever been arrested or convicted of a crime.

(5) If applicable, the name, business address, business telephone number, and agent for service of process of the corporation or partnership employing the immigration consultant.

(d) An immigration consultant shall notify the Secretary of State' s office in writing within 30 days when the surety bond required by this section is renewed, and of any change of name, address, telephone number, or agent for service of process.

(e) The Secretary of State shall post information on its Internet Web site demonstrating that an immigration consultant is in compliance with the bond required by this section and has satisfactorily passed the background check required under Section 22441.1, and shall also post a copy of the immigration consultant's photograph. The Secretary of State shall ensure that the information is current and shall update the information at least every 30 days. The Secretary of State shall only post this information and photograph on its Internet Web site if the person has filed and maintained the bond, filed the disclosure form and photograph required to be filed with the Secretary of State, and passed the background check required by Section 22441.1.

(f) The Secretary of State shall develop the disclosure form required to file a bond under this section and make it available to any immigration consultant filing a bond pursuant to this section.

(g) An immigration consultant shall submit all of the following with the disclosure form:

(1) A copy of valid and current photo identification to determine the immigration consultant's identity, such as a California driver's license or identification card, passport, or other identification acceptable to the Secretary of State.

(2) A photograph of himself or herself with the dimensions and in the style that would be acceptable to the U.S. Department of State for obtaining a United States passport, as instructed by the Secretary of State. An immigration consultant bonded on or before December 31, 2006, shall submit the photograph on or before July 1, 2007.

(h) The Secretary of State shall charge and collect a filing fee to cover the cost of filing the bond.

(i) The Secretary of State shall enforce the provisions of this chapter that govern the filing and maintenance of bonds.

(j) This section does not apply to employees of nonprofit, tax-exempt corporations who help clients complete application forms in an immigration matter free of charge or for a fee, including reasonable costs, consistent with that authorized by the Board of Immigration Appeals under Section 292.2 of Title 8 of the Code of Federal Regulations. (Added by Stats. 1994, ch. 562. Amended by Stats. 1996, ch. 633; Stats. 1997, ch. 790; Stats. 1998, ch. 829; Stats. 1999, ch. 336; Stats. 2001, ch. 304; Stats. 2004, ch. 557; Stats. 2006, ch. 605.)

§22443.2. Immigration Consultants—Cease and Desist Order for Failure to Maintain Bond or Pass Background Check

(a) The Secretary of State shall issue a cease and desist order to a person subject to this chapter's provisions who has failed to comply with the provisions governing the filing and maintenance of bonds or who does not satisfactorily pass a background check required by Section 22441.1, and shall give notice of the person's noncompliance or failure to satisfactorily pass the background check to the Attorney General. Prior to issuing a cease and desist order to a person pursuant to this subdivision, the Secretary of State shall provide the person with notice and an opportunity to demonstrate that grounds do not exist for disqualification.

(b) For orders issued for failure to comply with the provisions governing the filing and maintenance of bonds, the order shall include a statement that notice of the person's noncompliance shall be sent to the Attorney General. (Added by Stats. 2006, ch. 605.)

§22443.3. Immigration Consultants—Bond, Necessity to File with Secretary of State

It is unlawful for any person to disseminate by any means any statement indicating directly or by implication that the person engages in the business or acts in the capacity of an immigration consultant, or proposes to engage in the business or act in the capacity of an immigration consultant, unless the person has on file with the Secretary of State a disclosure statement and a bond, in the amount of, and subject to the terms described in Section 22443.1, that is maintained throughout the period covered by the statement, such as, but not limited to, the period of a Yellow Pages listing. (Added by Stats. 2001, ch. 304. Amended by Stats. 2006, ch. 605.)

§22444. Immigration Consultants—Illegal Acts

It is unlawful for any person engaged in the business or acting in the capacity of an immigration consultant to do any of the following acts:

(a) Make false or misleading statements to a client while providing services to that client.

(b) Make any guarantee or promise to a client, unless the guarantee or promise is in writing and the immigration consultant has some basis in fact for making the guarantee or promise.

(c) Make any statement that the immigration consultant can or will obtain special favors from or has special influence with the United States Citizenship and Immigration Services, or any other governmental agency, employee, or official, that may have a bearing on a client's immigration matter.

(d) Charge a client a fee for referral of the client to another for services which the immigration consultant cannot or will not provide to the client. A sign setting forth this prohibition shall be conspicuously displayed in the immigration consultant's office. (Added by Stats. 1986, ch. 248. Amended by Stats. 1988, ch. 160; Stats. 2004, ch. 557.)

§22445. Violations; Penalties and Punishment

(a) (1) A person who violates this chapter shall be subject to a civil penalty not to exceed one hundred thousand dollars ($100,000) for each violation, to be assessed and collected in a civil action brought by any person injured by the violation or in a civil action brought in the name of the people of the State of California by the Attorney General, a district attorney, or a city attorney. An action brought in the name of the people of the State of California shall not preclude an action being brought by an injured person.

(2) The court shall impose a civil penalty for each violation of this chapter. In assessing the amount of the civil penalty, the court may consider relevant circumstances presented by 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.

(3) Any action brought pursuant to this section by the Attorney General, a district attorney, or a city attorney shall also seek relief under subdivision (c) of Section 22446.5.

(4) If the Attorney General brings the action, one-half of the civil penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the General Fund. If a district attorney brings the action, the civil penalty collected shall be paid to the treasurer of the county in which the judgment was entered. If a city attorney brings the action, one-half of the civil 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.

(b) In addition to the provisions of subdivision (a), a violation of this chapter is a misdemeanor punishable by a fine of not less than two thousand dollars ($2,000) or more than ten thousand dollars ($10,000), as to each client with respect to whom a violation occurs, or imprisonment in the county jail for not more than one year, or by both fine and imprisonment. However, payment of restitution to a client shall take precedence over payment of a fine.

(c) A second or subsequent violation of Sections 22442.2, 22442.3, and 22442.4 is a misdemeanor subject to the penalties specified in subdivisions (a) and (b). A second or subsequent violation of any other provision of this chapter is a felony punishable by imprisonment in state prison.

(d) An action brought pursuant to this section shall be commenced within four years after discovery of the commission of the offense. (Added by Stats. 1986, ch. 248. Amended by Stats. 1987, ch. 1363; Stats. 1994, ch. 561; Stats. 1999, ch. 336; Stats. 2000, ch. 674; Stats. 2002, ch. 705; Stats. 2006, ch. 605.)

§22446.5. Civil Actions; Attorneys' Fees; Priority of Cases

(a) A person claiming to be aggrieved by a violation of this chapter by an immigration consultant may bring a civil action for injunctive relief or damages, or both. If the court finds that the defendant has violated a provision of this chapter, it shall award actual damages, plus an amount equal to treble the amount of actual damages or one thousand dollars ($1,000) per violation, whichever is greater. The court shall also grant a prevailing plaintiff reasonable attorneys' fees and costs.

(b) Any other party who, upon information and belief, claims a violation of this chapter has been committed by an immigration consultant may bring a civil action for injunctive relief on behalf of the general public and, upon prevailing, shall recover reasonable attorneys' fees and costs.

(c) The Attorney General, a district attorney, or a city attorney who claims a violation of this chapter has been committed by an immigration consultant, may bring a civil action for injunctive relief, restitution, and other equitable relief against the immigration consultant in the name of the people of the State of California.

(d) An action brought under this chapter shall be set for trial at the earliest possible date, and shall take precedence over all other cases, except older matters of the same character and matters to which special preference may be given by law. (Added by Stats. 1987, ch. 484. Amended by Stats. 1994, ch. 561; Stats. 2002, ch. 705.)

§22447. Damage Recovery for the Bond or Deposit; Effect of Reduction of Principal Amount

(a) A person who is awarded damages in an action or proceeding for injuries caused by the acts of a person engaged in the business of, or acting in the capacity of, an immigration consultant, in the performance of his or her duties as an immigration consultant, may recover damages from the bond required by Section 22443.1. In an action brought by the Attorney General, a district attorney, or a city attorney, the court may order relief for benefit of the injured parties to be paid from the bond.

(b) When any claim or claims against a bond have been paid so as to reduce the principal amount of the bond remaining available to pay claims below the principal amount required by Section 22443.1, the immigration consultant shall cease to conduct any business unless and until the bond has been reinstated up to the minimum amount required by Section 22443.1. (Added by Stats. 1994, ch. 562. Amended by Stats. 1997, ch. 790; Stats. 2001, ch. 304; Stats. 2002, ch. 705.)

§22448. Cause of Action; Commencement; Accrual

Any civil action to enforce any cause of action pursuant to this chapter shall be commenced within four years after the cause of action has accrued. The cause of action is not to be deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the violation. (Added by Stats. 1998, ch. 879.)

CIVIL CODE

§43.95 Immunity from Liability for Referrals by Professional Society

(a) There shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any professional society or any nonprofit corporation authorized by a professional society to operate a referral service, or their agents, employees, or members, for referring any member of the public to any professional member of the society or service, or for acts of negligence or conduct constituting unprofessional conduct committed by a professional to whom a member of the public was referred, so long as any of the foregoing persons or entities has acted without malice, and the referral was made at no cost added to the initial referral fee as part of a public service referral system organized under the auspices of the professional society. Further, there shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any professional society for providing a telephone information library available for use by the general public without charge, nor against any nonprofit corporation authorized by a professional society for providing a telephone information library available for use by the general public without charge. "Professional society" includes legal, psychological, architectural, medical, dental, dietetic, accounting, optometric, podiatric, pharmaceutic, chiropractic, veterinary, licensed marriage and family therapy, licensed clinical social work, and engineering organizations having as members at least 25 percent of the eligible persons or licentiates in the geographic area served by the particular society. However, if the society has less than 100 members, it shall have as members at least a majority of the eligible persons or licentiates in the geographic area served by the particular society. "Professional society" also includes organizations with referral services that have been authorized by the State Bar of California and operated in accordance with its Minimum Standards for a Lawyer Referral Service in California, and organizations that have been established to provide free assistance or representation to needy patients or clients.

(b) This section shall not apply whenever the professional society, while making a referral to a professional member of the society, fails to disclose the nature of any disciplinary action of which it has actual knowledge taken by a state licensing agency against that professional member. However, there shall be no duty to disclose a disciplinary action in either of the following cases:

(1) Where a disciplinary proceeding results in no disciplinary action being taken against the professional to whom a member of the public was referred.

(2) Where a period of three years has elapsed since the professional to whom a member of the public was referred has satisfied any terms, conditions, or sanctions imposed upon the professional as disciplinary action; except that if the professional is an attorney, there shall be no time limit on the duty to disclose. (Added by Stats. 1987, ch. 727, effective July 1, 1993. Amended by Stats 1988, ch. 312; Stats. 2002, ch. 1013.)

§225m. (Repealed and renumbered by Stats. 1990, ch. 1363.)

§224.10 (Repealed and incorporated into Family Code Section 8800 by Stats. 1992, ch. 162.)

§1714.10. Attorney-Client Civil Conspiracy; Proof and Pre-Pleading Court Determination; Defense; Limitations; Appeal

(a) No cause of action against an attorney for a civil conspiracy with his or her client arising from any attempt to contest or compromise a claim or dispute, and which is based upon the attorney's representation of the client, shall be included in a complaint or other pleading unless the court enters an order allowing the pleading that includes the claim for civil conspiracy to be filed after the court determines that the party seeking to file the pleading has established that there is a reasonable probability that the party will prevail in the action. The court may allow the filing of a pleading claiming liability based upon such a civil conspiracy following the filing of a verified petition therefor accompanied by the proposed pleading and supporting affidavits stating the facts upon which the liability is based. The court shall order service of the petition upon the party against whom the action is proposed to be filed and permit that party to submit opposing affidavits prior to making its determination. The filing of the petition, proposed pleading, and accompanying affidavits shall toll the running of any applicable statute of limitations until the final determination of the matter, which ruling, if favorable to the petitioning party, shall permit the proposed pleading to be filed.

(b) Failure to obtain a court order where required by subdivision (a) shall be a defense to any action for civil conspiracy filed in violation thereof. The defense shall be raised by the attorney charged with civil conspiracy upon that attorney's first appearance by demurrer, motion to strike, or such other motion or application as may be appropriate. Failure to timely raise the defense shall constitute a waiver thereof.

(c) This section shall not apply to a cause of action against an attorney for a civil conspiracy with his or her client, where (1) the attorney has an independent legal duty to the plaintiff, or (2) the attorney's acts go beyond the performance of a professional duty to serve the client and involve a conspiracy to violate a legal duty in furtherance of the attorney's financial gain.

(d) This section establishes a special proceeding of a civil nature. Any order made under subdivision (a), (b), or (c) which determines the rights of a petitioner or an attorney against whom a pleading has been or is proposed to be filed, shall be appealable as a final judgment in a civil action.

(e) Subdivision (d) does not constitute a change in, but is declaratory of, the existing law. (Added by Stats. 1988, ch. 1052. Amended by Stats. 1991, ch. 916; Stats. 1992, ch. 427; Stats. 1993, ch. 645; Stats. 2000, ch. 472.)

CODE OF CIVIL PROCEDURE

§128. Inherent Powers of the Court

(a) Every court shall have the power to do all of the following:

(1) To preserve and enforce order in its immediate presence.

(2) To enforce order in the proceedings before it, or before a person or persons empowered to conduct a judicial investigation under its authority.

(3) To provide for the orderly conduct of proceedings before it, or its officers.

(4) To compel obedience to its judgments, orders, and process, and to the orders of a judge out of court, in an action or proceeding pending therein.

(5) To control in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a judicial proceeding before it, in every matter pertaining thereto.

(6) To compel the attendance of persons to testify in an action or proceeding pending therein, in the cases and manner provided in this code.

(7) To administer oaths in an action or proceeding pending therein, and in all other cases where it may be necessary in the exercise of its powers and duties.

(8) To amend and control its process and orders so as to make them conform to law and justice. An appellate court shall not reverse or vacate a duly entered judgment upon an agreement or stipulation of the parties unless the court finds both of the following:

(A) There is no reasonable possibility that the interests of nonparties or the public will be adversely affected by the reversal.

(B) The reasons of the parties for requesting reversal outweigh the erosion of public trust that may result from the nullification of a judgment and the risk that the availability of stipulated reversal will reduce the incentive for pretrial settlement.

(b) Notwithstanding Section 1211 or any other law, if an order of contempt is made affecting an attorney, his or her agent, investigator, or any person acting under the attorney's direction, in the preparation and conduct of any action or proceeding, the execution of any sentence shall be stayed pending the filing within three judicial days of a petition for extraordinary relief testing the lawfulness of the court's order, the violation of which is the basis of the contempt except for the conduct as may be proscribed by subdivision (b) of Section 6068 of the Business and Professions Code, relating to an attorney's duty to maintain respect due to the courts and judicial officers.

(c) Notwithstanding Section 1211 or any other law, if an order of contempt is made affecting a public safety employee acting within the scope of employment for reason of the employee's failure to comply with a duly issued subpoena or subpoena duces tecum, the execution of any sentence shall be stayed pending the filing within three judicial days of a petition for extraordinary relief testing the lawfulness of the court's order, a violation of which is the basis for the contempt.

As used in this subdivision, "public safety employee" includes any peace officer, firefighter, paramedic, or any other employee of a public law enforcement agency whose duty is either to maintain official records or to analyze or present evidence for investigative or prosecutorial purposes.

(d) Notwithstanding Section 1211 or any other law, if an order of contempt is made affecting the victim of a sexual assault, where the contempt consists of refusing to testify concerning that sexual assault, the execution of any sentence shall be stayed pending the filing within three judicial days of a petition for extraordinary relief testing the lawfulness of the court's order, a violation of which is the basis for the contempt. As used in this subdivision, "sexual assault" means any act made punishable by Section 261, 262, 264.1, 285, 286, 288, 288a, or 289 of the Penal Code.

(e) Notwithstanding Section 1211 or any other law, if an order of contempt is made affecting the victim of domestic violence, where the contempt consists of refusing to testify concerning that domestic violence, the execution of any sentence shall be stayed pending the filing within three judicial days of a petition for extraordinary relief testing the lawfulness of the court's order, a violation of which is the basis for the contempt. As used in this subdivision, the term "domestic violence" means "domestic violence" as defined in Section 6211 of the Family Code.

(f) Notwithstanding Section 1211 or any other provision of law, no order of contempt shall be made affecting a county government or any member of its governing body acting pursuant to its constitutional or statutory authority unless the court finds, based on a review of evidence presented at a hearing conducted for this purpose, that either of the following conditions exist:

(1) That the county has the resources necessary to comply with the order of the court.

(2) That the county has the authority, without recourse to voter approval or without incurring additional indebtedness, to generate the additional resources necessary to comply with the order of the court, that compliance with the order of the court will not expose the county, any member of its governing body, or any other county officer to liability for failure to perform other constitutional or statutory duties, and that compliance with the order of the court will not deprive the county of resources necessary for its reasonable support and maintenance. (Added by Stats. 1987, ch.3. Amended by Stats. 1991, ch. 866; Stats. 1992, ch. 163; Stats. 1992, ch. 967; Stats. 1993, ch. 219; Stats. 1999, ch. 508.)

§128.5 Frivolous Actions or Delaying Tactics—Award of Expenses, Including Attorney's Fees on Motion

(a) Every trial court may order a party, the party's attorney, or both to pay any reasonable expenses, including attorney's fees, incurred by another party as a result of bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay. This section also applies to judicial arbitration proceedings under Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3.

(b) For purposes of this section:

(1) "Actions or tactics" include, but are not limited to, the making or opposing of motions or the filing and service of a complaint or cross-complaint only if the actions or tactics arise from a complaint filed, or a proceeding initiated, on or before December 31, 1994. The mere filing of a complaint without service thereof on an opposing party does not constitute "actions or tactics" for purposes of this section.

(2) "Frivolous" means (A) totally and completely without merit or (B) for the sole purpose of harassing an opposing party.

(c) Expenses pursuant to this section shall not be imposed except on notice contained in a party's moving or responding papers; or the court's own motion, after notice and opportunity to be heard. An order imposing expenses shall be in writing and shall recite in detail the conduct or circumstances justifying the order.

(d) In addition to any award pursuant to this section for conduct described in subdivision (a), the court may assess punitive damages against the plaintiff upon a determination by the court that the plaintiff's action was an action maintained by a person convicted of a felony against the person's victim, or the victim's heirs, relatives, estate, or personal representative, for injuries arising from the acts for which the person was convicted of a felony, and that the plaintiff is guilty of fraud, oppression, or malice in maintaining the action.

(e) The liability imposed by this section is in addition to any other liability imposed by law for acts or omissions within the purview of this section. (Added by Stats. 1981, ch. 762. Amended by Stats. 1984, ch. 355; Stats. 1985, ch. 296; Stats. 1990, ch. 887; Stats. 1994, ch. 1062.)

§128.6 Bad Faith Actions or Tactics, Award of Expenses, Including Attorney's Fees on Motion

(a) Every trial court may order a party, the party's attorney, or both to pay any reasonable expenses, including attorney's fees, incurred by another party as a result of bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay. This section also applies to judicial arbitration proceedings under Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3.

(b) For purposes of this section:

(1) "Actions or tactics" include, but are not limited to, the making or opposing of motions or the filing and service of a complaint or cross-complaint. The mere filing of a complaint without service thereof on an opposing party does not constitute "actions or tactics" for purposes of this section.

(2) "Frivolous" means

(A) totally and completely without merit or

(B) for the sole purpose of harassing an opposing party.

(c) Expenses pursuant to this section shall not be imposed except on notice contained in a party's moving or responding papers; or the court's own motion, after notice and opportunity to be heard. An order imposing expenses shall be in writing and shall recite in detail the conduct or circumstances justifying the order.

(d) In addition to any award pursuant to this section for conduct described in subdivision (a), the court may assess punitive damages against the plaintiff upon a determination by the court that the plaintiff's action was an action maintained by a person convicted of a felony against the person's victim, or the victim's heirs, relatives, estate, or personal representative, for injuries arising from the acts for which the person was convicted of a felony, and that the plaintiff is guilty of fraud, oppression, or malice in maintaining the action.

(e) The liability imposed by this section is in addition to any other liability imposed by law for acts or omissions within the purview of this section.

(f) This section shall become operative on January 1, 2003, unless a statute that becomes effective on or before this date extends or deletes the repeal date of Section 128.7. (Added by Stats. 1994, ch. 1062. Amended by Stats. 1998, ch. 121.)

§128.7 Pleadings, Petitions and Other Papers; Required Name, Address, Telephone Number, and Signature of Attorney of Record or Party; Remedies and Sanctions

(a) Every pleading, petition, written notice of motion, or other similar paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer's address and telephone number, if any. Except when otherwise provided by law, pleadings need not be verified or accompanied by affidavit. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

(b) By presenting to the court, whether by signing, filing, submitting, or later advocating, a pleading, petition, written notice of motion, or other similar paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, all of the following conditions are met:

(1) It is not being presented primarily for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(2) The claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.

(3) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

(4) The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(c) If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation. In determining what sanctions, if any, should be ordered, the court shall consider whether a party seeking sanctions has exercised due diligence.

(1) A motion for sanctions under this section shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). Notice of motion shall be served as provided in Section 1010, but shall not be filed with or presented to the court unless, within 21 days after service of the motion, or any other period as the court may prescribe, the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

(2) On its own motion, the court may enter an order describing the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b), unless, within 21 days of service of the order to show cause, the challenged paper, claim, defense, contention, allegation, or denial is withdrawn or appropriately corrected.

(d) A sanction imposed for violation of subdivision (b) shall be limited to what is sufficient to deter repetition of this conduct or comparable conduct by others similarly situated. Subject to the limitations in paragraphs (1) and (2), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorney's fees and other expenses incurred as a direct result of the violation.

(1) Monetary sanctions may not be awarded against a represented party for a violation of paragraph (2) of subdivision (b).

(2) Monetary sanctions may not be awarded on the court's motion unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party that is, or whose attorneys are, to be sanctioned.

(e) When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this section and explain the basis for the sanction imposed.

(f) In addition to any award pursuant to this section for conduct described in subdivision (b), the court may assess punitive damages against the plaintiff upon a determination by the court that the plaintiff's action was an action maintained by a person convicted of a felony against the person's victim, or the victim's heirs, relatives, estate, or personal representative, for injuries arising from the acts for which the person was convicted of a felony, and that the plaintiff is guilty of fraud, oppression, or malice in maintaining the action.

(g) This section shall not apply to disclosures and discovery requests, responses, objections, and motions.

(h) A motion for sanctions brought by a party or a party's attorney primarily for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation, shall itself be subject to a motion for sanctions. It is the intent of the Legislature that courts shall vigorously use its sanctions authority to deter that improper conduct or comparable conduct by others similarly situated.

(i) This section shall apply to a complaint or petition filed on or after January 1, 1995, and any other pleading, written notice of motion, or other similar paper filed in that matter. (Added by Stats. 1994, ch. 1062. Amended by Stats. 1998, ch. 121; Stats. 2002, ch. 491; Stats. 2005, ch. 706.)

§170.1 Grounds for Disqualification

(a) A judge shall be disqualified if any one or more of the following is true:

(1) (A) The judge has personal knowledge of disputed evidentiary facts concerning the proceeding.

(B) A judge shall be deemed to have personal knowledge within the meaning of this paragraph if the judge, or the spouse of the judge, or a person within the third degree of relationship to either of them, or the spouse of such a person is to the judge's knowledge likely to be a material witness in the proceeding.

(2) (A) The judge served as a lawyer in the proceeding, or in any other proceeding involving the same issues he or she served as a lawyer for any party in the present proceeding or gave advice to any party in the present proceeding upon any matter involved in the action or proceeding.

(B) A judge shall be deemed to have served as a lawyer in the proceeding if within the past two years:

(i) A party to the proceeding or an officer, director, or trustee of a party was a client of the judge when the judge was in the private practice of law or a client of a lawyer with whom the judge was associated in the private practice of law.

(ii) A lawyer in the proceeding was associated in the private practice of law with the judge.

(C) A judge who served as a lawyer for or officer of a public agency that is a party to the proceeding shall be deemed to have served as a lawyer in the proceeding if he or she personally advised or in any way represented the public agency concerning the factual or legal issues in the proceeding.

(3) (A) The judge has a financial interest in the subject matter in a proceeding or in a party to the proceeding.

(B) A judge shall be deemed to have a financial interest within the meaning of this paragraph if:

(i) A spouse or minor child living in the household has a financial interest.

(ii) The judge or the spouse of the judge is a fiduciary who has a financial interest.

(C) A judge has a duty to make reasonable efforts to inform himself or herself about his or her personal and fiduciary interests and those of his or her spouse and the personal financial interests of children living in the household.

(4) The judge, or the spouse of the judge, or a person within the third degree of relationship to either of them, or the spouse of such a person is a party to the proceeding or an officer, director, or trustee of a party.

(5) A lawyer or a spouse of a lawyer in the proceeding is the spouse, former spouse, child, sibling, or parent of the judge or the judge's spouse or if such a person is associated in the private practice of law with a lawyer in the proceeding.

(6) (A) For any reason:

(i) The judge believes his or her recusal would further the interests of justice.

(ii) The judge believes there is a substantial doubt as to his or her capacity to be impartial.

(iii) A person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial.

(B) Bias or prejudice toward a lawyer in the proceeding may be grounds for disqualification.

(7) By reason of permanent or temporary physical impairment, the judge is unable to properly perceive the evidence or is unable to properly conduct the proceeding.

(8) (A) The judge has a current arrangement concerning prospective employment or other compensated service as a dispute resolution neutral or is participating in, or, within the last two years has participated in, discussions regarding prospective employment or service as a dispute resolution neutral, or has been engaged in such employment or service, and any of the following applies:

(i) The arrangement is, or the prior employment or discussion was, with a party to the proceeding.

(ii) The matter before the judge includes issues relating to the enforcement of either an agreement to submit a dispute to an alternative dispute resolution process or an award or other final decision by a dispute resolution neutral.

(iii) The judge directs the parties to participate in an alternative dispute resolution process in which the dispute resolution neutral will be an individual or entity with whom the judge has the arrangement, has previously been employed or served, or is discussing or has discussed the employment or service.

(iv) The judge will select a dispute resolution neutral or entity to conduct an alternative dispute resolution process in the matter before the judge, and among those available for selection is an individual or entity with whom the judge has the arrangement, with whom the judge has previously been employed or served, or with whom the judge is discussing or has discussed the employment or service.

(B) For the purposes of this paragraph, all of the following apply

(i) "Participating in discussions" or "has participated in discussion" means that the judge solicited or otherwise indicated an interest in accepting or negotiating possible employment or service as an alternative dispute resolution neutral or responded to an unsolicited statement regarding, or an offer of, such employment or service by expressing an interest in that employment or service, making any inquiry regarding the employment or service, or encouraging the person making the statement or offer to provide additional information about that possible employment or service. If a judge's response to an unsolicited statement regarding, a question about, or offer of, prospective employment or other compensated service as a dispute resolution neutral is limited to responding negatively, declining the offer, or declining to discuss such employment or service, that response does not constitute participating in discussions.

(ii) "Party" includes the parent, subsidiary, or other legal affiliate of any entity that is a party and is involved in the transaction, contract, or facts that gave rise to the issues subject to the proceeding.

(iii) "Dispute resolution neutral" means an arbitrator, mediator, temporary judge appointed under Section 21 of Article VI of the California Constitution, referee appointed under Section 638 or 639, special master, neutral evaluator, settlement officer, or settlement facilitator.

(b) A judge before whom a proceeding was tried or heard shall be disqualified from participating in any appellate review of that proceeding.

(c) At the request of a party or on its own motion an appellate court shall consider whether in the interests of justice it should direct that further proceedings be heard before a trial judge other than the judge whose judgment or order was reviewed by the appellate court. (Added by Stats. 1984, ch. 1555. Amended by Stats. 2002, ch. 1094; Stats. 2005, ch. 332, effective September 22, 2005.)

§177.5 Judicial Officers—Sanctions

A judicial officer shall have the power to impose reasonable money sanctions, not to exceed fifteen hundred dollars ($1,500), notwithstanding any other provision of law, payable to the court, for any violation of a lawful court order by a person, done without good cause or substantial justification. This power shall not apply to advocacy of counsel before the court. For the purposes of this section, the term "person" includes a witness, a party, a party' s attorney, or both.

Sanctions pursuant to this section shall not be imposed except on notice contained in a party's moving or responding papers; or on the court's own motion, after notice and opportunity to be heard. An order imposing sanctions shall be in writing and shall recite in detail the conduct or circumstances justifying the order. (Added by Stats. 1982, ch. 1564. Amended by Stats. 2005, ch. 75.)

§206. Criminal Actions—Discussions with Jury After Discharge

(a) Prior to discharging the jury from the case, the judge in a criminal action shall inform the jurors that they have an absolute right to discuss or not to discuss the deliberation or verdict with anyone. The judge shall also inform the jurors of the provisions set forth in subdivisions (b), (d), and (e).

(b) Following the discharge of the jury in a criminal case, the defendant, or his or her attorney or representative, or the prosecutor, or his or her representative, may discuss the jury deliberation or verdict with a member of the jury, provided that the juror consents to the discussion and that the discussion takes place at a reasonable time and place.

(c) If a discussion of the jury deliberation or verdict with a member of the jury pursuant to subdivision (b) occurs at any time more than 24 hours after the verdict, prior to discussing the jury deliberation or verdict with a member of a jury pursuant to subdivision (b), the defendant or his or her attorney or representative, or the prosecutor or his or her representative, shall inform the juror of the identity of the case, the party in that case which the person represents, the subject of the interview , the absolute right of the juror to discuss or not discuss the deliberations or verdict in the case with the person, and the juror's right to review and have a copy of any declaration filed with the court.

(d) Any unreasonable contact with a juror by the defendant, or his or her attorney or representative, or by the prosecutor, or his or her representative, without the juror's consent shall be immediately reported to the trial judge.

(e) Any violation of this section shall be considered a violation of a lawful court order and shall be subject to reasonable monetary sanctions in accordance with Section 177.5 of the Code of Civil Procedure.

(f) Nothing in the section shall prohibit a peace officer from investigating an allegation of criminal conduct.

(g) Pursuant to Section 237, a defendant or defendant's counsel may, following the recording of a jury's verdict in a criminal proceeding, petition the court for access to personal juror identifying information within the court's records necessary for the defendant to communicate with jurors for the purpose of developing a motion for new trial or any other lawful purpose. This information consists of jurors' names, addresses, and telephone numbers. The court shall consider all requests for personal juror identifying information pursuant to Section 237. (Added by Stats. 1988, ch. 1245. Amended by Stats. 1992, ch. 971; Stats. 1993, ch. 632; Stats. 1995, ch. 964; Stats. 1996, ch. 636; Stats. 2000, ch. 242.)

§283. Authority to Bind Client

An attorney and counselor shall have authority:

1. To bind his client in any of the steps of an action or proceeding by his agreement filed with the clerk, or entered upon the minutes of the court, and not otherwise;

2. To receive money claimed by his client in an action or proceeding during the pendency thereof, or after judgment, unless a revocation of his authority is filed, and upon the payment thereof, and not otherwise, to discharge the claim or acknowledge satisfaction of the judgment. (Enacted 1872; amended 1880.)

§284. Substitution—Consent or Order

The attorney in an action or special proceeding may be changed at any time before or after judgment or final determination, as follows:

1. Upon the consent of both client and attorney, filed with the clerk, or entered upon the minutes.

2. Upon the order of the court, upon the application of either client or attorney, after notice from one to the other. (Enacted 1872; amended 1874, 1880. Amended by Stats. 1935, ch. 560; Stats. 1967, ch. 161.)

§285. Notice to Adversary

When an attorney is changed, as provided in the last section, written notice of the change and of the substitution of a new attorney, or of the appearance of the party in person, must be given to the adverse party. Until then he must recognize the former attorney. (Enacted 1872; amended 1880.)

§285.1 Withdrawal in Domestic Relations Matters

An attorney of record for any party in any civil action or proceeding for dissolution of marriage, legal separation, or for a declaration of void or voidable marriage, or for the support, maintenance or custody of minor children may withdraw at any time subsequent to the time when any judgment in such action or proceeding, other than an interlocutory judgment, becomes final, and prior to service upon him of pleadings or motion papers in any proceeding then pending in said cause, by filing a notice of withdrawal. Such notice shall state (a) date of entry of final decree or judgment, (b) the last known address of such party, (c) that such attorney withdraws as attorney for such party. A copy of such notice shall be mailed to such party at his last known address and shall be served upon the adverse party. (Added by Stats. 1963, ch. 1333; Stats. 1969, ch. 1608, operative January 1, 1970.)

§285.2 Withdrawal When Public Funding Reduced

If a reduction in public funding for legal service materially impairs a legal service agency attorney's ability to represent an indigent client, the court, on its own motion or on the motion of either the client or attorney, shall permit the withdrawal of such attorney upon a showing that all of the following apply:

(a) There are not adequate public funds to continue the effective representation of the indigent client.

(b) A good faith effort was made to find alternate representation for such client.

(c) All reasonable steps to reduce the legal prejudice to the client have been taken.

A showing of indigency of the client, in and of itself, will not be deemed sufficient cause to deny the application for withdrawal. (Added by Stats. 1983, ch. 279.)

§285.3 Withdrawal Pursuant to 285.2—When Tolling Required

The court, upon the granting of a motion for withdrawal pursuant to Section 285.2, may toll the running of any statute of limitations, filing requirement, statute providing for mandatory dismissal, notice of appeal, or discovery requirement, for a period not to exceed 90 days, on the court's own motion or on motion of any party or attorney, when the court finds that tolling is required to avoid legal prejudice caused by the withdrawal of the legal service agency attorney. (Added by Stats. 1983, ch. 279.)

§285.4 Appointment Pursuant to 285.2–No Compensation

The court, upon the granting of a motion for withdrawal pursuant to Section 285.2, may appoint any member of the bar or any law firm or professional law corporation to represent the indigent client without compensation, upon a showing of good cause. Nothing herein shall preclude the appointed attorney from recovering any attorneys' fees and costs to which the client may be entitled by law. In determining the existence of good cause, the court may consider, but is not limited to, the following factors:

(a) The probable merit of the client's claim.

(b) The client's financial ability to pay for legal services.

(c) The availability of alternative legal representation.

(d) The need for legal representation to avoid irreparable legal prejudice to the indigent client.

(e) The ability of appointed counsel to effectively represent the indigent client.

(f) Present and recent pro bono work of the appointed attorney, law firm or private law corporation.

(g) The ability of the indigent client to represent himself.

(h) The workload of the appointed attorney. (Added by Stats. 1983, ch. 279.)

§286. Death or Disability—Appearance

When an attorney dies, or is removed or suspended, or ceases to act as such, a party to an action, for whom he was acting as attorney, must, before any further proceedings are had against him, be required by the adverse party, by written notice, to appoint another attorney, or to appear in person. (Enacted 1872; amended 1880.)

§340.3 Commencement of Actions

(a) Unless a longer period is prescribed for a specific action, in any action for damages against a defendant based upon the defendant's commission of a felony offense for which the defendant has been convicted, the time for commencement of the action shall be within one year after judgment is pronounced.

(b) (1) Notwithstanding subdivision (a), an action for damages against a defendant based upon the defendant's commission of a felony offense for which the defendant has been convicted may be commenced within 10 years of the date on which the defendant is discharged from parole if the conviction was for any offense specified in paragraph (1), except voluntary manslaughter, (2), (3), (4), (5), (6), (7), (9), (16), (17), (20), (22), (25), (34), or (35) of subdivision (c) of Section 1192.7 of the Penal Code.

(2) No civil action may be commenced pursuant to paragraph (1) if any of the following applies:

(A) The defendant has received either a certificate of rehabilitation as provided in Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code or a pardon as provided in Chapter 1 (commencing with Section 4800) or Chapter 3 (commencing with Section 4850) of Title 6 of Part 3 of the Penal Code.

(B) Following a conviction for murder or attempted murder, the defendant has been paroled based in whole or in part upon evidence presented to the Board of Prison Terms that the defendant committed the crime because he or she was the victim of intimate partner battering.

(C) The defendant was convicted of murder or attempted murder in the second degree in a trial at

which substantial evidence was presented that the person committed the crime because he or she was a victim of intimate partner battering.

(c) If the sentence or judgment is stayed, the time for the commencement of the action shall be tolled until the stay is lifted. For purposes of this section, a judgment is not stayed if the judgment is appealed or the defendant is placed on probation.

(d) (1) Subdivision (b) shall apply to any action commenced before, on, or after the effective date of this section, including any action otherwise barred by a limitation of time in effect prior to the effective date of this section, thereby reviving those causes of action that had lapsed or expired under the law in effect prior to the effective date of this section.

(2) Paragraph (1) does not apply to either of the following:

(A) Any claim that has been litigated to finality on the merits in any court of competent jurisdiction prior to January 1, 2003. For purposes of this section, termination of a prior action on the basis of the statute of limitations does not constitute a claim that has been litigated to finality on the merits.

(B) Any written, compromised settlement agreement that has been entered into between a plaintiff and a defendant if the plaintiff was represented by an attorney who was admitted to practice law in this state at the time of the settlement, and the plaintiff signed the agreement.

(e) Any restitution paid by the defendant to the victim shall be credited against any judgment, award, or settlement obtained pursuant to this section. Any judgment, award, or settlement obtained pursuant to an action under this section shall be subject to the provisions of Section 13966.01 of the Government Code. (Amended by Stats. 2006, ch. 215.)

§340.6 Limitations: Commencement of Action Against an Attorney

(a) An action against an attorney for a wrongful act or omission, other than for actual fraud, arising in the performance of professional services shall be commenced within one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the facts constituting the wrongful act or omission, or four years from the date of the wrongful act or omission, whichever occurs first. In no event shall the time for commencement of legal action exceed four years except that the period shall be tolled during the time that any of the following exist:

(1) The plaintiff has not sustained actual injury;

(2) The attorney continues to represent the plaintiff regarding the specific subject matter in which the alleged wrongful act or omission occurred;

(3) The attorney willfully conceals the facts constituting the wrongful act or omission when such facts are known to the attorney, except that this subdivision shall toll only the four-year limitation; and

(4) The plaintiff is under a legal or physical disability which restricts the plaintiff's ability to commence legal action.

(b) In an action based upon an instrument in writing, the effective date of which depends upon some act or event of the future, the period of limitations provided for by this section shall commence to run upon the occurrence of such act or event. (Added by Stats. 1977, ch. 863.)

§364. Ninety Days Prior Notice of Intention to Commence Action—Definitions

(a) No action based upon the health care provider's professional negligence may be commenced unless the defendant has been given at least 90 days' prior notice of the intention to commence the action.

(b) No particular form of notice is required, but it shall notify the defendant of the legal basis of the claim and the type of loss sustained, including with specificity the nature of the injuries suffered.

(c) The notice may be served in the manner prescribed in Chapter 5 (commencing with Section 1010) of Title 14 of Part 2.

(d) If the notice is served within 90 days of the expiration of the applicable statute of limitations, the time for the commencement of the action shall be extended 90 days from the service of the notice.

(e) The provisions of this section shall not be applicable with respect to any defendant whose name is unknown to the plaintiff at the time of filing the complaint and who is identified therein by a fictitious name, as provided in Section 474.

(f) For the purposes of this section:

(1) "Health care provider" means any person licensed or certified pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, or licensed pursuant to the Osteopathic Initiative Act, or the Chiropractic Initiative Act, or licensed pursuant to Chapter 2.5 (commencing with Section 1440) of Division 2 of the Health and Safety Code; and any clinic, health dispensary, or health facility, licensed pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code. "Health care provider" includes the legal representatives of a health care provider;

(2) "Professional negligence" means negligent act or omission to act by a health care provider in the rendering of professional services, which act or omission is the proximate cause of a personal injury or wrongful death, provided that such services are within the scope of services for which the provider is licensed and which are not within any restriction imposed by the licensing agency or licensed hospital. (Added by Stats. 1975, 2nd Ex. Sess., ch. 1. Amended by Stats. 1975, 2nd Ex. Sess., ch. 2, effective September 24, 1975 operative December 15, 1975.)

§365. Failure to Comply With Provisions

Failure to comply with this chapter shall not invalidate any proceedings of any court of this state, nor shall it affect the jurisdiction of the court to render a judgment therein. However, failure to comply with such provisions by any attorney at law shall be grounds for professional discipline and the State Bar of California shall investigate and take appropriate action in any such cases brought to its attention. (Added by Stats. 1975, ch. 1.)

§411.35 Malpractice Actions; Architects, Engineers, Land Surveyors; Attorney's Certification of Case Review and Consultation; Reliance on Res Ipsa Loquitur or Failure to Inform of the Consequences of a Procedure Exceptions; Failure to File

(a) In every action, including a cross-complaint for damages or indemnity, arising out of the professional negligence of a person holding a valid architect's certificate issued pursuant to Chapter 3 (commencing with Section 5500) of Division 3 of the Business and Professions Code, or of a person holding a valid registration as a professional engineer issued pursuant to Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code, or a person holding a valid land surveyor's license issued pursuant to Chapter 15 (commencing with Section 8700) of Division 3 of the Business and Professions Code on or before the date of service of the complaint or cross-complaint on any defendant or cross-defendant, the attorney for the plaintiff or cross-complainant shall file and serve the certificate specified by subdivision (b).

(b) A certificate shall be executed by the attorney for the plaintiff or cross-complainant declaring one of the following:

(1) That the attorney has reviewed the facts of the case, that the attorney has consulted with and received an opinion from at least one architect, professional engineer, or land surveyor who is licensed to practice and practices in this state or any other state , or who teaches at an accredited college or university and is licensed to practice in this state or any other state, in the same discipline as the defendant or cross-defendant and who the attorney reasonably believes is knowledgeable in the relevant issues involved in the particular action, and that the attorney has concluded on the basis of this review and consultation that there is reasonable and meritorious cause for the filing of this action. The person consulted may not be a party to the litigation . The person consulted shall render his or her opinion that the named defendant or cross-defendant was negligent or was not negligent in the performance of the applicable professional services.

(2) That the attorney was unable to obtain the consultation required by paragraph (1) because a statute of limitations would impair the action and that the certificate required by paragraph (1) could not be obtained before the impairment of the action. If a certificate is executed pursuant to this paragraph, the certificate required by paragraph (1) shall be filed within 60 days after filing the complaint.

(3) That the attorney was unable to obtain the consultation required by paragraph (1) because the attorney had made three separate good faith attempts with three separate architects, professional engineers, or land surveyors to obtain this consultation and none of those contacted would agree to the consultation.

(c) Where a certificate is required pursuant to this section, only one certificate shall be filed, notwithstanding that multiple defendants have been named in the complaint or may be named at a later time.

(d) Where the attorney intends to rely solely on the doctrine of "res ipsa loquitur," as defined in Section 646 of the Evidence Code, or exclusively on a failure to inform of the consequences of a procedure, or both, this section shall be inapplicable. The attorney shall certify upon filing of

the complaint that the attorney is solely relying on the doctrines of "res ipsa loquitur" or failure to inform of the consequences of a procedure or both, and for that reason is not filing a certificate required by this section.

(e) For purposes of this section, and subject to Section 912 of the Evidence Code, an attorney who submits a certificate as required by paragraph (1) or (2) of subdivision (b) has a privilege to refuse to disclose the identity of the architect, professional engineer, or land surveyor consulted and the contents of the consultation. The privilege shall also be held by the architect, professional engineer, or land surveyor so consulted. If, however, the attorney makes a claim under paragraph (3) of subdivision (b) that he or she was unable to obtain the required consultation with the architect, professional engineer, or land surveyor, the court may require the attorney to divulge the names of architects, professional engineers, or land surveyors refusing the consultation.

(f) A violation of this section may constitute unprofessional conduct and be grounds for discipline against the attorney, except that the failure to file the certificate required by paragraph (1) of subdivision (b), within 60 days after filing the complaint and certificate provided for by paragraph (2) of subdivision (b), shall not be grounds for discipline against the attorney.

(g) The failure to file a certificate in accordance with this section shall be grounds for a demurrer pursuant to Section 430.10 or a motion to strike pursuant to Section 435.

(h) Upon the favorable conclusion of the litigation with respect to any party for whom a certificate of merit was filed or for whom a certificate of merit should have been filed pursuant to this section, the trial court may, upon the motion of a party or upon the court's own motion, verify compliance with this section, by requiring the attorney for the plaintiff or cross-complainant who was required by subdivision (b) to execute the certificate to reveal the name, address, and telephone number of the person or persons consulted with pursuant to subdivision (b) that were relied upon by the attorney in preparation of the certificate of merit. The name, address, and telephone number shall be disclosed to the trial judge in an in-camera proceeding at which the moving party shall not be present. If the trial judge finds there has been a failure to comply with this section, the court may order a party, a party's attorney, or both, to pay any reasonable expenses, including attorney's fees, incurred by another party as a result of the failure to comply with this section.

(i) For purposes of this section, "action" includes a complaint or cross-complaint for equitable indemnity arising out of the rendition of professional services whether or not the complaint or cross-complaint specifically asserts or utilizes the terms "professional negligence" or "negligence." (Added by Stats. 1979, ch. 973. Amended by Stats. 1983, ch. 414; Stats. 1986, ch. 1231; Stats. 1988, ch. 1070; Stats. 1990, ch. 204; Stats. 1991, ch. 272; Stats. 1995, ch. 241; Stats. 1999, ch. 176.)

§527.6 Harassment; Temporary Restraining Order and Injunction; Procedure ; Domestic Violence; Support Person; Costs and Attorneys Fees; Punishment

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

(b) For the purposes of this section, "harassment" is unlawful violence, a credible threat of violence, or a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the plaintiff. As used in this subdivision:

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

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

(3) "Course of conduct" is a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose, including following or stalking an individual, making harassing telephone calls to an individual, or sending harassing correspondence to an individual by any means, including, but not limited to, the use of public or private mails, interoffice mail, fax, or computer e-mail. Constitutionally protected activity is not included within the meaning of "course of conduct."

(c) Upon filing a petition for an injunction under this section, the plaintiff may obtain a temporary restraining order in accordance with Section 527, except to the extent this section provides a rule that is inconsistent. A temporary restraining order may be issued with or without notice upon an affidavit that, to the satisfaction of the court, shows reasonable proof of harassment of the plaintiff by

the defendant, and that great or irreparable harm would result to the plaintiff. In the discretion of the court, and on a showing of good cause, a temporary restraining order issued under this section may include other named family or household members who reside with the plaintiff. A temporary restraining order issued under this section shall remain in effect, at the court's discretion, for a period not to exceed 15 days, or, if the court extends the time for hearing under subdivision (d), not to exceed 22 days, unless otherwise modified or terminated by the court.

(d) Within 15 days, or, if good cause appears to the court, 22 days from the date the temporary restraining order is issued, a hearing shall be held on the petition for the injunction. The defendant may file a response that explains, excuses, justifies, or denies the alleged harassment or may file a cross-complaint under this section. At the hearing, the judge shall receive any testimony that is relevant, and may make an independent inquiry. If the judge finds by clear and convincing evidence that unlawful harassment exists, an injunction shall issue prohibiting the harassment. An injunction issued pursuant to this section shall have a duration of not more than three years. At any time within the three months before the expiration of the injunction, the plaintiff may apply for a renewal of the injunction by filing a new petition for an injunction under this section.

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

(f) In a proceeding under this section where there are allegations or threats of domestic violence, a support person may accompany a party in court and, where the party is not represented by an attorney, may sit with the party at the table that is generally reserved for the party and the party's attorney. The support person is present to provide moral and emotional support for a person who alleges he or she is a victim of domestic violence. The support person is not present as a legal adviser and shall not give legal advice. The support person shall assist the person who alleges he or she is a victim of domestic violence in feeling more confident that he or she will not be injured or threatened by the other party during the proceedings where the person who alleges he or she is a victim of domestic violence and the other party must be present in close proximity. This subdivision does not preclude the court from exercising its discretion to remove the support person from the courtroom if the court believes the support person is prompting, swaying, or influencing the party assisted by the support person.

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

(h) The court shall order the plaintiff or the attorney for the plaintiff to deliver a copy of each temporary restraining order or injunction, or modification or termination thereof, granted under this section, by the close of the business day on which the order was granted, to the law enforcement agencies within the court's discretion as are requested by the plaintiff. Each appropriate law enforcement agency shall make available information as to the existence and current status of these orders to law enforcement officers responding to the scene of reported harassment.

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

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

If the law enforcement officer determines that a protective order has been issued, but not served, the officer shall immediately notify the defendant of the terms of the order and shall at that time also enforce the order. Verbal notice of the terms of the order shall constitute service of the order and is sufficient notice for the purposes of this section and for the purposes of Section 273.6 and subdivision (g) of Section 12021 of the Penal Code.

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

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

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

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

(3) Every person who owns, possesses, purchases or receives, or attempts to purchase or receive a firearm while the protective order is in effect is punishable pursuant to subdivision (q) of Section 12021 of the Penal Code.

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

(m) The Judicial Council shall promulgate forms and instructions therefor, and rules for service of process, scheduling of hearings, and any other matters required by this section. The petition and response forms shall be simple and concise, and their use by parties in actions brought pursuant to this section shall be mandatory.

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

(o) Information on any temporary restraining order or injunction relating to harassment or domestic violence issued by a court pursuant to this section shall be transmitted to the Department of Justice in accordance with subdivision (b) of Section 6380 of the Family Code.

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

(q) (1) Subject to paragraph (4) of subdivision (b) of Section 6103.2 of the Government Code, there shall be no fee for the service of process of a protective order, restraining order, or injunction to be issued, if any of the following conditions apply:

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

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

(C) The protective order, restraining order, or injunction is issued pursuant to Section 6222 of the Family Code.

(2) The Judicial Council shall prepare and develop application forms for applicants who wish to avail themselves of the services described in this subdivision. (Added by Stats. 1978, ch. 1307. Amended by Stats. 1979, ch. 795; Stats. 1980, ch. 1158; Stats. 1981, ch. 182; Stats. 1982, ch. 423; Stats. 1984, ch. 1163; Stats. 1992, ch. 163; Stats. 1993, ch. 219; Stats. 1994, ch. 587; Stats. 1996, ch. 691; Stats. 1998, ch. 581; Stats. 1999, ch. 661; Stats. 2000, ch. 688; Stats. 2002, ch. 1008, Stats. 2002, ch. 1009; Stats. 2003, ch. 498; Stats. 2006, ch. 476.)

§566. Persons Ineligible for Appointment; Consent; Undertaking on Ex Parte Application

(a) No party, or attorney of a party, or person interested in an action, or related to any judge of the court by consanguinity or affinity within the third degree, can be appointed receiver therein without the written consent of the parties, filed with the clerk.

(b) If a receiver is appointed upon an ex parte application, the court, before making the order, must require from the applicant an undertaking in an amount to be fixed by the court, to the effect that the applicant will pay to the defendant all damages the defendant may sustain by reason of the appointment of the receiver and the entry by the receiver upon the duties, in case the applicant shall have procured the appointment wrongfully, maliciously, or without sufficient cause. (Enacted in 1982. Amended by Stats. 1874, ch. 383, Stats. 1897, ch. 69; Stats. 1907, ch. 374, Stats. 1982, ch. 517.)

§568. Powers of Receivers

The receiver has, under the control of the Court, power to bring and defend actions in his own name, as receiver; to take and keep possession of the property, to receive rents, collect debts, to compound for and compromise the same, to make transfers, and generally to do such acts respecting the property as the Court may authorize. (Enacted in 1872.)

§638. Reference by Agreement of the Parties; Purposes

A referee may be appointed upon the agreement of the parties filed with the clerk, or judge, or entered in the minutes, or upon the motion of a party to a written contract or lease that provides that any controversy arising therefrom shall be heard by a referee if the court finds a reference agreement exists between the parties:

(a) To hear and determine any or all of the issues in an action or proceeding, whether of fact or of law, and to report a statement of decision.

(b) To ascertain a fact necessary to enable the court to determine an action or proceeding.

(c) In any matter in which a referee is appointed pursuant to this section, a copy of the order shall be forwarded to the office of the presiding judge. The Judicial Council shall, by rule, collect information on the use of these referees. The Judicial Council shall also collect information on fees paid by the parties for the use of referees to the extent that information regarding those fees is reported to the court. The Judicial Council shall report thereon to the Legislature by July 1, 2003. This subdivision shall become inoperative on January 1, 2004. (Enacted 1872. Amended by Stats. 1933, ch. 744; Stats. 1951, ch. 1737; Stats. 1982, ch. 440; Stats. 1984, ch. 350; Stats. 2000, ch. 644; Stats. 2001, ch. 44; Stats. 2002, ch. 1008.)

§639. Direction of a Reference; Application; Motion of the Court

(a) When the parties do not consent, the court may, upon the written motion of any party, or of its own motion, appoint a referee in the following cases pursuant to the provisions of subdivision (b) of Section 640:

(1) When the trial of an issue of fact requires the examination of a long account on either side; in which case the referees may be directed to hear and decide the whole issue, or report upon any specific question of fact involved therein.

(2) When the taking of an account is necessary for the information of the court before judgment, or for carrying a judgment or order into effect.

(3) When a question of fact, other than upon the pleadings, arises upon motion or otherwise, in any stage of the action.

(4) When it is necessary for the information of the court in a special proceeding.

(5) When the court in any pending action determines that it is necessary for the court to appoint a referee to hear and determine any and all discovery motions and disputes relevant to discovery in the action and to report findings and make a recommendation thereon.

(b) In a discovery matter, a motion to disqualify an appointed referee pursuant to Section 170.6 shall be made to the court by a party either:

(A) Within 10 days after notice of the appointment, or if the party has not yet appeared in the action, a motion shall be made within 10 days after the appearance, if a discovery referee has been appointed for all discovery purposes.

(B) At least five days before the date set for hearing, if the referee assigned is known at least 10 days before the date set for hearing and the discovery referee has been assigned only for limited discovery purposes.

(c) When a referee is appointed pursuant to paragraph (5) of subdivision (a), the order shall indicate whether the referee is being appointed for all discovery purposes in the action.

(d) All appointments of referees pursuant to this section shall be by written order and shall include the following:

(1) When the referee is appointed pursuant to paragraph (1), (2), (3), or (4) of subdivision (a), a statement of the reason the referee is being appointed.

(2) When the referee is appointed pursuant to paragraph (5) of subdivision (a), the exceptional circumstances requiring the reference, which must be specific to the circumstances of the particular case.

(3) The subject matter or matters included in the reference.

(4) The name, business address, and telephone number of the referee.

(5) The maximum hourly rate the referee may charge and, at the request of any party, the maximum number of hours for which the referee may charge. Upon the written application of any party or the referee, the court may, for good cause shown, modify the maximum number of hours subject to any findings as set forth in paragraph (6).

(6) (A) Either a finding that no party has established an economic inability to pay a pro rata share of the referee's fee or a finding that one or more parties has established an economic inability to pay a pro rata share of the referee's fees and that another party has agreed voluntarily to pay that additional share of the referee's fee. A court shall not appoint a referee at a cost to the parties if neither of these findings is made.

(B) In determining whether a party has established an inability to pay the referee's fees under subparagraph (A), the court shall consider only the ability of the party, not the party's counsel, to pay these fees. If a party is proceeding in forma pauperis, the party shall be deemed by the court to have an economic inability to pay the referee's fees. However, a determination of economic inability to pay the fees shall not be limited to parties that proceed in forma pauperis. For those parties who are not proceeding in forma pauperis, the court, in determining whether a party has established an inability to pay the fees, shall consider, among other things, the estimated cost of the referral and the impact of the proposed fees on the party's ability to proceed with the litigation.

(e) In any matter in which a referee is appointed pursuant to paragraph (5) of subdivision (a), a copy of the order appointing the referee shall be forwarded to the office of the presiding judge of the court. The Judicial Council shall, by rule, collect information on the use of these references and the reference fees charged to litigants, and shall report thereon to the Legislature by July 1, 2003. This subdivision shall become inoperative on January 1, 2004. (Enacted by Stats. 1872. Amended by Stats. 1933, ch. 744; Stats. 1951, ch. 1737; Stats. 1977, ch. 1257; Stats. 1981, ch. 299, Stats. 2000, ch. 1011; Stats. 2001, ch. 362.)

*[**Publisher's Note:** The outline format found under subsection (b) of the above provision is printed as it appears in the bill as chaptered by the legislature in 2001.]*

§907. Appeal Frivolous or Taken Solely for Delay

When it appears to the reviewing court that the appeal was frivolous or taken solely for delay, it may add to the costs on appeal such damages as may be just. (Added by Stats. 1968, ch. 385.)

§1021. Attorney's Fees—Determined by Agreement

Except as attorney's fees are specifically provided for by statute, the measure and mode of compensation of attorneys and counselors at law is left to the agreement, express or implied, of the parties; but parties to actions or proceedings are entitled to their costs, as hereinafter provided. (Enacted 1872. Amended by Stats.1933, ch. 744; Stats.1986, ch. 377.)

§1029.8. Damages for Injury Caused by an Unlicensed Person who Provides Services for which a License is Required

(a) Any unlicensed person who causes injury or damage to another person as a result of providing goods or performing services for which a license is required under Division 2 (commencing with Section 500) or any initiative act referred to therein, Division 3 (commencing with Section 5000), or Chapter 2 (commencing with Section 18600) or Chapter 3 (commencing with Section 19000) of Division 8, of the Business and Professions Code, or Chapter 2 (commencing with Section 25210) or Chapter 3 (commencing with Section 25230) of Part 3 of Division 1 of Title 4 of the Corporations Code, shall be liable to the injured person for treble the amount of damages assessed in a civil action in any court having proper jurisdiction. The court may, in its discretion, award all costs and attorney's fees to the injured person if that person prevails in the action.

(b) This section shall not be construed to confer an additional cause of action or to affect or limit any other remedy, including, but not limited to, a claim for exemplary damages.

(c) The additional damages provided for in subdivision (a) shall not exceed ten thousand dollars ($10,000).

(d) For the purposes of this section, the term "unlicensed person" shall not apply to any of the following:

(1) Any person, partnership, corporation, or other entity providing goods or services under the good faith belief that they are properly licensed and acting within the proper scope of that licensure.

(2) Any person, partnership, corporation, or other entity whose license has expired for nonpayment of license renewal fees, but who is eligible to renew that license without the necessity of applying and qualifying for an original license.

(3) Any person, partnership, or corporation licensed under Chapter 6 (commencing with Section 2700) or

Chapter 6.5 (commencing with Section 2840) of the Business and Professions Code, who provides professional nursing services under an existing license, if the action arises from a claim that the licensee exceeded the scope of practice authorized by his or her license.

(e) This section shall not apply to any action for unfair trade practices brought against an unlicensed person under Chapter 4 (commencing with Section 17000) of Part 2 of Division 7 of the Business and Professions Code, by a person who holds a license that is required, or closely related to the license that is required, to engage in those activities performed by the unlicensed person. (Added by Stats.1985, ch. 895. Amended by Stats. 2004, ch. 575.)

§1141.18 Arbitrators, Qualifications; Compensation; Method of Selection; Disqualification

(a) Arbitrators shall be retired judges, retired court commissioners who were licensed to practice law prior to their appointment as a commissioner, or members of the State Bar, and shall sit individually. A judge may also serve as an arbitrator without compensation. People who are not attorneys may serve as arbitrators upon the stipulation of all parties.

(b) The Judicial Council rules shall provide for the compensation, if any, of arbitrators. Compensation for arbitrators may not be less than one hundred fifty dollars ($150) per case, or one hundred fifty dollars ($150) per day, whichever is greater. A superior court may set a higher level of compensation for that court. Arbitrators may waive compensation in whole or in part. No compensation shall be paid before the filing of the award by the arbitrator, or before the settlement of the case by the parties.

(c) In cases submitted to arbitration under Section 1141.11 or 1141.12, an arbitrator shall be assigned within 30 days from the time of submission to arbitration.

(d) Any party may request the disqualification of the arbitrator selected for his or her case on the grounds and by the procedures specified in Section 170.1 or 170.6. A request for disqualification of an arbitrator on grounds specified in Section 170.6 shall be made within five days of the naming of the arbitrator. An arbitrator shall disqualify himself or herself, upon demand of any party to the arbitration made before the conclusion of the arbitration proceedings on any of the grounds specified in Section 170.1. (Added by Stats. 1978, ch. 743, operative July 1, 1979. Amended by Stats. 1981, ch. 1110; Stats. 1993, ch. 768; Stats. 2003, ch. 449.)

§1209. Acts and Omissions Constituting Contempt

(a) The following acts or omissions in respect to a court of justice, or proceedings therein, are contempt of the authority of the court:

(1) Disorderly, contemptuous, or insolent behavior toward the judge while holding the court, tending to interrupt the due course of a trial or other judicial proceeding;

(2) A breach of the peace, boisterous conduct, or violent disturbance, tending to interrupt the due course of a trial or other judicial proceeding;

(3) Misbehavior in office, or other willful neglect or violation of duty by an attorney, counsel, clerk, sheriff, coroner, or other person, appointed or elected to perform a judicial or ministerial service;

(4) Abuse of the process or proceedings of the court, or falsely pretending to act under authority of an order or process of the court;

(5) Disobedience of any lawful judgment, order, or process of the court;

(6) Rescuing any person or property in the custody of an officer by virtue of an order or process of such court;

(7) Unlawfully detaining a witness, or party to an action while going to, remaining at, or returning from the court where the action is on the calendar for trial.

(8) Any other unlawful interference with the process or proceedings of a court;

(9) Disobedience of a subpoena duly served, or refusing to be sworn or answer as a witness;

(10) When summoned as a juror in a court, neglecting to attend or serve as such, or improperly conversing with a party to an action, to be tried at such court, or with any other person, in relation to the merits of such action, or receiving a communication from a party or other person in respect to it, without immediately disclosing the same to the court;

(11) Disobedience by an inferior tribunal, magistrate, or officer, of the lawful judgment, order, or process of a superior court, or proceeding in an action or special proceeding contrary to law, after such action or special proceeding is removed from the jurisdiction of such inferior tribunal, magistrate, or officer.

(b) No speech or publication reflecting upon or concerning any court or any officer thereof shall be treated or punished as a contempt of such court unless made in the immediate presence of such court while in session and in such a manner as to actually interfere with its proceedings.

(c) Notwithstanding Section 1211 or any other provision of law, if an order of contempt is made affecting an attorney, his agent, investigator, or any person acting under the attorney's direction, in the preparation and conduct of any action or proceeding, the execution of any sentence shall be stayed pending the filing within three judicial days of a petition for extraordinary relief testing the lawfulness of the court's order, the violation of which is the basis of the contempt, except for such conduct as may be proscribed by subdivision (b) of Section 6068 of the Business and Professions Code, relating to an attorney's duty to maintain respect due to the courts and judicial officers.

(d) Notwithstanding Section 1211 or any other provision of law, if an order of contempt is made affecting a public safety employee acting within the scope of employment for reason of the employee's failure to comply with a duly issued subpoena or subpoena duces tecum, the execution of any sentence shall be stayed pending the filing within three judicial days of a petition for extraordinary relief testing the lawfulness of the court's order, a violation of which is the basis for the contempt.

As used in this subdivision, "public safety employee" includes any peace officer, firefighter, paramedic, or any other employee of a public law enforcement agency whose duty is either to maintain official records or to analyze or present evidence for investigative or prosecutorial purposes. (Enacted 1872; amended 1891. Amended by Stats. 1907, ch. 255; Stats. 1939, ch. 979; Stats. 1975, ch. 836; Stats. 1982, ch. 510.)

§1280.1 Arbitrator Immunity

(a) An arbitrator has the immunity of a judicial officer from civil liability when acting in the capacity of arbitrator under any statute or contract.

The immunity afforded by this section shall supplement, and not supplant, any otherwise applicable common law or statutory immunity.

(b) This section shall remain in effect only until January 1, 1997, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1997, deletes or extends that date. (Added by Stats. 1985, ch. 709. Amended by Stats. 1990, ch. 817; Stats. 1995, ch. 209.)

§1281.9 Neutral Arbitrations; Disclosure of Information; Disqualification; Waiver

(a) In any arbitration pursuant to an arbitration agreement, when a person is to serve as a neutral arbitrator, the proposed neutral arbitrator shall disclose all matters that could cause a person aware of the facts to reasonably entertain a doubt that the proposed neutral arbitrator would be able to be impartial, including all of the following:

(1) The existence of any ground specified in Section 170.1 for disqualification of a judge. For purposes of paragraph (8) of subdivision (a) of Section 170.1, the proposed neutral arbitrator shall disclose whether or not he or she has a current arrangement concerning prospective employment or other compensated service as a dispute resolution neutral or is participating in, or, within the last two years, has participated in, discussions regarding such prospective employment or service with a party to the proceeding.

(2) Any matters required to be disclosed by the ethics standards for neutral arbitrators adopted by the Judicial Council pursuant to this chapter.

(3) The names of the parties to all prior or pending noncollective bargaining cases in which the proposed neutral arbitrator served or is serving as a party arbitrator for any party to the arbitration proceeding or for a lawyer for a party and the results of each case arbitrated to conclusion, including the date of the arbitration award, identification of the prevailing party, the names of the parties' attorneys and the amount of monetary damages awarded, if any. In order to preserve confidentiality, it shall be sufficient to give the name of any party who is not a party to the pending arbitration as "claimant" or "respondent" if the party is an individual and not a business or corporate entity.

(4) The names of the parties to all prior or pending noncollective bargaining cases involving any party to the arbitration or lawyer for a party for which the proposed neutral arbitrator served or is serving as neutral arbitrator, and the results of each case arbitrated to conclusion, including the date of the arbitration award, identification of the prevailing party, the names of the parties' attorneys and the amount of monetary damages awarded, if any. In order to preserve confidentiality, it shall be sufficient to give the name of any party not a party to the pending arbitration as "claimant" or "respondent" if the party is an individual and not a business or corporate entity.

(5) Any attorney-client relationship the proposed neutral arbitrator has or had with any party or lawyer for a party to the arbitration proceeding.

(6) Any professional or significant personal relationship the proposed neutral arbitrator or his or her spouse or minor child living in the household has or has had with any party to the arbitration proceeding or lawyer for a party.

(b) Subject only to the disclosure requirements of law, the proposed neutral arbitrator shall disclose all matters required to be disclosed pursuant to this section to all parties in writing within 10 calendar days of service of notice of the proposed nomination or appointment.

(c) For purposes of this section, "lawyer for a party" includes any lawyer or law firm currently associated in the practice of law with the lawyer hired to represent a party.

(d) For purposes of this section, "prior cases" means noncollective bargaining cases in which an arbitration award was rendered within five years prior to the date of the proposed nomination or appointment.

(e) For purposes of this section, "any arbitration" does not include an arbitration conducted pursuant to the terms of a public or private sector collective bargaining agreement. (Added by Stats. 1994, ch. 1202. Amended by Stats. 1997, ch. 445; Stats. 2001, ch. 362; Stats. 2002, ch. 1094.)

§1281.92 Restrictions Against Private Arbitration Company from Administering Consumer Arbitration or Related Services

(a) No private arbitration company may administer a consumer arbitration, or provide any other services related to a consumer arbitration, if the company has, or within the preceding year has had, a financial interest, as defined in Section 170.5, in any party or attorney for a party.

(b) No private arbitration company may administer a consumer arbitration, or provide any other services related to a consumer arbitration, if any party or attorney for a party has, or within the preceding year has had, any type of financial interest in the private arbitration company.

(c) This section shall operate only prospectively so as not to prohibit the administration of consumer arbitrations on the basis of financial interests held prior to January 1, 2003.

(d) This section applies to all consumer arbitration agreements subject to this article, and to all consumer arbitration proceedings conducted in California.

(e) This section shall become operative on January 1, 2003. (Added by Stats. 2002, ch. 952.)

§1281.96 Private Arbitration Companies; Publication of Consumer Arbitration Information; Liability

(a) Except as provided in paragraph (2) of subdivision (b), any private arbitration company that administers or is otherwise involved in, a consumer arbitration, shall collect, publish at least quarterly, and make available to the public in a computer-searchable format, which shall be accessible at the Internet Web site of the private arbitration company, if any, and on paper upon request, all of the following information regarding each consumer arbitration within the preceding five years:

(1) The name of the nonconsumer party, if the nonconsumer party is a corporation or other business entity.

(2) The type of dispute involved, including goods, banking, insurance, health care, employment, and, if it involves employment, the amount of the employee's annual wage divided into the following ranges: less than one hundred thousand dollars ($100,000), one hundred thousand dollars ($100,000) to two hundred fifty thousand dollars ($250,000), inclusive, and over two hundred fifty thousand dollars ($250,000).

(3) Whether the consumer or nonconsumer party was the prevailing party.

(4) On how many occasions, if any, the nonconsumer party has previously been a party in an arbitration or mediation administered by the private arbitration company.

(5) Whether the consumer party was represented by an attorney.

(6) The date the private arbitration company received the demand for arbitration, the date the arbitrator was appointed, and the date of disposition by the arbitrator or private arbitration company.

(7) The type of disposition of the dispute, if known, including withdrawal, abandonment, settlement, award after hearing, award without hearing, default, or dismissal without hearing.

(8) The amount of the claim, the amount of the award, and any other relief granted, if any.

(9) The name of the arbitrator, his or her total fee for the case, and the percentage of the arbitrator's fee allocated to each party.

(b) (1) If the information required by subdivision (a) is provided by the private arbitration company in a computer-searchable format at the company's Internet Web site and may be downloaded without any fee, the company may charge the actual cost of copying to any person who requests the information on paper. If the information required by subdivision (a) is not accessible by the Internet, the company shall provide that information without charge to any person who requests the information on paper.

(2) Notwithstanding paragraph (1), a private arbitration company that receives funding pursuant to Chapter 8 (commencing with Section 465) of Division 1 of the Business and Professions Code, and that administers or conducts fewer than 50 consumer arbitrations per year may collect and publish the information required by subdivision (a) semiannually, provide the information only on paper, and charge the actual cost of copying.

(c) This section shall apply to any consumer arbitration commenced on or after January 1, 2003.

(d) No private arbitration company shall have any liability for collecting, publishing, or distributing the information required by this section. (Added by Stats. 2002, ch. 1158.)

§1282.4 Arbitration—Representation by Counsel; Non-California Attorney Certificate

(a) A party to the arbitration has the right to be represented by an attorney at any proceeding or hearing in arbitration under this title. A waiver of this right may be revoked; but if a party revokes that waiver, the other party is entitled to a reasonable continuance for the purpose of procuring an attorney.

(b) Notwithstanding any other provision of law, including Section 6125 of the Business and Professions Code, an attorney admitted to the bar of any other state may represent the parties in the course of, or in connection with, an arbitration proceeding in this state, provided that the attorney, if not admitted to the State Bar of California, satisfies all of the following:

(1) He or she timely serves the certificate described in subdivision (c).

(2) The attorney's appearance is approved in writing on that certificate by the arbitrator, the arbitrators, or the arbitral forum.

(3) The certificate bearing approval of the attorney's appearance is filed with the State Bar of California and served on the parties as described in this section.

(c) Within a reasonable period of time after the attorney described in subdivision (b) indicates an intention to appear in the arbitration, the attorney shall serve a certificate in a form prescribed by the State Bar of California on the arbitrator, arbitrators, or arbitral forum, the State Bar of California, and all other parties and counsel in the arbitration whose addresses are known to the attorney. The certificate shall state all of the following:

(1) The case name and number, and the name of the arbitrator, arbitrators, or arbitral forum assigned to the proceeding in which the attorney seeks to appear.

(2) The attorney's residence and office address.

(3) The courts before which the attorney has been admitted to practice and the dates of admission.

(4) That the attorney is currently a member in good standing of, and eligible to practice law before, the bar of those courts.

(5) That the attorney is not currently on suspension or disbarred from the practice of law before the bar of any court.

(6) That the attorney is not a resident of the State of California.

(7) That the attorney is not regularly employed in the State of California.

(8) That the attorney is not regularly engaged in substantial business, professional, or other activities in the State of California.

(9) That the attorney agrees to be subject to the jurisdiction of the courts of this state with respect to the law of this state governing the conduct of attorneys to the same extent as a member of the State Bar of California.

(10) The title of the court and the cause in which the attorney has filed an application to appear as counsel pro hac vice in this state or filed a certificate pursuant to this section in the preceding two years, the date of each application, and whether or not it was granted. If the attorney has made repeated appearances, the certificate shall reflect the special circumstances that warrant the approval of the attorney's appearance in the arbitration.

(11) The name, address, and telephone number of the active member of the State Bar of California who is the attorney of record.

(d) The arbitrator, arbitrators, or arbitral forum may approval the attorney's appearance if the attorney has complied with subdivision (c). Failure to timely file and serve the certificate described in subdivision (c) shall be grounds for disapproval of the appearance and disqualification from serving as an attorney in the arbitration in which the certificate was filed. In the absence of special circumstances, repeated appearances shall be grounds for disapproval of the appearance and disqualification from serving as an attorney in the arbitration in which the certificate was filed.

(e) Within a reasonable period of time after the arbitrator, arbitrators, or arbitral forum approves the certificate, the attorney shall file the certificate with the State Bar of California and serve the certificate as described in Section 1013a on all parties and counsel in the arbitration whose address is known to the attorney.

(f) An attorney who fails to file or serve the certificate required by this section or files or serves a certificate containing false information or who otherwise fails to comply with the standards of professional conduct required of members of the State Bar of California shall be subject to the disciplinary jurisdiction of the State Bar with respect to that certificate or any of his or her acts occurring in the course of the arbitration.

(g) Notwithstanding any other provision of law, including Section 6125 of the Business and Professions Code, an attorney who is a member in good standing of the bar of any state may represent the parties in connection with rendering legal services in this state in the course of and in connection with an arbitration pending in another state.

(h) Notwithstanding any other provision of law, including Section 6125 of the Business and Professions Code, any party to an arbitration arising under collective bargaining agreements in industries and provisions subject to either state or federal law may be represented in the course of, and in connection with, those proceedings by any person, regardless of whether that person is licensed to practice law in this state.

(i) Nothing in this section shall apply to Division 4 (commencing with Section 3201) of the Labor Code.

(j) (1) In enacting the amendments to this section made by Assembly Bill 2086 of the 1997-98 Regular Session, it is the intent of the Legislature to respond to the holding in Birbrower v. Superior Court (1998) 17 Cal.4th 117, as modified at 17 Cal.4th 643a (hereafter Birbrower), to provide a procedure for nonresident attorneys who are not licensed in this state to appear in California arbitration proceedings.

(2) In enacting subdivision (h), it is the intent of the Legislature to make clear that any party to an arbitration arising under a collective bargaining agreement governed by the laws of this state may be represented in the course of and in connection with those proceedings by any person regardless of whether that person is licensed to practice law in this state.

(3) Except as otherwise specifically provided in this section, in enacting the amendments to this section made by Assembly Bill 2086 of the 1997-98 Regular Session, it is the Legislature's intent that nothing in this section is intended to expand or restrict the ability of a party prior to the decision in Birbrower to elect to be represented by any person in a nonjudicial arbitration proceeding, to the extent those rights or abilities existed prior to that decision. To the extent that Birbrower is interpreted to expand or restrict that right or ability pursuant to the laws of this state, it is hereby abrogated except as specifically provided in this section.

(4) In enacting subdivision (i), it is the intent of the Legislature to make clear that nothing in this section shall affect those provisions of law governing the right of injured workers to elect to be represented by any person, regardless of whether that person is licensed to practice law in this state, as set forth in Division 4 (commencing with Section 3200) of the Labor Code.

(k) This section shall be operative until January 1, 2011, and on that date shall be repealed. (Added by Stats. 1961, ch. 461. Amended by Stats. 1998, ch. 915; Stats. 2000, ch. 1011; Stats. 2005, ch. 607; Stats. 2006, ch. 357.)

§1282.4 Arbitration—Representation by Counsel

(a) A party to the arbitration has the right to be represented by an attorney at any proceeding or hearing in arbitration under this title. A waiver of this right may be revoked; but if a party revokes the waiver, the other party is entitled to a reasonable continuance for the purpose of procuring an attorney.

(b) This section shall become operative on January 1, 2011. (Added by Stats. 1998, ch. 915. Amended by Stats. 2000, ch. 1011; Stats. 2005, ch. 607; Stats. 2006, ch. 357.)

§1284.3 Consumer Arbitrations; Agreements to Pay Fees and Costs; Waiver for Indigents

(a) No neutral arbitrator or private arbitration company shall administer a consumer arbitration under any agreement or rule requiring that a consumer who is a party to the arbitration pay the fees and costs incurred by an opposing party if the consumer does not prevail in the arbitration, including, but not limited to, the fees and costs of the arbitrator, provider organization, attorney, or witnesses.

(b) (1) All fees and costs charged to or assessed upon a consumer party by a private arbitration company in a consumer arbitration, exclusive of arbitrator fees, shall be waived for an indigent consumer. For the purposes of this section, "indigent consumer" means a person having a gross monthly income that is less than 300 percent of the federal poverty guidelines. Nothing in this section shall affect the ability of a private arbitration company to shift fees that would otherwise be charged or assessed upon a consumer party to a nonconsumer party.

(2) Prior to requesting or obtaining any fee, a private arbitration company shall provide written notice of the right to obtain a waiver of fees to a consumer or prospective consumer in a manner calculated to bring the matter to the attention of a reasonable consumer, including, but not limited to, prominently placing a notice in its first written communication to the consumer and in any invoice, bill, submission form, fee schedule, rules, or code of procedure.

(3) Any consumer requesting a waiver of fees or costs may establish his or her eligibility by making a declaration under oath on a form provided to the consumer by the private arbitration company for signature stating his or her monthly income and the number of persons living in his or her household. No private arbitration company may require a consumer to provide any further statement or evidence of indigence.

(4) Any information obtained by a private arbitration company about a consumer's identity, financial condition, income, wealth, or fee waiver request shall be kept confidential and may not be disclosed to any adverse party or any nonparty to the arbitration, except a private arbitration company may not keep confidential the number of waiver requests received or granted, or the total amount of fees waived.

(c) This section applies to all consumer arbitration agreements subject to this article, and to all consumer arbitration proceedings conducted in California. (Added by Stats. 2002, ch. 1101.)

§1518. When Fiduciary Property Escheats to State

(a) All tangible personal property located in this state and, subject to Section 1510, all intangible personal property, and the income or increment on such tangible or intangible property, held in a fiduciary capacity for the benefit of another person escheats to this state if after it becomes payable or distributable, the owner has not, within a period of three years, increased or decreased the principal, accepted payment of principal or income, corresponded in writing concerning the property, or otherwise indicated an interest as evidenced by a memorandum or other record on file with the fiduciary.

(b) Funds in an individual retirement account or a retirement plan for self-employed individuals or similar account or plan established pursuant to the internal revenue laws of the United States or of this state are not payable or distributable within the meaning of subdivision (a) unless, under the terms of the account or plan, distribution of all or part of the funds would then be mandatory.

(c) For the purpose of this section, when a person holds property as an agent for a business association, he or she is deemed to hold the property in a fiduciary capacity for the business association alone, unless the agreement between him or her and the business association clearly provides the contrary. For the purposes of this chapter, if a person holds property in a fiduciary capacity for a business association alone, he or she is the holder of the property only insofar as the interest of the business association in the property is concerned and the association is deemed to be the holder of the property insofar as the interest of any other person in the property is concerned. (Formerly 1506, added by Stats. 1959, ch. 1809 and amended by Stats. 1961, ch. 1904. Renumbered 1518 and amended by Stats. 1968, ch. 356, operative January 1, 1969; Stats. 1976, ch. 49; Stats. 1982, ch. 786; Stats. 1988, ch. 286; Stats. 1990, ch. 450, effective July 31, 1990.)

§2018. (Added by Stats. 1987, ch. 86, operative July 1, 1987. Repealed by Stats. 2004, ch. 182.)

CHAPTER 4
ATTORNEY WORK PRODUCT

§2018.010 Client Defined

For purposes of this chapter, "client" means a "client" as defined in Section 951 of the Evidence Code. (Added by Stats. 2004, ch. 182, operative July 1, 2005.)

§2018.020 Policy

It is the policy of the state to do both of the following:

(a) Preserve the rights of attorneys to prepare cases for trial with that degree of privacy necessary to encourage them to prepare their cases thoroughly and to investigate not only the favorable but the unfavorable aspects of those cases.

(b) Prevent attorneys from taking undue advantage of their adversary's industry and efforts. (Added by Stats. 2004, ch. 182, operative July 1, 2005.)

§2018.030 Limitations on Discovery

(a) A writing that reflects an attorney's impressions, conclusions, opinions, or legal research or theories is not discoverable under any circumstances.

(b) The work product of an attorney, other than a writing described in subdivision (a), is not discoverable unless the court determines that denial of discovery will unfairly prejudice the party seeking discovery in preparing that party's claim or defense or will result in an injustice. (Added by Stats. 2004, ch. 182, operative July 1, 2005.)

§2018.040 Scope

This chapter is intended to be a restatement of existing law relating to protection of work product. It is not intended to expand or reduce the extent to which work product is discoverable under existing law in any action. (Added by Stats. 2004, ch. 182, operative July 1, 2005.)

§2018.050 Crime or Fraud Exception

Notwithstanding Section 2018.040, when a lawyer is suspected of knowingly participating in a crime or fraud, there is no protection of work product under this chapter in any official investigation by a law enforcement agency or proceeding or action brought by a public prosecutor in the name of the people of the State of California if the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit a crime or fraud. (Added by Stats. 2004, ch. 182, operative July 1, 2005.)

§2018.060 In Camera Hearing Request

Nothing in this chapter is intended to limit an attorney's ability to request an in camera hearing as provided for in People v. Superior Court (Laff) (2001) 25 Cal.4th 703. (Added by Stats. 2004, ch. 182, operative July 1, 2005.)

§2018.070 Exception: State Bar Disciplinary Charges Pending; Client Approval; Confidentiality

(a) The State Bar may discover the work product of an attorney against whom disciplinary charges are pending when it is relevant to issues of breach of duty by the lawyer and requisite client approval has been granted.

(b) Where requested and for good cause, discovery under this section shall be subject to a protective order to ensure the confidentiality of the work product except for its use by the State Bar in disciplinary investigations and its consideration under seal in State Bar Court proceedings.

(c) For purposes of this chapter, whenever a client has initiated a complaint against an attorney, the requisite client approval shall be deemed to have been granted. (Added by Stats. 2004, ch. 182, operative July 1, 2005.)

§2018.080 Breach of Attorney's Duty Arising Out of Attorney-Client Relationship

In an action between an attorney and a client or a former client of the attorney, no work product privilege under this chapter exists if the work product is relevant to an issue of breach by the attorney of a duty to the client arising out of the attorney-client relationship. (Added by Stats. 2004, ch. 182, operative July 1, 2005.)

CORPORATIONS CODE

§10830. Formation; Requirements; Supervision

A nonprofit corporation may be formed under Part 3 (commencing with Section 7110) of this division for the purposes of administering a system or systems of defraying the cost of professional services of attorneys, but any such corporation may not engage directly or indirectly in the performance of the corporate purposes or objects unless all of the following requirements are met:

(a) The attorneys furnishing professional services pursuant to such system or systems are acting in compliance with the Rules of Professional Conduct of the State Bar of California concerning such system or systems.

(b) Membership in the corporation and an opportunity to render professional services upon a uniform basis are available to all active members of the State Bar.

(c) Voting by proxy and cumulative voting are prohibited.

(d) A certificate is issued to the corporation by the State Bar of California, finding compliance with the requirements of subdivisions (a), (b) and (c).

Any such corporation shall be subject to supervision by the State Bar of California and shall also be subject to Part 3 (commencing with Section 7110) of this division except as to matters specifically otherwise provided for in this article. (Added by Stats. 1978, ch. 1305, operative January 1, 1980.)

§16100. Uniform Partnership Act of 1994

This chapter may be cited as the Uniform Partnership Act of 1994. (Added by Stats.1996, ch. 1003.)

§16101. Uniform Partnership Act—Definitions

As used in this chapter, the following terms and phrases have the following meanings:

(1) "Business" includes every trade, occupation, and profession.

(2) "Debtor in bankruptcy" means a person who is the subject of either of the following:

(A) An order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application.

(B) A comparable order under federal, state, or foreign law governing insolvency.

(3) "Distribution" means a transfer of money or other property from a partnership to a partner in the partner's capacity as a partner or to the partner's transferee.

(4) "Electronic transmission by the partnership" means a communication (a) delivered by (1) facsimile telecommunication or electronic mail when directed to the facsimile number or electronic mail address, respectively, for that recipient on record with the partnership, (2) posting on an electronic message board or network that the partnership has designated for those communications, together with a separate notice to the recipient of the posting, which transmission shall be validly delivered upon the later of the posting or delivery of the separate notice thereof, or (3) other means of electronic communication, (b) to a recipient who has provided an unrevoked consent to the use of those means of transmission, and (c) that creates a record that is capable of retention, retrieval, and review, and that may thereafter be rendered into clearly legible tangible form. However, an electronic transmission by a partnership to an individual partner is not authorized unless, in addition to satisfying the requirements of this section, the transmission satisfies the requirements applicable to consumer consent to electronic records as set forth in the Electronic Signatures in Global and National Commerce Act (15 U.S.C. Sec. 7001 (c)(1)).

(5) "Electronic transmission to the partnership" means a communication (a) delivered by (1) facsimile telecommunication or electronic mail when directed to the facsimile number or electronic mail address, respectively, which the partnership has provided from time to time to partners for sending communications to the partnership, (2) posting on an electronic message board or network that the partnership has designated for those communications, and which transmission shall be validly delivered upon the posting, or (3) other means of electronic communication, (b) as to which the partnership has placed in effect reasonable measures to verify that the sender is the partner (in person or by proxy) purporting to send the transmission, and (c) that creates a record that is capable of retention, retrieval, and review, and that may thereafter be rendered into clearly legible tangible form.

(6) (A) "Foreign limited liability partnership" means a partnership, other than a limited partnership, formed pursuant to an agreement governed by the laws of another jurisdiction and denominated or registered as a limited liability partnership or registered limited liability partnership under the laws of that jurisdiction (i) in which each partner is a licensed person or a person licensed or authorized to provide professional limited liability partnership services in a jurisdiction or jurisdictions other than this state, (ii) which is licensed under the laws of the state to engage in the practice of architecture, the practice of public accountancy, or the practice of law, or (iii) which (I) is related to a registered limited liability partnership that practices public accountancy or, to the extent permitted by the State Bar, practices law or is related to a foreign limited liability partnership and (II) provides services related or complementary to the professional limited liability partnership services provided by, or provides services or facilities to, that registered limited liability partnership or foreign limited liability partnership.

(B) For the purposes of clause (iii) of subparagraph (A), a partnership is related to a registered limited liability partnership or foreign limited liability partnership if (i) at least a majority of the partners in one partnership are also partners in the other partnership, or (ii) at least a majority in interest in each partnership hold interests in or are members of another person, except an individual, and each partnership renders services pursuant to an agreement with that other person, or (iii) one partnership, directly or

indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the other partnership.

(7) "Licensed person" means any person who is duly licensed, authorized, or registered under the provisions of the Business and Professions Code to provide professional limited liability partnership services or who is lawfully able to render professional limited liability partnership services in this state.

(8) (A) "Registered limited liability partnership" means a partnership, other than a limited partnership, formed pursuant to an agreement governed by Article 10 (commencing with Section 16951), that is registered under Section 16953 and (i) each of the partners of which is a licensed person or a person licensed or authorized to provide professional limited liability partnership services in a jurisdiction or jurisdictions other than this state, (ii) is licensed under the laws of the state to engage in the practice of architecture, practice of public accountancy, or the practice of law, or (iii)(I) is related to a registered limited liability partnership that practices public accountancy or, to the extent permitted by the State Bar, practices law or is related to a foreign limited liability partnership and (II) provides services related or complementary to the professional limited liability partnership services provided by, or provides services or facilities to, that registered limited liability partnership or foreign limited liability partnership.

(B) For the purposes of clause (iii) of subparagraph (A), a partnership is related to a registered limited liability partnership or foreign limited liability partnership if (i) at least a majority of the partners in one partnership are also partners in the other partnership, or (ii) at least a majority in interest in each partnership hold interests in or are members of another person, other than an individual, and each partnership renders services pursuant to an agreement with that other person, or (iii) one partnership, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the other partnership.

(9) "Partnership" means an association of two or more persons to carry on as coowners a business for profit formed under Section 16202, predecessor law, or comparable law of another jurisdiction, and includes, for all purposes of the laws of this state, a registered limited liability partnership, and excludes any partnership formed under Chapter 2 (commencing with Section 15501) or Chapter 3 (commencing with Section 15611), or Chapter 5.5 (commencing with Section 15900).

(10) "Partnership agreement" means the agreement, whether written, oral, or implied, among the partners concerning the partnership, including amendments to the partnership agreement.

(11) "Partnership at will" means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.

(12) "Partnership interest" or "partner's interest in the partnership" means all of a partner's interests in the partnership, including the partner's transferable interest and all management and other rights.

(13) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited partnership, limited liability partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(14) "Professional limited liability partnership services" means the practice of architecture, the practice of public accountancy, or the practice of law.

(15) "Property" means all property, real, personal, or mixed, tangible or intangible, or any interest therein.

(16) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

(17) "Statement" means a statement of partnership authority under Section 16303, a statement of denial under Section 16304, a statement of dissociation under Section 16704, a statement of dissolution under Section 16805, a statement of conversion or a certificate of conversion under Section 16906, a statement of merger under Section 16915, or an amendment or cancellation of any of the foregoing.

(18) "Transfer" includes an assignment, conveyance, lease, mortgage, deed, and encumbrance.

(19) The inclusion of the practice of architecture as a professional limited liability partnership service permitted by this section shall extend only until January 1, 2012. (Added by Stats. 1996, ch. 1003. Amended by Stats. 1998, ch. 504; Stats. 1999, ch. 250; Stats. 2001, ch. 595; Stats. 2004, ch. 254; Stats. 2006, ch. 426; Stats. 2006, ch. 495.)

§16306. Joint and Severable Liability; Personal Liability; Registered Limited Liability Partnerships

(a) Except as otherwise provided in subdivisions (b) and (c), all partners are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law.

(b) A person admitted as a partner into an existing partnership is not personally liable for any partnership obligation incurred before the person's admission as a partner.

(c) Notwithstanding any other section of this chapter, and subject to subdivisions (d), (e), (f), and (h), a partner in a registered limited liability partnership is not liable or accountable, directly or indirectly, including by way of indemnification, contribution, assessment, or otherwise, for debts, obligations, or liabilities of or chargeable to the partnership or another partner in the partnership, whether arising in tort, contract, or otherwise, that are incurred, created, or assumed by the partnership while the partnership is a registered limited liability partnership, by reason of being a partner or acting in the conduct of the business or activities of the partnership.

(d) Notwithstanding subdivision (c), all or certain specified partners of a registered limited liability partnership, if the specified partners agree, may be liable in their capacity as partners for all or specified debts, obligations, or liabilities of the registered limited liability partnership if the partners possessing a majority of the interests of the partners in the current profits of the partnership, or a different vote as may be required in the partnership agreement, specifically agreed to the specified debts, obligations, or liabilities in writing, prior to the debt, obligation, or liability being incurred. That specific agreement may be modified or revoked if the partners possessing a majority of the interests of the partners in the current profits of the partnership, or a different vote as may be required in the partnership agreement, agree to the modification or revocation in writing; provided, however, that a modification or revocation shall not affect the liability of a partner for any debts, obligations, or liabilities of a registered limited liability partnership incurred, created, or assumed by the registered limited liability partnership prior to the modification or revocation.

(e) Nothing in subdivision (c) shall be construed to affect the liability of a partner of a registered limited liability partnership to third parties for that partner's tortious conduct.

(f) The limitation of liability in subdivision (c) shall not apply to claims based upon acts, errors, or omissions arising out of the rendering of professional limited liability partnership services of a registered limited liability partnership providing legal services unless that partnership has a currently effective certificate of registration issued by the State Bar.

(g) A partner in a registered limited liability partnership is not a proper party to a proceeding by or against a registered limited liability partnership in which personal liability for partnership debts, obligations, or liabilities is asserted against the partner, unless that partner is personally liable under subdivision (d) or (e).

(h) Nothing in this section shall affect or impair the ability of a partner to act as a guarantor or surety for, provide collateral for or otherwise be liable for, the debts, obligations, or liabilities of a registered limited liability partnership. (Added by Stats.1996, ch. 1003.)

§16951. Types of Limited Liability Partnerships to be Recognized

For purposes of this chapter, the only types of limited liability partnerships that shall be recognized are a registered limited liability partnership and a foreign limited liability partnership, as defined in Section 16101. No registered limited liability partnership or foreign limited liability partnership may render professional limited liability partnership services in this state except through licensed persons. (Added by Stats.1996, ch. 1003.)

§16952. Requirements for Name

The name of a registered limited liability partnership shall contain the words "Registered Limited Liability Partnership" or "Limited Liability Partnership" or one of the abbreviations "L.L.P.," "LLP," "R.L.L.P.," or "RLLP" as the last words or letters of its name. (Added by Stats.1996, ch. 1003.)

§16953. Registration; Contents; Fee; Filing; Form; Compliance with Requirements

(a) To become a registered limited liability partnership, a partnership, other than a limited partnership, shall file with the Secretary of State a registration, executed by one or more partners authorized to execute a registration, stating all of the following:

(1) The name of the partnership.

(2) The address of its principal office.

(3) The name and address of the agent for service of process on the limited liability partnership in California.

(4) A brief statement of the business in which the partnership engages.

(5) Any other matters that the partnership determines to include.

(6) That the partnership is registering as a registered limited liability partnership.

(b) The registration shall be accompanied by a fee as set forth in subdivision (a) of Section 12189 of the Government Code.

(c) The Secretary of State shall register as a registered limited liability partnership any partnership that submits a completed registration with the required fee.

(d) The Secretary of State may cancel the filing of the registration if a check or other remittance accepted in payment of the filing fee is not paid upon presentation. Upon receiving written notification that the item presented for payment has not been honored for payment, the Secretary of State shall give a first written notice of the applicability of this section to the agent for service of process or to the person submitting the instrument. Thereafter, if the amount has not been paid by cashier's check or equivalent, the Secretary of State shall give a second written notice of cancellation and the cancellation shall thereupon be effective. The second notice shall be given 20 days or more after the first notice and 90 days or less after the date of the original filing.

(e) A partnership becomes a registered limited liability partnership at the time of the filing of the initial registration with the Secretary of State or at any later date or time specified in the registration and the payment of the fee required by subdivision (b). A partnership continues as a registered limited liability partnership until a notice that it is no longer a registered limited liability partnership has been filed pursuant to subdivision (b) of Section 16954 or, if applicable, until it has been dissolved and finally wound up. The status of a partnership as a registered limited liability partnership and the liability of a partner of the registered limited liability partnership shall not be adversely affected by errors or subsequent changes in the information stated in a registration under subdivision (a) or an amended registration or notice under Section 16954.

(f) The fact that a registration or amended registration pursuant to this section is on file with the Secretary of State is notice that the partnership is a registered limited liability partnership and of those other facts contained therein that are required to be set forth in the registration or amended registration.

(g) The Secretary of State shall provide a form for a registration under subdivision (a), which shall include the form for confirming compliance with the optional security requirement pursuant to subdivision (c) of Section 16956. The Secretary of State shall include with instructional materials provided in conjunction with the form for a registration under subdivision (a) a notice that filing the registration will obligate the limited liability partnership to pay an annual tax for that taxable year to the Franchise Tax Board pursuant to Section 17948 of the Revenue and Taxation Code. That notice shall be updated annually to specify the dollar amount of the tax.

(h) A limited liability partnership providing professional limited liability partnership services in this state shall comply with all statutory and administrative registration or filing requirements of the state board, commission, or other agency that prescribes the rules and regulations governing the particular profession in which the partnership proposes to engage, pursuant to the applicable provisions of the Business and Professions Code relating to that profession. The state board, commission, or other agency shall not disclose, unless compelled by a subpoena or other order of a court of competent jurisdiction, any information it receives in the course of evaluating the compliance of a limited liability partnership with applicable statutory and administrative registration or filing requirements, provided that nothing in this section shall be construed to prevent a state board, commission, or other agency from disclosing the manner in which the limited liability partnership has complied with the requirements of Section 16956, or the compliance or noncompliance by the limited liability partnership with any other requirements of the state board, commission, or other agency. (Added by Stats.1996, ch. 1003. Amended by Stats. 2002, ch. 169.)

§16955. Conversion of Domestic Partnership; Rights and Obligations

(a) A domestic partnership, other than a limited partnership, may convert to a registered limited liability by the vote of the partners possessing a majority of the interests of its partners in the current profits of the partnership or by a different vote as may be required in its partnership agreement.

(b) When such a conversion takes effect, all of the following apply:

(1) All property, real and personal, tangible and intangible, of the converting partnership remains

vested in the converted registered limited liability partnership.

(2) All debts, obligations, liabilities, and penalties of the converting partnership continue as debts, obligations, liabilities, and penalties of the converted registered limited liability partnership.

(3) Any action, suit, or proceeding, civil or criminal, then pending by or against the converting partnership may be continued as if the conversion had not occurred.

(4) To the extent provided in the agreement of conversion and in this chapter, the partners of a partnership shall continue as partners in the converted registered limited liability partnership.

(5) A partnership that has been converted to a registered limited liability partnership pursuant to this chapter is the same person that existed prior to the conversion. (Added by Stats.1996, ch. 1003.)

§16956. Security for Claims Against Limited Liability Partnership; Requirements; Evidence of Compliance

(a) At the time of registration pursuant to Section 16953, in the case of a registered limited liability partnership, and Section 16959, in the case of a foreign limited liability partnership, and at all times during which those partnerships shall transact intrastate business, every registered limited liability partnership and foreign limited liability partnership, as the case may be, shall be required to provide security for claims against it as follows:

(1) For claims based upon acts, errors, or omissions arising out of the practice of public accountancy, a registered limited liability partnership or foreign limited liability partnership providing accountancy services shall comply with one, or pursuant to subdivision (b) some combination, of the following:

(A) Maintaining a policy or policies of insurance against liability imposed on or against it by law for damages arising out of claims; however, the total aggregate limit of liability under the policy or policies of insurance for partnerships with five or fewer licensed persons shall not be less than one million dollars ($1,000,000), and for partnerships with more than five licensees rendering professional services on behalf of the partnership, an additional one hundred thousand dollars ($100,000) of insurance shall be obtained for each additional licensee; however, the maximum amount of insurance is not required to exceed five million dollars ($5,000,000) in any one designated period, less amounts paid in defending, settling, or discharging claims as set forth in this subparagraph. The policy or policies may be issued on a claims-made or occurrence basis, and shall cover: (i) in the case of a claims-made policy, claims initially asserted in the designated period, and (ii) in the case of an occurrence policy, occurrences during the designated period. For purposes of this subparagraph, "designated period" means a policy year or any other period designated in the policy that is not greater than 12 months. The impairment or exhaustion of the aggregate limit of liability by amounts paid under the policy in connection with the settlement, discharge, or defense of claims applicable to a designated period shall not require the partnership to acquire additional insurance coverage for that designated period. The policy or policies of insurance may be in a form reasonably available in the commercial insurance market and may be subject to those terms, conditions, exclusions, and endorsements that are typically contained in those policies. A policy or policies of insurance maintained pursuant to this subparagraph may be subject to a deductible or self-insured retention.

Upon the dissolution and winding up of the partnership, the partnership shall, with respect to any insurance policy or policies then maintained pursuant to this subparagraph, maintain or obtain an extended reporting period endorsement or equivalent provision in the maximum total aggregate limit of liability required to comply with this subparagraph for a minimum of three years if reasonably available from the insurer.

(B) Maintaining in trust or bank escrow, cash, bank certificates of deposit, United States Treasury obligations, bank letters of credit, or bonds of insurance or surety companies as security for payment of liabilities imposed by law for damages arising out of all claims; however, the maximum amount of security for partnerships with five or fewer licensed persons shall not be less than one million dollars ($1,000,000), and for partnerships with more than five licensees rendering professional services on behalf of the partnership, an additional one hundred thousand dollars ($100,000) of security shall be obtained for each additional licensee; however, the maximum amount of security is not required to exceed five million dollars ($5,000,000). The partnership remains in compliance with this section during a calendar year notwithstanding amounts paid during that calendar year from the accounts, funds, Treasury obligations, letters of credit, or bonds in defending, settling, or discharging claims of the type

described in this paragraph, provided that the amount of those accounts, funds, Treasury obligations, letters of credit, or bonds was at least the amount specified in the preceding sentence as of the first business day of that calendar year. Notwithstanding the pendency of other claims against the partnership, a registered limited liability partnership or foreign limited liability partnership shall be deemed to be in compliance with this subparagraph as to a claim if within 30 days after the time that a claim is initially asserted through service of a summons, complaint, or comparable pleading in a judicial or administrative proceeding, the partnership has provided the required amount of security by designating and segregating funds in compliance with the requirements of this subparagraph.

(C) Unless the partnership has satisfied subparagraph (D), each partner of a registered limited liability partnership or foreign limited liability partnership providing accountancy services, by virtue of that person's status as a partner, thereby automatically guarantees payment of the difference between the maximum amount of security required for the partnership by this paragraph and the security otherwise provided in accordance with subparagraphs (A) and (B), provided that the aggregate amount paid by all partners under these guarantees shall not exceed the difference. Neither withdrawal by a partner nor the dissolution and winding up of the partnership shall affect the rights or obligations of a partner arising prior to withdrawal or dissolution and winding up, and the guarantee provided for in this subparagraph shall apply only to conduct that occurred prior to the withdrawal or dissolution and winding up. Nothing contained in this subparagraph shall affect or impair the rights or obligations of the partners among themselves, or the partnership, including, but not limited to, rights of contribution, subrogation, or indemnification.

(D) Confirming, pursuant to the procedure in subdivision (c), that, as of the most recently completed fiscal year of the partnership, it had a net worth equal to or exceeding ten million dollars ($10,000,000).

(2) For claims based upon acts, errors, or omissions arising out of the practice of law, a registered limited liability partnership or foreign limited liability partnership providing legal services shall comply with one, or pursuant to subdivision (b) some combination, of the following:

(A) Each registered limited liability partnership or foreign limited liability partnership providing legal services shall maintain a policy or policies of insurance against liability imposed on or against it by law for damages arising out of claims; however, the total aggregate limit of liability under the policy or policies of insurance for partnerships with five or fewer licensed persons shall not be less than one million dollars ($1,000,000), and for partnerships with more than five licensees rendering professional services on behalf of the partnership, an additional one hundred thousand dollars ($100,000) of insurance shall be obtained for each additional licensee; however, the maximum amount of insurance is not required to exceed seven million five hundred thousand dollars ($7,500,000) in any one designated period, less amounts paid in defending, settling, or discharging claims as set forth in this subparagraph. The policy or policies may be issued on a claims-made or occurrence basis, and shall cover (i) in the case of a claims-made policy, claims initially asserted in the designated period, and (ii) in the case of an occurrence policy, occurrences during the designated period. For purposes of this subparagraph, "designated period" means a policy year or any other period designated in the policy that is not greater than 12 months. The impairment or exhaustion of the aggregate limit of liability by amounts paid under the policy in connection with the settlement, discharge, or defense of claims applicable to a designated period shall not require the partnership to acquire additional insurance coverage for that designated period. The policy or policies of insurance may be in a form reasonably available in the commercial insurance market and may be subject to those terms, conditions, exclusions, and endorsements that are typically contained in those policies. A policy or policies of insurance maintained pursuant to this subparagraph may be subject to a deductible or self-insured retention.

Upon the dissolution and winding up of the partnership, the partnership shall, with respect to any insurance policy or policies then maintained pursuant to this subparagraph, maintain or obtain an extended reporting period endorsement or equivalent provision in the maximum total aggregate limit of liability required to comply with this subparagraph for a minimum of three years if reasonably available from the insurer.

(B) Each registered limited liability partnership or foreign limited liability partnership providing legal services shall maintain in trust or bank escrow, cash, bank certificates of deposit, United States Treasury obligations, bank letters of credit, or bonds of insurance or surety companies as security for payment of liabilities imposed by law for damages

arising out of all claims; however, the maximum amount of security for partnerships with five or fewer licensed persons shall not be less than one million dollars ($1,000,000), and for partnerships with more than five licensees rendering professional services on behalf of the partnership, an additional one hundred thousand dollars ($100,000) of security shall be obtained for each additional licensee; however, the maximum amount of security is not required to exceed seven million five hundred thousand dollars ($7,500,000). The partnership remains in compliance with this section during a calendar year notwithstanding amounts paid during that calendar year from the accounts, funds, Treasury obligations, letters of credit, or bonds in defending, settling, or discharging claims of the type described in this paragraph, provided that the amount of those accounts, funds, Treasury obligations, letters of credit, or bonds was at least the amount specified in the preceding sentence as of the first business day of that calendar year. Notwithstanding the pendency of other claims against the partnership, a registered limited liability partnership or foreign limited liability partnership shall be deemed to be in compliance with this subparagraph as to a claim if within 30 days after the time that a claim is initially asserted through service of a summons, complaint, or comparable pleading in a judicial or administrative proceeding, the partnership has provided the required amount of security by designating and segregating funds in compliance with the requirement of this subparagraph.

(C) Unless the partnership has satisfied the requirements of subparagraph (D), each partner of a registered limited liability partnership or foreign limited liability partnership providing legal services, by virtue of that person's status as a partner, thereby automatically guarantees payment of the difference between the maximum amount of security required for the partnership by this paragraph and the security otherwise provided in accordance with the provisions of subparagraphs (A) and (B), provided that the aggregate amount paid by all partners under these guarantees shall not exceed the difference. Neither withdrawal by a partner nor the dissolution and winding up of the partnership shall affect the rights or obligations of a partner arising prior to withdrawal or dissolution and winding up, and the guarantee provided for in this subparagraph shall apply only to conduct that occurred prior to the withdrawal or dissolution and winding up. Nothing contained in this subparagraph shall affect or impair the rights or obligations of the partners among themselves, or the partnership, including, but not limited to, rights of contribution, subrogation, or indemnification.

(D) Confirming, pursuant to the procedure in subdivision (c), that, as of the most recently completed fiscal year of the partnership, it had a net worth equal to or exceeding fifteen million dollars ($15,000,000).

(3) For claims based upon acts, errors, or omissions arising out of the practice of architecture, a registered limited liability partnership or foreign limited liability partnership providing architectural services shall comply with one, or pursuant to subdivision (b) some combination, of the following:

(A) Maintaining a policy or policies of insurance against liability imposed on or against it by law for damages arising out of claims in an amount for each claim of at least one hundred thousand dollars ($100,000) multiplied by the number of licensed persons rendering professional services on behalf of the partnership; however, the total aggregate limit of liability under the policy or policies of insurance for partnerships with five or fewer licensees rendering professional services on behalf of the partnership shall not be less than five hundred thousand dollars ($500,000), and for all other partnerships is not required to exceed five million dollars ($5,000,000) in any one designated period, less amounts paid in defending, settling, or discharging claims as set forth in this subparagraph. On and after January 1, 2008, the total aggregate limit of liability under the policy or policies of insurance for partnerships with five or fewer licensees rendering professional services on behalf of the partnership shall not be less than one million dollars ($1,000,000), and for partnerships with more than five licensees rendering professional services on behalf of the partnership, an additional one hundred thousand dollars ($100,000) of liability coverage shall be obtained for each additional licensee; however, the total aggregate limit of liability under the policy or policies of insurance is not required to exceed five million dollars ($5,000,000). The policy or policies may be issued on a claims-made or occurrence basis, and shall cover: (i) in the case of a claims-made policy, claims initially asserted in the designated period, and (ii) in the case of an occurrence policy, occurrences during the designated period. For purposes of this subparagraph, "designated period" means a policy year or any other period designated in the policy that is not greater than 12 months. The impairment or exhaustion of the aggregate limit of liability by amounts paid under the policy in connection with the settlement, discharge, or defense of claims applicable to a designated period shall not require the partnership to acquire additional insurance coverage for that designated period. The policy or policies of

insurance may be in a form reasonably available in the commercial insurance market and may be subject to those terms, conditions, exclusions, and endorsements that are typically contained in those policies. A policy or policies of insurance maintained pursuant to this subparagraph may be subject to a deductible or self-insured retention.

Upon the dissolution and winding up of the partnership, the partnership shall, with respect to any insurance policy or policies then maintained pursuant to this subparagraph, maintain or obtain an extended reporting period endorsement or equivalent provision in the maximum total aggregate limit of liability required to comply with this subparagraph for a minimum of three years if reasonably available from the insurer.

(B) Maintaining in trust or bank escrow, cash, bank certificates of deposit, United States Treasury obligations, bank letters of credit, or bonds of insurance or surety companies as security for payment of liabilities imposed by law for damages arising out of all claims in an amount of at least one hundred thousand dollars ($100,000) multiplied by the number of licensed persons rendering professional services on behalf of the partnership; however, the maximum amount of security for partnerships with five or fewer licensees rendering professional services on behalf of the partnership shall not be less than five hundred thousand dollars ($500,000), and for all other partnerships is not required to exceed five million dollars ($5,000,000). On and after January 1, 2008, the maximum amount of security for partnerships with five or fewer licensees rendering professional services on behalf of the partnership shall not be less than one million dollars ($1,000,000), and for partnerships with more than five licensees rendering professional services on behalf of the partnership, an additional one hundred thousand dollars ($100,000) of security shall be obtained for each additional licensee; however, the maximum amount of security is not required to exceed five million dollars ($5,000,000). The partnership remains in compliance with this section during a calendar year notwithstanding amounts paid during that calendar year from the accounts, funds, Treasury obligations, letters of credit, or bonds in defending, settling, or discharging claims of the type described in this paragraph, provided that the amount of those accounts, funds, Treasury obligations, letters of credit, or bonds was at least the amount specified in the preceding sentence as of the first business day of that calendar year. Notwithstanding the pendency of other claims against the partnership, a registered limited liability partnership or foreign limited liability partnership shall be deemed to be in compliance with this subparagraph as to a claim if within 30 days after the time that a claim is initially asserted through service of a summons, complaint, or comparable pleading in a judicial or administrative proceeding, the partnership has provided the required amount of security by designating and segregating funds in compliance with the requirements of this subparagraph.

(C) Unless the partnership has satisfied subparagraph (D), each partner of a registered limited liability partnership or foreign limited liability partnership providing architectural services, by virtue of that person's status as a partner, thereby automatically guarantees payment of the difference between the maximum amount of security required for the partnership by this paragraph and the security otherwise provided in accordance with subparagraphs (A) and (B), provided that the aggregate amount paid by all partners under these guarantees shall not exceed the difference. Neither withdrawal by a partner nor the dissolution and winding up of the partnership shall affect the rights or obligations of a partner arising prior to withdrawal or dissolution and winding up, and the guarantee provided for in this subparagraph shall apply only to conduct that occurred prior to the withdrawal or dissolution and winding up. Nothing contained in this subparagraph shall affect or impair the rights or obligations of the partners among themselves, or the partnership, including, but not limited to, rights of contribution, subrogation, or indemnification.

(D) Confirming, pursuant to the procedure in subdivision (c), that, as of the most recently completed fiscal year of the partnership, it had a net worth equal to or exceeding ten million dollars ($10,000,000).

(b) For purposes of satisfying the security requirements of this section, a registered limited liability partnership or foreign limited liability partnership may aggregate the security provided by it pursuant to subparagraphs (A), (B), (C), and (D) of paragraph (1) of subdivision (a), subparagraphs (A), (B), (C), and (D) of paragraph (2) of subdivision (a), or subparagraphs (A), (B), (C), and (D) of paragraph (3) of subdivision (a), as the case may be. Any registered limited liability partnership or foreign limited liability partnership intending to comply with the alternative security provisions set forth in subparagraph (D) of paragraph (1) of subdivision (a), subparagraph (D) of paragraph (2) of subdivision (a), or subparagraph (D) of paragraph (3) of subdivision (a) shall furnish the following information to the Secretary of State's office, in the manner prescribed in, and accompanied by all information required by, the applicable section:

TRANSMITTAL FORM FOR
EVIDENCING COMPLIANCE WITH
SECTION 16956(a)(1)(D),
SECTION 16956(a)(2)(D), OR
SECTION 16956(a)(3)(D) OF THE
CALIFORNIA CORPORATIONS CODE

The undersigned hereby confirms the following:

1. _____
   Name of registered or foreign limited liability partnership

2. _____
   Jurisdiction where partnership is organized

3. _____
   Address of principal office

4. The registered or foreign limited liability partnership chooses to satisfy the requirements of Section 16956 by confirming, pursuant to Section 16956(a)(1)(D), 16956(a)(2)(D), or 16956(a)(3)(D) and pursuant to Section 16956(c), that, as of the most recently completed fiscal year, the partnership had a net worth equal to or exceeding ten million dollars ($10,000,000), in the case of a partnership providing accountancy services, fifteen million dollars ($15,000,000) in the case of a partnership providing legal services, or ten million dollars ($10,000,000), in the case of a partnership providing architectural services.

5. _____
   Title of authorized person executing this form

6. _____
   Signature of authorized person executing this form

(c) Pursuant to subparagraph (D) of paragraph (1) of subdivision (a), subparagraph (D) of paragraph (2) of subdivision (a), or subparagraph (D) of paragraph (3) of subdivision (a), a registered limited liability partnership or foreign limited liability partnership may satisfy the requirements of this section by confirming that, as of the last day of its most recently completed fiscal year, it had a net worth equal to or exceeding the amount required. In order to comply with this alternative method of meeting the requirements established in this section, a registered limited liability partnership or foreign limited liability partnership shall file an annual confirmation with the Secretary of State's office, signed by an authorized member of the registered limited liability partnership or foreign limited liability partnership, accompanied by a transmittal form as prescribed by subdivision (b). In order to be current in a given year, the partnership form for confirming compliance with the optional security requirement shall be on file within four months of the completion of the fiscal year and, upon being filed, shall constitute full compliance with the financial security requirements for purposes of this section as of the beginning of the fiscal year. A confirmation filed during any particular fiscal year shall continue to be effective for the first four months of the next succeeding fiscal year.

(d) Neither the existence of the requirements of subdivision (a) nor the extent of the registered limited liability partnership's or foreign limited liability partnership's compliance with the alternative requirements in this section shall be admissible in court or in any way be made known to a jury or other trier of fact in determining an issue of liability for, or to the extent of, the damages in question.

(e) Notwithstanding any other provision of this section, if a registered limited liability partnership or foreign limited liability partnership is otherwise in compliance with the terms of this section at the time that a bankruptcy or other insolvency proceeding is commenced with respect to the registered limited liability partnership or foreign limited liability partnership, it shall be deemed to be in compliance with this section during the pendency of the proceeding. A registered limited liability partnership that has been the subject of a proceeding and that conducts business after the proceeding ends shall thereafter comply with paragraph (1), (2), or (3) of subdivision (a), in order to obtain the limitations on liability afforded by subdivision (c) of Section 16306. (Added by Stats.1996, ch. 1003. Amended by Stats. 1997, ch. 387; Stats. 1998, ch. 485 and ch. 504; Stats. 2006, ch. 426; Stats. 2007, ch. 80.)

§16958. Law governing foreign limited liability partnership

(a) (1) The laws of the jurisdiction under which a foreign limited liability partnership is organized shall govern its organization and internal affairs and the liability and authority of its partners, subject to compliance with Section 16956, and

(2) a foreign limited liability partnership may not be denied registration by reason of any difference between those laws and the laws of this state.

(b) The name of a foreign limited liability partnership transacting intrastate business in this state shall contain the words "Registered Limited Liability Partnership" or "Limited Liability Partnership" or one of the abbreviations "L.L.P.," "LLP," "R.L.L.P.," or "RLLP," or such other similar words or abbreviations as may be required or authorized by the laws of the jurisdiction of formation of the foreign limited liability partnership, as the last words or letters of its name. (Added by Stats.1996, ch. 1003.)

EDUCATION CODE

§69740. Definitions

Unless the context requires otherwise, the definitions in this section govern the construction of this article.

(a) "Commission" means the Student Aid Commission.

(b) "Eligible education and training programs" means education and training programs approved by the commission that lead to eligibility for a license to practice law as a licensed attorney.

(c) "Eligible expenses" means reasonable expenses associated with the costs of acquiring an education such as tuition, books, equipment, fees, room and board, and other expenses determined by the commission.

(d) "Eligible participant" means a licensed attorney who has been admitted to the program and is a resident of this state and who can provide proof of residency in this state.

(e) "Licensed attorney" means an attorney who resides in this state who has successfully passed the California bar examination and has been admitted to practice in this state or has otherwise been licensed to practice law in this state by the State Bar of California.

(f) "Loan repayment" means a loan that is paid in full or in part if the participant renders legal services in this state in a public interest area of the law.

(g) "Participant" means a licensed attorney who has been admitted to the program and has commenced practice as a licensed attorney in this state in a public interest area of the law.

(h) "Program" means the Public Interest Attorney Loan Repayment Program.

(i) "Public interest area of the law" means those areas of the law determined by the commission, in consultation with the advisory committee, to serve the public interest, including, but not necessarily limited to, providing direct legal service at a local (1) legal services organization, (2) prosecuting attorney's office, (3) child support agency office, or (4) criminal public defender's office. For the purposes of this article, a "legal services organization" is a legal services provider in California that serves a clientele over 70 percent of whom are low-income persons according to applicable federal income guidelines.

(j) "Required service obligation" means an obligation by the participant to provide legal services in this state in a public interest area of the law as established pursuant to this article. (Added by Stats. 2001, ch. 881.)

§69741. Establishment of Program

The Public Interest Attorney Loan Repayment Program is established for licensed attorneys who practice or agree to practice in public interest areas of the law in this state. The program shall be administered by the commission. (Added by Stats. 2001, ch. 881.)

§69741.5 Amount of Assistance

(a) Participants in this program are eligible for a maximum of eleven thousand dollars ($11,000) in loan assistance for four years, as follows:

(1)For the first year, two thousand dollars ($2,000) in loan repayment assistance.

(2) For the second, third, and fourth years, three thousand dollars ($3,000) in loan repayment assistance for each year.

(b) Notwithstanding any other provision of law, in any fiscal year, the commission shall award no more than the number of warrants that are authorized in the annual Budget Act for that fiscal year for the assumption of loans pursuant to this article. (Added by Stats. 2001, ch. 881. Amended by Stats. 2006, ch. 79, effective July 19, 2006.)

§69742. Eligibility Criteria

(a) The commission shall establish eligibility criteria for participation in the program based upon need and merit. These criteria shall be based on all of the following, which are set forth in order of importance:

(1) The applicant's need, which shall be based on the applicant's salary, personal resources, and law school debt.

(2) The applicant's commitment to public interest law, which shall be determined by examining the applicant's employment and volunteer history, and taking into consideration a low-income applicant's need to work while in law school.

(3) The applicant's declared interest in practicing in areas of the state where the need for public interest attorneys is high.

(4) The applicant's academic achievements.

(b) The commission shall adopt initial regulations for the program within one year of the effective date of the initial appropriation funding the program. (Added by Stats. 2001, ch. 881.)

§69743. Other Loan Repayment Programs

The program is intended to supplement, and not to replace, existing loan repayment programs operated by law schools. Prior to participating in the program, an applicant shall apply for any educational loan assistance from his or her educational institution for which he or she may qualify. Only if an applicant has received no loan repayment assistance, or only partial assistance, from other available sources, may he or she apply to the program for assistance in repaying the balance of his or her educational loans. (Added by Stats. 2001, ch. 881.)

§69743.5 Selection of Participants; Repayment

The commission shall select, from the qualified applicants, the individuals who are eligible to participate in the program. After each year-long period of full-time, or full-time equivalent, employment in a public interest area of the law, the loan repayment of the eligible participant shall be made to the lender. (Added by Stats. 2001, ch. 881.)

§69744. Use of Funds

The commission may use the funds appropriated for the program for the purposes of loan repayments and to defray reasonable administrative costs. The commission shall annually establish the total amount of funding to be awarded for loan repayments. Allocation of funds shall be established based upon the best use of funding for that year, as determined by the commission. (Added by Stats. 2001, ch. 881. Amended by Stats. 2006, ch. 79, effective July 19, 2006.)

§69745. Loans Which May be Repaid; Length of Repayment

(a) Loans from both government sources and financial institutions may be repaid by the program. Each participant shall agree to allow the commission access to loan records and to acquire information from lenders necessary to verify eligibility and to determine payments. Loans may not be renegotiated with lenders to accelerate repayment.

(b) Payments shall be made annually to the lender until the loan is repaid, fulfilled, or until the required service obligation is fulfilled and eligibility discontinues, whichever comes first.

(c) If the participant discontinues practicing in a public interest area of the law, payments against the loans of the participant shall cease to be effective on the date that the participant discontinues service. (Added by Stats. 2001, ch. 881.)

§69746. Commission Not Responsible after Participant's Eligibility Expires

The commission is not responsible for any outstanding payments on principal and interest to any lender once a participant's eligibility expires. (Added by Stats. 2001, ch. 881.)

§69746.5 Annual Report to Legislature

The commission shall submit an annual written report to the Legislature regarding this program. The report shall include, but not necessarily be limited to, all of the following data:

(a) The total number of loan repayment awards made under the program in the immediately preceding fiscal year, classified by the repayment year as described in subdivision (a) of Section 69741.5.

(b) The total amount of funds expended for the purposes of loan repayments, and the total amount of funds expended to defray administrative costs, in the immediately preceding fiscal year.

(c) The annual and cumulative attrition rates of participants, as calculated through the end of the immediately preceding fiscal year.

[***Publisher's Note:*** *The following paragraph relating to the foregoing provisions (§§ 69740 - 69746.5) concerning the public interest attorney loan repayment program was added by Stats. 2001, ch. 881, but not codified and is provided below for your information.*]

SECTION 1. It is the intent of the Legislature to provide access to legal education and to meet the needs of the State of California in areas of law related to the public interest. The Legislature finds that the high cost of attending law school requires that attorneys command high incomes to repay the financial obligations incurred in obtaining the required training and that, consequently, few attorneys are able to practice in areas of law relating to the public interest because the pay is substantially lower than the pay in other practice areas. The Legislature finds that encouraging outstanding law students and attorneys to practice in areas of the law related to the public interest is essential to ensuring access to legal services in those areas. Therefore, it is the intent of the Legislature in enacting this act to provide for the partial or full repayment of educational loans of attorneys who provide legal services in California in a public interest area of the law.

§94361. Unaccredited Law Schools

A law school not accredited by the examining committee of the State Bar may refer to itself as a university or part of a university, and if it so refers to itself, shall state whether or not the law school is associated with an undergraduate school. (Added by Stats. 1977, ch. 36, operative April 30, 1977.)

EVIDENCE CODE

§250. "Writing"

"Writing" means handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored. (Added by Stats. 1965, ch. 299. Amended by Stats. 2002, ch. 945.)

§703.5 Competency to Testify

No person presiding at any judicial or quasi-judicial proceeding, and no arbitrator or mediator, shall be competent to testify, in any subsequent civil proceeding, as to any statement, conduct, decision, or ruling, occurring at or in conjunction with the prior proceeding, except as to a statement or conduct that could (a) give rise to civil or criminal contempt, (b) constitute a crime, (c) be the subject of investigation by the State Bar or Commission on Judicial Performance, or (d) give rise to disqualification proceedings under paragraph (1) or (6) of subdivision (a) of Section 170.1 of the Code of Civil Procedure. However, this section does not apply to a mediator with regard to any mediation under Chapter 11 (commencing with Section 3160) of Part 2 of Division 8 of the Family Code. (Added by Stats. 1979, ch. 205. Amended by Stats. 1980, ch. 290; Stats. 1988, ch. 281; Stats. 1990, ch. 1491; Stats 1993, ch. 1261; Stats. 1994, ch. 1269.)

§911. Refusing to Be or Have Another as a Witness, or Disclosing or Producing any Matter

Except as otherwise provided by statute:

(a) No person has a privilege to refuse to be a witness.

(b) No person has a privilege to refuse to disclose any matter or to refuse to produce any writing, object, or other thing.

(c) No person has a privilege that another shall not be a witness or shall not disclose any matter or shall not produce any writing, object, or other thing. (Added by Stats. 1965, ch. 299.)

§912. Privilege, Waiver

(a) Except as otherwise provided in this section, the right of any person to claim a privilege provided by Section 954 (lawyer-client privilege), 980 (privilege for confidential marital communications), 994 (physician-patient privilege), 1014 (psychotherapist-patient privilege), 1033 (privilege of penitent), 1034 (privilege of clergyman), 1035.8 (sexual assault counselor-victim privilege), or 1037.5 (domestic violence counselor-victim privilege) is waived with respect to a communication protected by the privilege if any holder of the privilege, without coercion, has disclosed a significant part of the communication or has consented to disclosure made by anyone. Consent to disclosure is manifested by any statement or other conduct of the holder of the privilege indicating consent to the disclosure, including failure to claim the privilege in any proceeding in which the holder has the legal standing and opportunity to claim the privilege.

(b) Where two or more persons are joint holders of a privilege provided by Section 954 (lawyer-client privilege), 994 (physician-patient privilege), 1014 (psychotherapist-patient privilege), 1035.8 (sexual assault counselor-victim privilege), or 1037.5 (domestic violence counselor-victim privilege), a waiver of the right of a particular joint holder of the privilege to claim the privilege does not affect the right of another joint holder to claim the privilege. In the case of the privilege provided by Section 980 (privilege for confidential marital communications), a waiver of the right of one spouse to claim the privilege does not affect the right of the other spouse to claim the privilege.

(c) A disclosure that is itself privileged is not a waiver of any privilege.

(d) A disclosure in confidence of a communication that is protected by a privilege provided by Section 954 (lawyer-client privilege), 994 (physician-patient privilege), 1014 (psychotherapist-patient privilege), 1035.8 (sexual assault counselor-victim privilege), or 1037.5 (domestic violence counselor-victim privilege), when disclosure is reasonably necessary for the accomplishment of the purpose for which the lawyer, physician, psychotherapist, sexual assault counselor, or domestic violence counselor was consulted, is not a waiver of the privilege. (Added by Stats. 1965, ch. 299. Amended by Stats. 1980, ch. 917; Stats. 2002, ch. 72; Stats. 2004, ch. 405.)

§913. Comments on, and Inferences from the Exercise of the Privilege

(a) If in the instant proceeding or on a prior occasion a privilege is or was exercised not to testify with respect to any matter, or to refuse to disclose or to prevent another from disclosing any matter, neither the presiding officer nor counsel may comment thereon, no presumption shall arise because of the exercise of the privilege, and the trier of fact may not draw any inference therefrom as to the credibility of the witness or as to any matter at issue in the proceeding.

(b) The court, at the request of a party who may be adversely affected because an unfavorable inference may be drawn by the jury because a privilege has been exercised, shall instruct the jury that no presumption arises because of the exercise of the privilege and that the jury may not draw any inference therefrom as to the credibility of the witness or as to any matter at issue in the proceeding. (Added by Stats. 1965, ch. 299.)

§914. Claim of Privilege, Determination of; Limitations on Punishment for Contempt

(a) The presiding officer shall determine a claim of privilege in any proceeding in the same manner as a court determines such a claim under Article 2 (commencing with Section 400) of Chapter 4 of Division 3.

(b) No person may be held in contempt for failure to disclose information claimed to be privileged unless he has failed to comply with an order of a court that he disclose such information. This subdivision does not apply to any governmental agency that has constitutional contempt power, nor does it apply to hearings and investigations of the Industrial Accident Commission, nor does it impliedly repeal Chapter 4 (commencing with Section 9400) of Part 1 of Division 2 of Title 2 of the Government Code. If no other statutory procedure is applicable, the procedure prescribed by Section 1991 of the Code of Civil Procedure shall be followed in seeking an order of a court that the person disclose the information claimed to be privileged. (Added by Stats. 1965, ch. 299.)

§915. Disclosure of Privileged Information in Ruling on Claim of Privilege

(a) Subject to subdivision (b), the presiding officer may not require disclosure of information claimed to be privileged under this division or attorney work product under subdivision (a) of Section 2018.030 of the Code of Civil Procedure in order to rule on the claim of privilege; provided, however, that in any hearing conducted pursuant to subdivision (c) of Section 1524 of the Penal Code in which a claim of privilege is made and the court determines that there is no other feasible means to rule on the validity of the claim other than to require disclosure, the court shall proceed in accordance with subdivision (b).

(b) When a court is ruling on a claim of privilege under Article 9 (commencing with Section 1040) of Chapter 4 (official information and identity of informer) or under Section 1060 (trade secret) or under subdivision (b) of Section 2018.030 of the Code of Civil Procedure (attorney work product) and is unable to do so without requiring disclosure of the information claimed to be privileged, the court may require the person from whom disclosure is sought or the person authorized to claim the privilege, or both, to disclose the information in chambers out of the presence and hearing of all persons except the person authorized to claim the privilege and any other persons as the person authorized to claim the privilege is willing to have present. If the judge determines that the information is privileged, neither the judge nor any other person may ever disclose, without the consent of a person authorized to permit disclosure, what was disclosed in the course of the proceedings in chambers. (Added by Stats. 1965, ch. 299. Amended by Stats. 1979, ch. 1034; Stats. 2001, ch. 812; Stats. 2004, ch. 182.)

§916. Privileged Information—Exclusion Where Persons Authorized to Claim Privilege are Not Present

(a) The presiding officer, on his own motion or on the motion of any party, shall exclude information that is subject to a claim of privilege under this division if:

(1) The person from whom the information is sought is not a person authorized to claim the privilege; and

(2) There is no party to the proceeding who is a person authorized to claim the privilege.

(b) The presiding officer may not exclude information under this section if:

(1) He is otherwise instructed by a person authorized to permit disclosure; or

(2) The proponent of the evidence establishes that there is no person authorized to claim the privilege in existence. (Added by Stats. 1965, ch. 299.)

§917. Confidential Communications—Presumptions; Burden of Proof

(a) If a privilege is claimed on the ground that the matter sought to be disclosed is a communication made in confidence in the course of the lawyer-client, physician-patient, psychotherapist-patient, clergy-penitent, husband-wife, sexual assault counselor-victim, or domestic violence counselor-victim relationship, the communication is presumed to have been made in confidence and the opponent of the claim of privilege has the burden of proof to establish that the communication was not confidential.

(b) A communication between persons in a relationship listed in subdivision (a) does not lose its privileged character for the sole reason that it is communicated by electronic means or because persons involved in the delivery, facilitation, or storage of electronic communication may have access to the content of the communication.

(c) For purposes of this section, "electronic" has the same meaning provided in Section 1633.2 of the Civil Code. (Added by Stats. 1965, ch. 299. Amended by Stats. 2002, ch. 72; Stats. 2003, ch. 468; Stats. 2004, ch. 183; Stats. 2006, ch. 689.)

§918. Claim of Privilege—Error in Overruling

A party may predicate error on a ruling disallowing a claim of privilege only if he is the holder of the privilege, except that a party may predicate error on a ruling disallowing a claim of privilege by his spouse under Section 970 or 971. (Added by Stats. 1965, ch. 299.)

§919. Erroneously Compelled Disclosure—Admissibility; Claim of Privilege; Coercion

(a) Evidence of a statement or other disclosure of privileged information is inadmissible against a holder of the privilege if:

(1) A person authorized to claim the privilege claimed it but nevertheless disclosure erroneously was required to be made; or

(2) The presiding officer did not exclude the privileged information as required by Section 916.

(b) If a person authorized to claim the privilege claimed it, whether in the same or a prior proceeding, but nevertheless disclosure erroneously was required by the presiding officer to be made, neither the failure to refuse to disclose nor the failure to seek review of the order of the presiding officer requiring disclosure indicates consent to the disclosure or constitutes a waiver and, under these circumstances, the disclosure is one made under coercion. (Added by Stats. 1965, ch. 299. Amended by Stats. 1974, ch. 277.)

§920. Repeal by Implication of Other Statutes Related to Privilege

Nothing in this division shall be construed to repeal by implication any other statute relating to privileges. (Added by Stats. 1965, ch. 299.)

§950. Lawyer Defined

As used in this article, "lawyer" means a person authorized, or reasonably believed by the client to be authorized, to practice law in any state or nation. (Added by Stats. 1965, ch. 299, operative January 1, 1967.)

§951. Client Defined

As used in this article, "client" means a person who, directly or through an authorized representative, consults a lawyer for the purpose of retaining the lawyer or securing legal service or advice from him in his professional capacity, and includes an incompetent (a) who himself so consults the lawyer or (b) whose guardian or conservator so consults the lawyer in behalf of the incompetent. (Added by Stats. 1965, ch. 299, operative January 1, 1967.)

§952. Confidential Communication Between Client and Lawyer Defined

As used in this article, "confidential communication between client and lawyer" means information transmitted between a client and his or her lawyer in the course of that relationship and in confidence by a means which, so far as the client is aware, discloses the information to no third persons other than those who are present to further the interest of the client in the consultation or those to whom disclosure is reasonably necessary for the transmission of the information or the accomplishment of the purpose for which the lawyer is consulted, and includes a legal opinion formed and the advice given by the lawyer in the course of that relationship. (Added by Stats. 1965, ch. 299, operative January 1, 1967. Amended by Stats. 1967, ch. 650; Stats. 1994, ch. 587; Stats. 2002, ch. 72.)

§953. Holder of Privilege Defined

As used in this article, "holder of the privilege" means:

(a) The client when he has no guardian or conservator.

(b) A guardian or conservator of the client when the client has a guardian or conservator.

(c) The personal representative of the client if the client is dead.

(d) A successor, assign, trustee in dissolution, or any similar representative of a firm, association, organization, partnership, business trust, corporation, or public entity that is no longer in existence. (Added by Stats. 1965, ch. 299, operative January 1, 1967.)

§954. Who May Claim Privilege

Subject to Section 912 and except as otherwise provided in this article, the client, whether or not a party, has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between client and lawyer if the privilege is claimed by:

(a) The holder of the privilege;

(b) A person who is authorized to claim the privilege by the holder of the privilege; or

(c) The person who was the lawyer at the time of the confidential communication, but such person may not claim the privilege if there is no holder of the privilege in existence or if he is otherwise instructed by a person authorized to permit disclosure.

The relationship of attorney and client shall exist between a law corporation as defined in Article 10 (commencing with Section 6160) of Chapter 4 of Division 3 of the Business and Professions Code and the persons to whom it renders professional services, as well as between such persons and members of the State Bar employed by such corporation to render services to such persons. The word "persons" as used in this subdivision includes partnerships, corporations, limited liability companies, associations and other groups and entities. (Added by Stats. 1965, ch. 299, operative January 1, 1967. Amended by Stats. 1968, ch. 1375; Stats. 1994, ch. 1010.)

§955. When Lawyer Must Claim Privilege

The lawyer who received or made a communication subject to the privilege under this article shall claim the privilege whenever he is present when the communication is sought to be disclosed and is authorized to claim the privilege under subdivision (c) of Section 954. (Added by Stats. 1965, ch. 299, operative January 1, 1967.)

§956. Services of Lawyer Obtained to Aid in Commission of Crime or Fraud

There is no privilege under this article if the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit a crime or a fraud. (Added by Stats. 1965, ch. 299, operative January 1, 1967.)

§956.5. Prevention of Criminal Act Likely to Result in Death or Substantial Bodily Harm

There is no privilege under this article if the lawyer reasonably believes that disclosure of any confidential communication relating to representation of a client is necessary to prevent a criminal act that the lawyer reasonably believes is likely to result in the death of, or substantial bodily harm to, an individual. (Added by Stats. 1993, ch. 982. Amended by Stats. 2003, ch. 765; Stats. 2004, ch. 183.)

§957. Parties Claiming Under Deceased Client

There is no privilege under this article as to a communication relevant to an issue between parties all of whom claim through a deceased client, regardless of whether the claims are by testate or intestate succession or by inter vivos transaction. (Added by Stats. 1965, ch. 299, operative January 1, 1967.)

§958. Breach of Duty Arising Out of Lawyer-Client Relationship in Issue

There is no privilege under this article as to a communication relevant to an issue of breach, by the lawyer or by the client, of a duty arising out of the lawyer-client relationship. (Added by Stats. 1965, ch. 299, operative January 1, 1967.)

§959. Intention or Competence of Client Executing Attested Document in Issue

There is no privilege under this article as to a communication relevant to an issue concerning the intention or competence of a client executing an attested document of which the lawyer is an attesting witness, or concerning the execution or attestation of such a document. (Added by Stats. 1965, ch. 299, operative January 1, 1967.)

§960. Intention of Deceased Client With Respect to Writing Affecting Interest in Property in Issue

There is no privilege under this article as to a communication relevant to an issue concerning the intention of a client, now deceased, with respect to a deed of conveyance, will, or other writing, executed by the client, purporting to affect an interest in property. (Added by Stats. 1965, ch. 299, operative January 1, 1967.)

§961. Validity of Writing Affecting Interest in Property Executed by Deceased Client in Issue

There is no privilege under this article as to a communication relevant to an issue concerning the validity of a deed of conveyance, will, or other writing, executed by a client, now deceased, purporting to affect an interest in property. (Added by Stats. 1965, ch. 299, operative January 1, 1967.)

§962. Two or More Clients Retaining Same Lawyer in Matter of Common Interest

Where two or more clients have retained or consulted a lawyer upon a matter of common interest, none of them, nor the successor in interest of any of them, may claim a privilege under this article as to a communication made in the course of that relationship when such communication is offered in a civil proceeding between one of such clients (or his successor in interest) and another of such clients (or his successor in interest). (Added by Stats. 1965, ch. 299, operative January 1, 1967.)

§1119. Written or Oral Communications During Mediation Process; Admissibility

Except as otherwise provided in this chapter:

(a) No evidence of anything said or any admission made for the purpose of, in the course of, or pursuant to, a mediation or a mediation consultation is admissible or subject to discovery, and disclosure of the evidence shall not be compelled, in any arbitration, administrative adjudication, civil action, or other noncriminal proceeding in which, pursuant to law, testimony can be compelled to be given.

(b) No writing, as defined in Section 250, that is prepared for the purpose of, in the course of, or pursuant to, a mediation or a mediation consultation, is admissible or subject to discovery, and disclosure of the writing shall not be compelled, in any arbitration, administrative adjudication, civil action, or other noncriminal proceeding in which, pursuant to law, testimony can be compelled to be given.

(c) All communications, negotiations, or settlement discussions by and between participants in the course of a mediation or a mediation consultation shall remain confidential. (Added by Stats. 1997, ch. 772.)

§1270. "A Business"

As used in this article, "a business" includes every kind of business, governmental activity, profession, occupation, calling, or operation of institutions, whether carried on for profit or not. (Added by Stats. 1965, ch. 299.)

§1271. Business Record

Evidence of a writing made as a record of an act, condition, or event is not made inadmissible by the hearsay rule when offered to prove the act, condition, or event if:

(a) The writing was made in the regular course of a business;

(b) The writing was made at or near the time of the act, condition, or event;

(c) The custodian or other qualified witness testifies to its identity and the mode of its preparation; and

(d) The sources of information and method and time of preparation were such as to indicate its trustworthiness. (Added by Stats. 1965, ch. 299.)

§1272. Absence of Entry in Business Records

Evidence of the absence from the records of a business of a record of an asserted act, condition, or event is not made inadmissible by the hearsay rule when offered to prove the nonoccurrence of the act or event, or the non-existence of the condition, if:

(a) It was the regular course of that business to make records of all such acts, conditions, or events at or near the time of the act, condition, or event and to preserve them; and

(b) The sources of information and method and time of preparation of the records of that business were such that the absence of a record of an act, condition, or event is a trustworthy indication that the act or event did not occur or the condition did not exist. (Added by Stats. 1965, ch. 299.)

§1500.5 Printed Representation of Computer Information or Computer Program Used by or Stored on Computer or Computer Readable Storage Media; Admissibility of Evidence; Presumption; Burden of Proof

(a) Notwithstanding the provisions of Section 1500, a printed representation of computer information or a computer program which is being used by or stored on a computer or computer readable storage media shall be admissible to prove the existence and content of the computer information or computer program.

(b) Computer recorded information or computer programs, or copies of computer recorded information or computer programs, shall not be rendered inadmissible by the best evidence rule.

(c) Printed representations of computer information and computer programs will be presumed to be accurate representations of the computer information or computer programs that they purport to represent. This presumption, however, will be a presumption affecting the burden of producing evidence only. If any party to a judicial proceeding introduces evidence that such a printed representation is inaccurate or unreliable, the party introducing it into evidence will have the burden of proving, by a preponderance of evidence, that the printed representation is the best available evidence of the existence and content of the computer information or computer programs that it purports to represent.

(d) Subdivision (c) shall not apply to computer-generated official records certified in accordance with Section 452.5 or 1530. (Added by Stats. 1983, ch. 933. Amended by Stats. 1996, ch. 642. Repealed effective January 1, 1998.)

§1552. Evidence–Printed Representation of Computer Information or Computer Program; Burden of Proof

(a) A printed representation of computer information or a computer program is presumed to be an accurate representation of the computer information or computer program that it purports to represent. This presumption is a presumption affecting the burden of producing evidence. If a party to an action introduces evidence that a printed representation of computer information or computer program is inaccurate or unreliable, the party introducing the printed representation into evidence has the burden of proving, by a preponderance of evidence, that the printed representation is an accurate representation of the existence and content of the computer information or computer program that it purports to represent.

(b) Subdivision (a) shall not apply to computer-generated official records certified in accordance with Section 452.5 or 1530. (Added by Stats. 1998, ch. 100.)

§1553. Evidence—Printed Representation of Images Stored on Video or Digital Medium; Burden of Proof

A printed representation of images stored on a video or digital medium is presumed to be an accurate representation of the images it purports to represent. This presumption is a presumption affecting the burden of producing evidence. If a party to an action introduces evidence that a printed representation of images stored on a video or digital medium is inaccurate or unreliable, the party introducing the printed representation into evidence has the burden of proving, by a preponderance of evidence, that the printed representation is an accurate representation of the existence and content of the images that it purports to represent. (Added by Stats. 1998, ch. 100.)

§1563. Witness Fees

(a) This article shall not be interpreted to require tender or payment of more than one witness fee and one mileage fee or other charge to a witness or witness' business, unless there is an agreement to the contrary between the witness and the requesting party.

(b) All reasonable costs incurred in a civil proceeding by any witness which is not a party with respect to the production of all or any part of business records the production of which is requested pursuant to a subpoena duces tecum maybe charged against the party serving the subpoena duces tecum.

(1) "Reasonable cost," as used in this section, shall include, but not be limited to, the following specific costs: ten cents ($0.10) per page for standard reproduction of documents of a size 81/2 by 14 inches or less; twenty cents ($0.20) per page for copying of documents from microfilm; actual costs for reproduction of oversize documents or the reproduction of documents requiring special processing which are made in response to a subpoena; reasonable clerical costs incurred in locating and making the records available to be billed at the maximum rate of twenty-four dollars ($24) per hour per person, computed on the basis of six dollars ($6) per quarter hour or fraction thereof; actual postage charges; and actual costs, if any, charged to the witness by a third person for the retrieval and return of records held offsite by that third person.

(2) The requesting party, or the requesting party's deposition officer, shall not be required to pay those costs or any estimate thereof prior to the time the records are available for delivery pursuant to the subpoena, but the witness may demand payment of costs pursuant to this section simultaneous with actual delivery of the subpoenaed records, and until payment is made, is under no obligation to deliver the records.

(3) The witness shall submit an itemized statement for the costs to the requesting party, or the requesting party's deposition officer, setting forth the reproduction and clerical costs incurred by the witness. Should the costs exceed those authorized in paragraph (1), or the witness refuses to produce an itemized statement of costs as required by paragraph (3), upon demand by the requesting party, or the requesting party's deposition officer, the witness shall furnish a statement setting forth the actions taken by the witness in justification of the costs.

(4) The requesting party may petition the court in which the action is pending to recover from the witness all or a part of the costs paid to the witness, or to reduce all or a part of the costs charged by the witness, pursuant to this subdivision, on the grounds that those costs were excessive. Upon the filing of the petition the court shall issue an order to show cause and from the time the order is served on the witness the court has jurisdiction over the witness. The court may hear testimony on the order to show cause and if it finds that the costs demanded and collected, or charged but not collected, exceed the amount authorized by this subdivision, it shall order the witness to remit to the requesting party, or reduce its charge to the requesting party by an amount equal to, the amount of the excess. In the event that the court finds the costs excessive and charged in bad faith by the witness, the court shall order the witness to remit the full amount of the costs demanded and collected, or excuse the requesting party from any payment of costs charged but not collected, and the court shall also order the witness to pay the requesting party the amount of the reasonable expenses incurred in obtaining the order including attorney's fees. If the court finds the costs were not excessive, the court shall order the requesting party to pay the witness the amount of the reasonable expenses incurred in defending the petition, including attorney's fees.

(5) If a subpoena is served to compel the production of business records and is subsequently withdrawn, or is quashed, modified or limited on a motion made other than by the witness, the witness shall be entitled to reimbursement pursuant to paragraph (1) for all costs incurred in compliance with the subpoena to the time that the requesting party has notified the witness that the subpoena has been withdrawn or quashed, modified or limited. In the event the subpoena is withdrawn or quashed, if those costs are not paid within 30 days after demand therefor, the witness may file a motion in the court in which the action is pending for an order requiring payment, and the court shall award the payment of expenses and attorney's fees in the manner set forth in paragraph (4).

(6) Where the records are delivered to the attorney or the attorney's representative or the deposition officer for inspection or photocopying at the witness' place of business, the only fee for complying with the subpoena shall not exceed fifteen dollars ($15), plus actual costs, if any, charged to the witness by a third person for retrieval and return of records held offsite by that third person. If the records are retrieved from microfilm, the reasonable cost, as defined in paragraph (1), shall also apply.

(c) When the personal attendance of the custodian of a record or other qualified witness is required pursuant to Section 1564, in a civil proceeding, he or she shall be entitled to the same witness fees and mileage permitted in a case where the subpoena requires the witness to attend and testify before a court in which the action or proceeding is pending and to any additional costs incurred as provided by subdivision (b). (Added by Stats. 1965, ch. 299, operative January 1, 1967. Amended by Stats. 1972, ch. 396; Stats. 1981, ch. 1014; Stats. 1982, ch. 452; Stats. 1986, ch. 603; Stats. 1987, ch. 19, effective May 12, 1987; Stats. 1997, ch. 442; Stats. 1999, ch. 444.)

FAMILY CODE

§1612. Premarital Agreements, Subject Matter

(a) Parties to a premarital agreement may contract with respect to all of the following:

(1) The rights and obligations of each of the parties in any of the property of either or both of them whenever and wherever acquired or located.

(2) The right to buy, sell, use, transfer, exchange, abandon, lease, consume, expend, assign, create a security interest in, mortgage, encumber, dispose of, or otherwise manage and control property.

(3) The disposition of property upon separation, marital dissolution, death, or the occurrence or nonoccurrence of any other event.

(4) The making of a will, trust, or other arrangement to carry out the provisions of the agreement.

(5) The ownership rights in and disposition of the death benefit from a life insurance policy.

(6) The choice of law governing the construction of the agreement.

(7) Any other matter, including their personal rights and obligations, not in violation of public policy or a statute imposing a criminal penalty.

(b) The right of a child to support may not be adversely affected by a premarital agreement.

(c) Any provision in a premarital agreement regarding spousal support, including, but not limited to, a waiver of it, is not enforceable if the party against whom enforcement of the spousal support provision is sought was not represented by independent counsel at the time the agreement containing the provision was signed, or if the provision regarding spousal support is unconscionable at the time of enforcement. An otherwise unenforceable provision in a premarital agreement regarding spousal support may not become enforceable solely because the party against whom enforcement is sought was represented by independent counsel. (Added by Stats. 1992, ch. 162, operative January 1, 1994. Amended by Stats. 2001, ch. 286.)

§1615. Premarital Agreements, Enforceability

(a) A premarital agreement is not enforceable if the party against whom enforcement is sought proves either of the following:

(1) That party did not execute the agreement voluntarily.

(2) The agreement was unconscionable when it was executed and, before execution of the agreement, all of the following applied to that party:

(A) That party was not provided a fair, reasonable, and full disclosure of the property or financial obligations of the other party.

(B) That party did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided.

(C) That party did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party.

(b) An issue of unconscionability of a premarital agreement shall be decided by the court as a matter of law.

(c) For the purposes of subdivision (a), it shall be deemed that a premarital agreement was not executed voluntarily unless the court finds in writing or on the record all of the following:

(1) The party against whom enforcement is sought was represented by independent legal counsel at the time of signing the agreement or, after being advised to seek independent legal counsel, expressly waived, in a separate writing, representation by independent legal counsel.

(2) The party against whom enforcement is sought had not less than seven calendar days between the time that party was first presented with the agreement and advised to seek independent legal counsel and the time the agreement was signed.

(3) The party against whom enforcement is sought, if unrepresented by legal counsel, was fully informed of the terms and basic effect of the agreement as well as the rights and obligations he or she was giving up by signing the agreement, and was proficient in the language in which the explanation of the party's rights was conducted and in which the agreement was written. The explanation of the rights and obligations relinquished shall be memorialized in writing and delivered to the party prior to signing the agreement. The unrepresented party shall, on or before the signing of the premarital agreement, execute a document declaring that he or she received the information required by this paragraph and indicating who provided that information.

(4) The agreement and the writings executed pursuant to paragraphs (1) and (3) were not executed under duress, fraud, or undue influence, and the parties did not lack capacity to enter into the agreement.

(5) Any other factors the court deems relevant. (Added by Stats.1992, ch. 162, operative January 1, 1994. Amended by Stats. 2001, ch. 286.)

§2033. Family Law Attorney's Real Property Lien; Notice; Objections

(a) Either party may encumber his or her interest in community real property to pay reasonable attorney's fees in order to retain or maintain legal counsel in a proceeding for dissolution of marriage, for nullity of marriage, or for legal separation of the parties. This encumbrance shall be known as a "family law attorney's real property lien" and attaches only to the encumbering party's interest in the community real property.

(b) Notice of a family law attorney's real property lien shall be served either personally or on the other party's attorney of record at least 15 days before the encumbrance is recorded. This notice shall contain a declaration signed under penalty of perjury containing all of the following:

(1) A full description of the real property.

(2) The party's belief as to the fair market value of the property and documentation supporting that belief.

(3) Encumbrances on the property as of the date of the declaration.

(4) A list of community assets and liabilities and their estimated values as of the date of the declaration.

(5) The amount of the family law attorney's real property lien.

(c) The nonencumbering party may file an ex parte objection to the family law attorney's real property lien. The objection shall include a request to stay the recordation until further notice of the court and shall contain a copy of the notice received. The objection shall also include a declaration signed under penalty of perjury as to all of the following:

(1) Specific objections to the family law attorney's real property lien and to the specific items in the notice.

(2) The objector's belief as to the appropriate items or value and any documentation supporting that belief.

(3) A declaration specifically stating why recordation of the encumbrance at this time would likely result in an unequal division of property or would otherwise be unjust under the circumstances of the case.

(d) Except as otherwise provided by this section, general procedural rules regarding ex parte motions apply.

(e) An attorney for whom a family law attorney's real property lien is obtained shall comply with Rule 3-300 of the Rules of Professional Conduct of the State Bar of California. (Added by Stats. 1993, ch. 219.)

§8800. Unethical for Attorney to Represent Both Prospective Adopting Parents and Natural Parents—Conflict of Interest

(a) The Legislature finds and declares that an attorney's ability to effectively represent his or her client may be seriously impaired when conflict of interest deprives the client of the attorney's undivided loyalty and effort. The Legislature further finds and declares that the relation between attorney and client is a fiduciary relation of the very highest character, and binds the attorney to the most conscientious fidelity.

(b) The Legislature finds that Rule 2-111(A)(2)* of the State Bar Rules of Professional Conduct provides that an attorney shall not withdraw from employment until the attorney has taken reasonable steps to avoid foreseeable prejudice to the rights of the client, including giving due notice to the client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled, and complying with applicable laws and rules.

(c) The Legislature declares that in an independent adoption proceeding, whether or not written consent is obtained, multiple representation by an attorney should be avoided whenever a birth parent displays the slightest reason for the attorney to believe any controversy might arise. The Legislature finds and declares that it is the duty of the attorney when a conflict of interest occurs to withdraw promptly from any case, advise the parties to retain independent counsel, refrain from taking positions in opposition to any of these former clients, and thereafter maintain an impartial, fair, and open attitude toward the new attorneys.

(d) Notwithstanding any other law, it is unethical for an attorney to undertake the representation of both the prospective adoptive parents and the birth parents of a child in any negotiations or proceedings in connection with an adoption unless a written consent is obtained from both parties. The written consent shall include all of the following:

(1) A notice to the birth parents, in the form specified in this section, of their right to have an independent attorney advise and represent them in the adoption proceeding and that the prospective adoptive parents may be required to pay the reasonable attorney's fees up to a maximum of five hundred dollars ($500) for that representation, unless a higher fee is agreed to by the parties.

(2) A notice to the birth parents that they may waive their right to an independent attorney and may be represented by the attorney representing the prospective adoptive parents.

(3) A waiver by the birth parents of representation by an independent attorney.

(4) An agreement that the attorney representing the prospective adoptive parents shall represent the birth parents.

(e) Upon the petition or motion of any party, or upon motion of the court, the court may appoint an attorney to represent a child's birth parent or parents in negotiations or proceedings in connection with the child's adoption.

(f) The birth parent or parents may have an attorney, other than the attorney representing the interests of the prospective adoptive parents, to advise them fully of the adoption procedures and of their legal rights. The birth parent or parents also may retain an attorney to represent them in negotiations or proceedings in connection with the child's adoption. The court may award attorney's fees and costs for just cause and based upon the ability of the parties to pay those fees and costs.

(g) In the initial communication between the attorney retained by or representing the prospective adoptive parents and the birth parents, or as soon thereafter as reasonable, but before any written consent for dual representation, the attorney shall advise the birth parents of their rights regarding an independent attorney and that it is possible to waive the independent attorney.

(h) The attorney retained by or representing the prospective adoptive parents shall inform the prospective adoptive parents in writing that the birth parent or parents can revoke consent to the adoption pursuant to Section 8814.5 and that any moneys expended in negotiations or proceedings in connection with the child's adoption are non reimbursable. The prospective adoptive parents shall sign a statement to indicate their understanding of this information.

(i) Any written consent to dual representation shall be filed with the court before the filing of the birth parent's consent to adoption. (Added by Stats. 1992, ch. 162. Amended by Stats. 1993, ch. 450, operative January 1, 1995.)

*[***Publisher's Note:** Rule 2-111(A)(2) of the California Rules of Professional Conduct has been amended and renumbered; please refer to current rule 3-700.]*

§8812. Requirements for Payment of Attorneys' Fees, etc., by Prospective Adopting Parents to the Birth Parents

Any request by a birth parent or birth parents for payment by the prospective adoptive parents of attorney's fees, medical fees and expenses, counseling fees, or living expenses of the birth mother shall be in writing. The birth parent or parents shall, by first-class mail or other agreed upon means to ensure receipt, provide the prospective adoptive parents written receipts for any money provided to the birth parent or birth parents. The prospective adoptive parents shall provide the receipts to the court when the accounting report required pursuant to Section 8610 is filed. (Added by Stats. 1993, ch. 450.)

§10000. Family Law Facilitator Act

This division shall be known and may be cited as the Family Law Facilitator Act. (Added by Stats. 1996, ch. 957.)

§10001. Family Law Facilitator Act—Legislative Findings and Declaration

(a) The Legislature finds and declares the following:

(1) Child and spousal support are serious legal obligations. The entry of a child support order is frequently delayed while parents engage in protracted litigation concerning custody and visitation. The current system for obtaining child and spousal support orders is suffering because the family courts are unduly burdened with heavy case loads and do not have sufficient personnel to meet increased demands on the courts.

(2) Reports to the Legislature regarding the family law pilot projects in the Superior Courts of the Counties of Santa Clara and San Mateo indicate that the pilot projects have provided a cost-effective and efficient method for the courts to process family law cases that involve unrepresented litigants with issues concerning child support, spousal support, and health insurance.

(3) The reports to the Legislature further indicate that the pilot projects in both counties have been successful in making the process of obtaining court orders concerning child support, spousal support, and health insurance more accessible to unrepresented parties. Surveys conducted by both counties indicate a high degree of satisfaction with the services provided by the pilot projects.

(4) There is a compelling state interest in having a speedy, conflict-reducing system for resolving issues of child support, spousal support, and health insurance that is cost-effective and accessible to families that cannot afford legal representation.

(b) Therefore, it is the intent of the Legislature to make the services provided in the family law pilot projects in the Counties of Santa Clara and San Mateo available to unrepresented parties in the superior courts of all California counties. (Added by Stats. 1996, ch. 957.)

§10002. Family Law Facilitator Office—Superior Court Appointment of Licensed Attorneys as Facilitators

Each superior court shall maintain an office of the family law facilitator. The office of the family law facilitator shall be staffed by an attorney licensed to practice law in this state who has mediation or litigation experience, or both, in the field of family law. The family law facilitator shall be appointed by the superior court. (Added by Stats. 1996, ch. 957.)

§10003. Family Law Facilitator Act —Application of Division

This division shall apply to all actions or proceedings for temporary or permanent child support, spousal support, health insurance, child custody, or visitation in a proceeding for dissolution of marriage, nullity of marriage, legal separation, or exclusive child custody, or pursuant to the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12) or the Domestic Violence Prevention Act (Division 10 (commencing with Section 6200)). (Added by Stats. 1996, ch. 957. Amended by Stats. 1999, ch. 652.)

§10004. Family Law Facilitator Act—Services Provided

Services provided by the family law facilitator shall include, but are not limited to, the following: providing educational materials to parents concerning the process of establishing parentage and establishing, modifying, and enforcing child support and spousal support in the courts; distributing necessary court forms and voluntary declarations of paternity; providing assistance in completing forms; preparing support schedules based upon statutory guidelines; and providing referrals to the local child support agency, family court services, and other community agencies and resources that provide services for parents and children. In counties where a family law information center exists, the family law facilitator shall provide assistance on child support issues. (Added by Stats. 1996, ch. 957. Amended by Stats. 1999, ch. 652.)

§10005. Family Law Facilitator Act—Additional Duties

(a) By local rule, the superior court may designate additional duties of the family law facilitator, which may include, but are not limited to, the following:

(1) Meeting with litigants to mediate issues of child support, spousal support, and maintenance of health insurance, subject to Section 10012. Actions in which one or both of the parties are unrepresented by counsel shall have priority.

(2) Drafting stipulations to include all issues agreed to by the parties, which may include issues other than those specified in Section 10003.

(3) If the parties are unable to resolve issues with the assistance of the family law facilitator, prior to or at the hearing, and at the request of the court, the family law facilitator shall review the paperwork, examine documents, prepare support schedules, and advise the judge whether or not the matter is ready to proceed.

(4) Assisting the clerk in maintaining records.

(5) Preparing formal orders consistent with the court's announced order in cases where both parties are unrepresented.

(6) Serving as a special master in proceedings and making findings to the court unless he or she has served as a mediator in that case.

(7) Providing the services specified in Division 15 (commencing with Section 10100). Except for the funding specifically designated for visitation programs pursuant to Section 669B of Title 42 of the United States Code, Title IV-D child support funds shall not be used to fund the services specified in Division 15 (commencing with Section 10100).

(8) Providing the services specified in Section 10004 concerning the issues of child custody and visitation as they relate to calculating child support, if funding is provided for that purpose.

(b) If staff and other resources are available and the duties listed in subdivision (a) have been accomplished, the duties of the family law facilitator may also include the following:

(1) Assisting the court with research and any other responsibilities which will enable the court to be responsive to the litigants' needs.

(2) Developing programs for bar and community outreach through day and evening programs, videotapes, and other innovative means that will assist unrepresented and financially disadvantaged litigants in gaining meaningful access to family court. These programs shall specifically include information concerning underutilized legislation, such as expedited child support orders (Chapter 5 (commencing with

Section 3620) of Part 1 of Division 9), and preexisting, court-sponsored programs, such as supervised visitation and appointment of attorneys for children. (Added by Stats. 1996, ch. 957. Amended by Stats. 1997, ch. 599; Stats. 1999, ch. 652.)

§10006. Family Law Facilitator Act—Hearing

The court shall adopt a protocol wherein all litigants, both unrepresented by counsel and represented by counsel, have ultimate access to a hearing before the court. (Added by Stats. 1996, ch. 957.)

§10007. Family Law Facilitator Act—Cost

The court shall provide the family law facilitator at no cost to the parties. (Added by Stats. 1996, ch. 957.)

§10008. Family Law Facilitator Act—Child Support; Services Provided

(a) Except as provided in subdivision (b), nothing in this chapter shall be construed to apply to a child for whom services are provided or required to be provided by a local child support agency pursuant to Section 17400.

(b) In cases in which the services of the local child support agency are provided pursuant to Section 17400, either parent may utilize the services of the family law facilitator that are specified in Section 10004. In order for a custodial parent who is receiving the services of the local child support agency pursuant to Section 17400 to utilize the services specified in Section 10005 relating to support, the custodial parent must obtain written authorization from the local child support agency. It is not the intent of the Legislature in enacting this section to limit the duties of local child support agencies with respect to seeking child support payments or to in any way limit or supersede other provisions of this code respecting temporary child support. (Added by Stats. 1996, ch. 957. Amended by Stats. 2000, ch. 808, effective September 28, 2000.)

§10010. Family Law Facilitator Act—Minimum Standards

The Judicial Council shall adopt minimum standards for the office of the family law facilitator and any forms or rules of court that are necessary to implement this division. (Added by Stats. 1996, ch. 957.)

§10011. Family Law Facilitator Act—Funding

The Director of the State Department of Social Services shall seek approval from the United States Department of Health and Human Services, Office of Child Support Enforcement, to utilize funding under Title IV-D of the Social Security Act for the services provided pursuant to this division. (Added by Stats. 1996, ch. 957.)

§10012. Family Law Facilitator Act—Separate Meetings with Parties When History of Domestic Violence is Alleged

(a) In a proceeding in which mediation is required pursuant to paragraph (1) of subdivision (a) of Section 10005, where there has been a history of domestic violence between the parties or where a protective order as defined in Section 6218 is in effect, at the request of the party alleging domestic violence in a written declaration under penalty of perjury or protected by the order, the family law facilitator shall meet with the parties separately and at separate times.

(b) Any intake form that the office of the family law facilitator requires the parties to complete before the commencement of mediation shall state that, if a party alleging domestic violence in a written declaration under penalty of perjury or a party protected by a protective order so requests, the mediator will meet with the parties separately and at separate times. (Added by Stats. 1996, ch. 957.)

§10013. Family Law Facilitator Act—Notice Regarding Attorney-Client Relationship

The family law facilitator shall not represent any party. No attorney-client relationship is created between a party and the family law facilitator as a result of any information or services provided to the party by the family law facilitator. The family law facilitator shall give conspicuous notice that no attorney-client relationship exists between the facilitator, its staff, and the family law litigant. The notice shall include the advice that the absence of an attorney-client relationship means that communications between the party and the family law facilitator are not privileged and that the family law facilitator may provide services to the other party. (Added by Stats. 1999, ch. 652.)

§10014. Family Law Facilitator Act—Public Comments Prohibited

A person employed by, or directly supervised by, the family law facilitator shall not make any public comment

about a pending or impending proceeding in the court as provided by paragraph (9) of subdivision (B) of Canon 3 of the Code of Judicial Ethics. All persons employed by or directly supervised by the family law facilitator shall be provided a copy of paragraph (9) of subdivision (B) of Canon 3 of the Code of Judicial Ethics, and shall be required to sign an acknowledgment that he or she is aware of its provisions. (Added by Stats. 1999, ch. 652.)

§10015. Family Law Facilitator Act—Judicial Counsel Forms

The Judicial Council shall create any necessary forms to advise the parties of the types of services provided, that there is no attorney-client relationship, that the family law facilitator is not responsible for the outcome of any case, that the family law facilitator does not represent any party and will not appear in court on the party's behalf, and that the other party may also be receiving information and services from the family law facilitator. (Added by Stats. 1999, ch. 652.)

§17520. License Applicants; Compliance with Support Orders; License Issuance, Renewal, and Suspension; Review

(a) As used in this section:

(1) "Applicant" means any person applying for issuance or renewal of a license.

(2) "Board" means any entity specified in Section 101 of the Business and Professions Code, the entities referred to in Sections 1000 and 3600 of the Business and Professions Code, the State Bar, the Department of Real Estate, the Department of Motor Vehicles, the Secretary of State, the Department of Fish and Game, and any other state commission, department, committee, examiner, or agency that issues a license, certificate, credential, permit, registration, or any other authorization to engage in a business, occupation, or profession, or to the extent required by federal law or regulations, for recreational purposes. This term includes all boards, commissions, departments, committees, examiners, entities, and agencies that issue a license, certificate, credential, permit, registration, or any other authorization to engage in a business, occupation, or profession. The failure to specifically name a particular board, commission, department, committee, examiner, entity, or agency that issues a license, certificate, credential, permit, registration, or any other authorization to engage in a business, occupation, or profession does not exclude that board, commission, department, committee, examiner, entity, or agency from this term.

(3) "Certified list" means a list provided by the local child support agency to the Department of Child Support Services in which the local child support agency verifies, under penalty of perjury, that the names contained therein are support obligors found to be out of compliance with a judgment or order or support in a case being enforced under Title IV-D of the Social Security Act.

(4) "Compliance with a judgment or order for support" means that, as set forth in a judgment or order for child or family support, the obligor is no more than 30 calendar days in arrears in making payments in full for current support, in making periodic payments in full, whether court ordered or by agreement with the local child support agency, on a support arrearage, or in making periodic payments in full, whether court ordered or by agreement with the local child support agency, on a judgment for reimbursement for public assistance, or has obtained a judicial finding that equitable estoppel as provided in statute or case law precludes enforcement of the order. The local child support agency is authorized to use this section to enforce orders for spousal support only when the local child support agency is also enforcing a related child support obligation owed to the obligee parent by the same obligor, pursuant to Sections 17400 and 17604.

(5) "License" includes membership in the State Bar, and a certificate, credential, permit, registration, or any other authorization issued by a board that allows a person to engage in a business, occupation, or profession, or to operate a commercial motor vehicle, including appointment and commission by the Secretary of State as a notary public. "License" also includes any driver's license issued by the Department of Motor Vehicles, any commercial fishing license issued by the Department of Fish and Game, and to the extent required by federal law or regulations, any license used for recreational purposes. This term includes all licenses, certificates, credentials, permits, registrations, or any other authorization issued by a board that allows a person to engage in a business, occupation, or profession. The failure to specifically name a particular type of license, certificate, credential, permit, registration, or other authorization issued by a board that allows a person to engage in a business, occupation, or profession, does not exclude that license, certificate, credential, permit, registration, or other authorization from this term.

(6) "Licensee" means any person holding a license, certificate, credential, permit, registration, or other authorization issued by a board, to engage in a business,

occupation, or profession, or a commercial driver's license as defined in Section 15210 of the Vehicle Code, including an appointment and commission by the Secretary of State as a notary public. "Licensee" also means any person holding a driver's license issued by the Department of Motor Vehicles, any person holding a commercial fishing license issued by the Department of Fish and Game, and to the extent required by federal law or regulations, any person holding a license used for recreational purposes. This term includes all persons holding a license, certificate, credential, permit, registration, or any other authorization to engage in a business, occupation, or profession, and the failure to specifically name a particular type of license, certificate, credential, permit, registration, or other authorization issued by a board does not exclude that person from this term. For licenses issued to an entity that is not an individual person, "licensee" includes any individual who is either listed on the license or who qualifies for the license.

(b) The local child support agency shall maintain a list of those persons included in a case being enforced under Title IV-D of the Social Security Act against whom a support order or judgment has been rendered by, or registered in, a court of this state, and who are not in compliance with that order or judgment. The local child support agency shall submit a certified list with the names, social security numbers, and last known addresses of these persons and the name, address, and telephone number of the local child support agency who certified the list to the department. The local child support agency shall verify, under penalty of perjury, that the persons listed are subject to an order or judgment for the payment of support and that these persons are not in compliance with the order or judgment. The local child support agency shall submit to the department an updated certified list on a monthly basis.

(c) The department shall consolidate the certified lists received from the local child support agencies and, within 30 calendar days of receipt, shall provide a copy of the consolidated list to each board that is responsible for the regulation of licenses, as specified in this section.

(d) On or before November 1, 1992, or as soon thereafter as economically feasible, as determined by the department, all boards subject to this section shall implement procedures to accept and process the list provided by the department, in accordance with this section. Notwithstanding any other law, all boards shall collect social security numbers from all applicants for the purposes of matching the names of the certified list provided by the department to applicants and licensees and of responding to requests for this information made by child support agencies.

(e) (1) Promptly after receiving the certified consolidated list from the department, and prior to the issuance or renewal of a license, each board shall determine whether the applicant is on the most recent certified consolidated list provided by the department. The board shall have the authority to withhold issuance or renewal of the license of any applicant on the list.

(2) If an applicant is on the list, the board shall immediately serve notice as specified in subdivision (f) on the applicant of the board's intent to withhold issuance or renewal of the license. The notice shall be made personally or by mail to the applicant's last known mailing address on file with the board. Service by mail shall be complete in accordance with Section 1013 of the Code of Civil Procedure.

(A) The board shall issue a temporary license valid for a period of 150 days to any applicant whose name is on the certified list if the applicant is otherwise eligible for a license.

(B) Except as provided in subparagraph (D), the 150-day time period for a temporary license shall not be extended. Except as provided in subparagraph (D), only one temporary license shall be issued during a regular license term and it shall coincide with the first 150 days of that license term. As this paragraph applies to commercial driver's licenses, "license term" shall be deemed to be 12 months from the date the application fee is received by the Department of Motor Vehicles. A license for the full or remainder of the license term shall be issued or renewed only upon compliance with this section.

(C) In the event that a license or application for a license or the renewal of a license is denied pursuant to this section, any funds paid by the applicant or licensee shall not be refunded by the board.

(D) This paragraph shall apply only in the case of a driver's license, other than a commercial driver's license. Upon the request of the local child support agency or by order of the court upon a showing of good cause, the board shall extend a 150-day temporary license for a period not to exceed 150 extra days.

(3) (A) The department may, when it is economically feasible for the department and the boards to do so as determined by the department, in cases where the department is aware that certain child support obligors listed on the certified lists have been out of compliance with a judgment or order for

support for more than four months, provide a supplemental list of these obligors to each board with which the department has an interagency agreement to implement this paragraph. Upon request by the department, the licenses of these obligors shall be subject to suspension, provided that the licenses would not otherwise be eligible for renewal within six months from the date of the request by the department. The board shall have the authority to suspend the license of any licensee on this supplemental list.

(B) If a licensee is on a supplemental list, the board shall immediately serve notice as specified in subdivision (f) on the licensee that his or her license will be automatically suspended 150 days after notice is served, unless compliance with this section is achieved. The notice shall be made personally or by mail to the licensee's last known mailing address on file with the board. Service by mail shall be complete in accordance with Section 1013 of the Code of Civil Procedure.

(C) The 150-day notice period shall not be extended.

(D) In the event that any license is suspended pursuant to this section, any funds paid by the licensee shall not be refunded by the board.

(E) This paragraph shall not apply to licenses subject to annual renewal or annual fee.

(f) Notices shall be developed by each board in accordance with guidelines provided by the department and subject to approval by the department. The notice shall include the address and telephone number of the local child support agency that submitted the name on the certified list, and shall emphasize the necessity of obtaining a release from that local child support agency as a condition for the issuance, renewal, or continued valid status of a license or licenses.

(1) In the case of applicants not subject to paragraph (3) of subdivision (e), the notice shall inform the applicant that the board shall issue a temporary license, as provided in subparagraph (A) of paragraph (2) of subdivision (e), for 150 calendar days if the applicant is otherwise eligible and that upon expiration of that time period the license will be denied unless the board has received a release from the local child support agency that submitted the name on the certified list.

(2) In the case of licensees named on a supplemental list, the notice shall inform the licensee that his or her license will continue in its existing status for no more than 150 calendar days from the date of mailing or service of the notice and thereafter will be suspended indefinitely unless, during the 150-day notice period, the board has received a release from the local child support agency that submitted the name on the certified list. Additionally, the notice shall inform the licensee that any license suspended under this section will remain so until the expiration of the remaining license term, unless the board receives a release along with applications and fees, if applicable, to reinstate the license during the license term.

(3) The notice shall also inform the applicant or licensee that if an application is denied or a license is suspended pursuant to this section, any funds paid by the applicant or licensee shall not be refunded by the board. The Department of Child Support Services shall also develop a form that the applicant shall use to request a review by the local child support agency. A copy of this form shall be included with every notice sent pursuant to this subdivision.

(g) (1) Each local child support agency shall maintain review procedures consistent with this section to allow an applicant to have the underlying arrearage and any relevant defenses investigated, to provide an applicant information on the process of obtaining a modification of a support order, or to provide an applicant assistance in the establishment of a payment schedule on arrearages if the circumstances so warrant.

(2) It is the intent of the Legislature that a court or local child support agency, when determining an appropriate payment schedule for arrearages, base its decision on the facts of the particular case and the priority of payment of child support over other debts. The payment schedule shall also recognize that certain expenses may be essential to enable an obligor to be employed. Therefore, in reaching its decision, the court or the local child support agency shall consider both of these goals in setting a payment schedule for arrearages.

(h) If the applicant wishes to challenge the submission of his or her name on the certified list, the applicant shall make a timely written request for review to the local child support agency who certified the applicant's name. A request for review pursuant to this section shall be resolved in the same manner and timeframe provided for resolution of a complaint pursuant to Section 17800. The local child support agency shall immediately send a release to the appropriate board and the applicant, if any of the following conditions are met:

(1) The applicant is found to be in compliance or negotiates an agreement with the local child support agency for a payment schedule on arrearages or reimbursement.

(2) The applicant has submitted a request for review, but the local child support agency will be unable to complete the review and send notice of its findings to the applicant within the time specified in Section 17800.

(3) The applicant has filed and served a request for judicial review pursuant to this section, but a resolution of that review will not be made within 150 days of the date of service of notice pursuant to subdivision (f). This paragraph applies only if the delay in completing the judicial review process is not the result of the applicant's failure to act in a reasonable, timely, and diligent manner upon receiving the local child support agency's notice of findings.

(4) The applicant has obtained a judicial finding of compliance as defined in this section.

(i) An applicant is required to act with diligence in responding to notices from the board and the local child support agency with the recognition that the temporary license will lapse or the license suspension will go into effect after 150 days and that the local child support agency and, where appropriate, the court must have time to act within that period. An applicant's delay in acting, without good cause, which directly results in the inability of the local child support agency to complete a review of the applicant's request or the court to hear the request for judicial review within the 150-day period shall not constitute the diligence required under this section which would justify the issuance of a release.

(j) Except as otherwise provided in this section, the local child support agency shall not issue a release if the applicant is not in compliance with the judgment or order for support. The local child support agency shall notify the applicant in writing that the applicant may, by filing an order to show cause or notice of motion, request any or all of the following:

(1) Judicial review of the local child support agency's decision not to issue a release.

(2) A judicial determination of compliance.

(3) A modification of the support judgment or order. The notice shall also contain the name and address of the court in which the applicant shall file the order to show cause or notice of motion and inform the applicant that his or her name shall remain on the certified list if the applicant does not timely request judicial review. The applicant shall comply with all statutes and rules of court regarding orders to show cause and notices of motion. Nothing in this section shall be deemed to limit an applicant from filing an order to show cause or notice of motion to modify a support judgment or order or to fix a payment schedule on arrearages accruing under a support judgment or order or to obtain a court finding of compliance with a judgment or order for support.

(k) The request for judicial review of the local child support agency's decision shall state the grounds for which review is requested and judicial review shall be limited to those stated grounds. The court shall hold an evidentiary hearing within 20 calendar days of the filing of the request for review. Judicial review of the local child support agency's decision shall be limited to a determination of each of the following issues:

(1) Whether there is a support judgment, order, or payment schedule on arrearages or reimbursement.

(2) Whether the petitioner is the obligor covered by the support judgment or order.

(3) Whether the support obligor is or is not in compliance with the judgment or order of support.

(4) (A) The extent to which the needs of the obligor, taking into account the obligor's payment history and the current circumstances of both the obligor and the obligee, warrant a conditional release as described in this subdivision.

(B) The request for judicial review shall be served by the applicant upon the local child support agency that submitted the applicant's name on the certified list within seven calendar days of the filing of the petition. The court has the authority to uphold the action, unconditionally release the license, or conditionally release the license.

(C) If the judicial review results in a finding by the court that the obligor is in compliance with the judgment or order for support, the local child support agency shall immediately send a release in accordance with subdivision (l) to the appropriate board and the applicant. If the judicial review results in a finding by the court that the needs of the obligor warrant a conditional release, the court shall make findings of fact stating the basis for the release and the payment necessary to satisfy the unrestricted issuance or renewal of the license without prejudice to a later judicial determination of the amount of support arrearages, including

interest, and shall specify payment terms, compliance with which are necessary to allow the release to remain in effect.

(l) The department shall prescribe release forms for use by local child support agencies. When the obligor is in compliance, the local child support agency shall mail to the applicant and the appropriate board a release stating that the applicant is in compliance. The receipt of a release shall serve to notify the applicant and the board that, for the purposes of this section, the applicant is in compliance with the judgment or order for support. Any board that has received a release from the local child support agency pursuant to this subdivision shall process the release within five business days of its receipt.

If the local child support agency determines subsequent to the issuance of a release that the applicant is once again not in compliance with a judgment or order for support, or with the terms of repayment as described in this subdivision, the local child support agency may notify the board, the obligor, and the department in a format prescribed by the department that the obligor is not in compliance.

The department may, when it is economically feasible for the department and the boards to develop an automated process for complying with this subdivision, notify the boards in a manner prescribed by the department, that the obligor is once again not in compliance. Upon receipt of this notice, the board shall immediately notify the obligor on a form prescribed by the department that the obligor's license will be suspended on a specific date, and this date shall be no longer than 30 days from the date the form is mailed. The obligor shall be further notified that the license will remain suspended until a new release is issued in accordance with subdivision (h). Nothing in this section shall be deemed to limit the obligor from seeking judicial review of suspension pursuant to the procedures described in subdivision (k).

(m) The department may enter into interagency agreements with the state agencies that have responsibility for the administration of boards necessary to implement this section, to the extent that it is cost-effective to implement this section. These agreements shall provide for the receipt by the other state agencies and boards of federal funds to cover that portion of costs allowable in federal law and regulation and incurred by the state agencies and boards in implementing this section. Notwithstanding any other provision of law, revenue generated by a board or state agency shall be used to fund the nonfederal share of costs incurred pursuant to this section. These agreements shall provide that boards shall reimburse the department for the nonfederal share of costs incurred by the department in implementing this section. The boards shall reimburse the department for the nonfederal share of costs incurred pursuant to this section from moneys collected from applicants and licensees.

(n) Notwithstanding any other provision of law, in order for the boards subject to this section to be reimbursed for the costs incurred in administering its provisions, the boards may, with the approval of the appropriate department director, levy on all licensees and applicants a surcharge on any fee or fees collected pursuant to law, or, alternatively, with the approval of the appropriate department director, levy on the applicants or licensees named on a certified list or supplemental list, a special fee.

(o) The process described in subdivision (h) shall constitute the sole administrative remedy for contesting the issuance of a temporary license or the denial or suspension of a license under this section. The procedures specified in the administrative adjudication provisions of the Administrative Procedure Act (Chapter 4.5 (commencing with Section 11400) and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code) shall not apply to the denial, suspension, or failure to issue or renew a license or the issuance of a temporary license pursuant to this section.

(p) In furtherance of the public policy of increasing child support enforcement and collections, on or before November 1, 1995, the State Department of Social Services shall make a report to the Legislature and the Governor based on data collected by the boards and the district attorneys in a format prescribed by the State Department of Social Services. The report shall contain all of the following:

(1) The number of delinquent obligors certified by district attorneys under this section.

(2) The number of support obligors who also were applicants or licensees subject to this section.

(3) The number of new licenses and renewals that were delayed, temporary licenses issued, and licenses suspended subject to this section and the number of new licenses and renewals granted and licenses reinstated following board receipt of releases as provided by subdivision (h) by May 1, 1995.

(4) The costs incurred in the implementation and enforcement of this section.

(q) Any board receiving an inquiry as to the licensed status of an applicant or licensee who has had a license denied or suspended under this section or has been granted a temporary license under this section shall respond only that the license was denied or suspended or the temporary license was issued pursuant to this section. Information

collected pursuant to this section by any state agency, board, or department shall be subject to the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code).

(r) Any rules and regulations issued pursuant to this section by any state agency, board, or department may be adopted as emergency regulations in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The adoption of these regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, and safety, or general welfare. The regulations shall become effective immediately upon filing with the Secretary of State.

(s) The department and boards, as appropriate, shall adopt regulations necessary to implement this section.

(t) The Judicial Council shall develop the forms necessary to implement this section, except as provided in subdivisions (f) and (l).

(u) The release or other use of information received by a board pursuant to this section, except as authorized by this section, is punishable as a misdemeanor.

(v) The State Board of Equalization shall enter into interagency agreements with the department and the Franchise Tax Board that will require the department and the Franchise Tax Board to maximize the use of information collected by the State Board of Equalization, for child support enforcement purposes, to the extent it is cost-effective and permitted by the Revenue and Taxation Code.

(w) (1) The suspension or revocation of any driver's license, including a commercial driver's license, under this section shall not subject the licensee to vehicle impoundment pursuant to Section 14602.6 of the Vehicle Code.

(2) Notwithstanding any other provision of law, the suspension or revocation of any driver's license, including a commercial driver's license, under this section shall not subject the licensee to increased costs for vehicle liability insurance.

(x) If any provision of this section or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

(y) All rights to administrative and judicial review afforded by this section to an applicant shall also be afforded to a licensee. (Added by Stats. 1999, ch. 654. Amended by Stats. 2001, ch. 755.)

GOVERNMENT CODE

§6261. Inspection of State Agencies Expenditures and Disbursements

Notwithstanding Section 6252, an itemized statement of the total expenditures and disbursements of any agency provided for in Article VI of the California Constitution shall be open for inspection. (Added by Stats. 1975, ch. 1246.)

§8287. Law Revision Commission Assistance of Board of Governors

The Board of Governors of the State Bar shall assist the [Law Revision] commission in any manner the commission may request within the scope of its powers or duties. (Formerly 10307, added by Stats. 1953, ch. 1445. Renumbered and amended by Stats. 1984, ch. 1335.)

§11140. Policy of State

It is the policy of the State of California that the composition of state boards and commissions shall be broadly reflective of the general public including ethnic minorities and women. (Added by Stats. 1975, ch. 977.)

§11141. Nomination for Appointments; Compliance with Policy

In making appointments to state boards and commissions, the Governor and every other appointing authority shall be responsible for nominating a variety of persons of different backgrounds, abilities, interests, and opinions in compliance with the policy expressed in this article. It is not the intent of the Legislature that formulas or specific ratios be utilized in complying with this article. (Added by Stats. 1975, ch. 977.)

§12011.5 Judicial Vacancies, State Bar Evaluation of Candidates

(a) In the event of a vacancy in a judicial office to be filled by appointment of the Governor, or in the event that a declaration of candidacy is not filed by a judge and the Governor is required under subdivision (d) of Section 16 of

Article VI of the Constitution to nominate a candidate, the Governor shall first submit to a designated agency of the State Bar of California the names of all potential appointees or nominees for the judicial office for evaluation of their judicial qualifications.

(b) The membership of the designated agency of the State Bar responsible for evaluation of judicial candidates shall consist of attorney members and public members with the ratio of public members to attorney members determined, to the extent practical, by the ratio established in Sections 6013.4 and 6013.5 of the Business and Professions Code. It is the intent of this subdivision that the designated agency of the State Bar responsible for evaluation of judicial candidates shall be broadly representative of the ethnic, gender, and racial diversity of the population of California and composed in accordance with Sections 11140 and 11141 of the Government Code. The further intent of this subdivision is to establish a selection process for membership on the designated agency of the State Bar responsible for evaluation of judicial candidates under which no member of that agency shall provide inappropriate, multiple representation for purposes of this subdivision.

(c) Upon receipt from the Governor of the names of candidates for judicial office and their completed personal data questionnaires, the State Bar shall employ appropriate confidential procedures to evaluate and determine the qualifications of each candidate with regard to his or her ability to discharge the judicial duties of the office to which the appointment or nomination shall be made. Within 90 days of submission by the Governor of the name of a potential appointee for judicial office, the State Bar shall report in confidence to the Governor its recommendation whether the candidate is exceptionally well qualified, well qualified, qualified, or not qualified and the reasons therefor, and may report, in confidence, other information as the State Bar deems pertinent to the qualifications of the candidate.

(d) In determining the qualifications of a candidate for judicial office, the State Bar shall consider, among other appropriate factors, his or her industry, judicial temperament, honesty, objectivity, community respect, integrity, health, ability, and legal experience. The State Bar shall consider legal experience broadly, including, but not limited to, litigation and nonlitigation experience, legal work for a business or nonprofit entity, experience as a law professor or other academic position, legal work in any of the three branches of government, and legal work in dispute resolution.

(e) The State Bar shall establish and promulgate rules and procedures regarding the investigation of the qualifications of candidates for judicial office by the designated agency. These rules and procedures shall establish appropriate, confidential methods for disclosing to the candidate the subject matter of substantial and credible adverse allegations received regarding the candidate's health, physical or mental condition, or moral turpitude which, unless rebutted, would be determinative of the candidate's unsuitability for judicial office. No provision of this section shall be construed as requiring that any rule or procedure be adopted that permits the disclosure to the candidate of information from which the candidate may infer the source, and no information shall either be disclosed to the candidate nor be obtainable by any process that would jeopardize the confidentiality of communications from persons whose opinion has been sought on the candidate's qualifications.

(f) All communications, written, verbal or otherwise, of and to the Governor, the Governor's authorized agents or employees, including, but not limited to, the Governor's Legal Affairs Secretary and Appointments Secretary, or of and to the State Bar in furtherance of the purposes of this section are absolutely privileged from disclosure and confidential, and any communication made in the discretion of the Governor or the State Bar with a candidate or person providing information in furtherance of the purposes of this section shall not constitute a waiver of the privilege or a breach of confidentiality.

(g) If the Governor has appointed a person to a trial court who has been found not qualified by the designated agency, the State Bar may make public this fact after due notice to the appointee of its intention to do so, but that notice or disclosure shall not constitute a waiver of privilege or breach of confidentiality with respect to communications of or to the State Bar concerning the qualifications of the appointee.

(h) If the Governor has nominated or appointed a person to the Supreme Court or court of appeal in accordance with subdivision (d) of Section 16 of Article VI of the California Constitution, the Commission on Judicial Appointments may invite, or the State Bar's governing board or its designated agency may submit to the commission its recommendation, and the reasons therefor, but that disclosure shall not constitute a waiver of privilege or breach of confidentiality with respect to communications of or to the State Bar concerning the qualifications of the nominee or appointee.

(i) No person or entity shall be liable for any injury caused by any act or failure to act, be it negligent, intentional, discretionary, or otherwise, in the furtherance of the purposes of this section, including, but not limited to, providing or receiving any information, making any recommendations, and giving any reasons therefor. As used in this section, the term "State Bar" means its governing

board and members thereof, the designated agency of the State Bar and members thereof, and employees and agents of the State Bar.

(j) At any time prior to the receipt of the report from the State Bar specified in subdivision (c) the Governor may withdraw the name of any person submitted to the State Bar for evaluation pursuant to this section.

(k) No candidate for judicial office may be appointed until the State Bar has reported to the Governor pursuant to this section, or until 90 days have elapsed after submission of the candidate's name to the State Bar, whichever occurs earlier. The requirement of this subdivision shall not apply to any vacancy in judicial office occurring within the 90 days preceding the expiration of the Governor's term of office, provided, however, that with respect to those vacancies and with respect to nominations pursuant to subdivision (d) of Section 16 of Article VI of the California Constitution, the Governor shall be required to submit any candidate's name to the State Bar in order to provide an opportunity, if time permits, to make an evaluation.

(l) Nothing in this section shall be construed as imposing an additional requirement for an appointment or nomination to judicial office, nor shall anything in this section be construed as adding any additional qualifications for the office of a judge.

(m) The Board of Governors of the State Bar shall not conduct or participate in, or authorize any committee, agency, employee, or commission of the State Bar to conduct or participate in, any evaluation, review, or report on the qualifications, integrity, diligence, or judicial ability of any specific justice of a court provided for in Section 2 or 3 of Article VI of the California Constitution without prior review and statutory authorization by the Legislature, except an evaluation, review, or report on potential judicial appointees or nominees as authorized by this section.

The provisions of this subdivision shall not be construed to prohibit a member of the State Bar from conducting or participating in an evaluation, review, or report in his or her individual capacity.

(n) (1) Notwithstanding any other provision of this section, on or before March 1, 2007, and on or before March 1 of each year thereafter, all of the following shall occur:

(A) The Governor shall collect and release, on an aggregate statewide basis, all of the following:

(i) Demographic data provided by all judicial applicants relative to ethnicity, race, and gender.

(ii) Demographic data relative to ethnicity, race, and gender as provided by all judicial applicants, both as to those judicial applicants who have been and those who have not been submitted to the State Bar for evaluation.

(iii) Demographic data relative to ethnicity, race, and gender of all judicial appointments or nominations as provided by the judicial appointee or nominee.

(B) The designated agency of the State Bar responsible for evaluation of judicial candidates shall collect and release both of the following on an aggregate statewide basis:

(i) Statewide demographic data provided by all judicial applicants reviewed relative to ethnicity, race, gender, and areas of legal practice and employment.

(ii) The statewide summary of the recommendations of the designated agency of the State Bar by ethnicity, race, gender, and areas of legal practice and employment.

(C) The Administrative Office of the Courts shall collect and release the demographic data provided by justices and judges described in Article VI of the California Constitution relative to ethnicity, race, and gender, by specific jurisdiction.

(2) Any demographic data disclosed or released pursuant to this subdivision shall disclose only aggregated statistical data and shall not identify any individual applicant, justice, or judge.

(o) If any provision of this section other than a provision relating to or providing for confidentiality or privilege from disclosure of any communication or matter, or the application of the provision to any person or circumstances, is held invalid, the remainder of this section to the extent it can be given effect, or the application of the provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby, and to this extent the provisions of this section are severable. If any other act of the Legislature conflicts with the provisions of this section, this section shall prevail. (Added by Stats. 1979, ch. 534. Amended by Stats. 1984, ch. 16; Stats. 2007, ch. 722.)

§19990.6. State Attorneys and Administrative Law Judges; Service on Governmental Bodies

(a) Service on a local appointed or elected governmental board, commission, committee, or other body or as a local elected official by an attorney employed by the state in a nonelected position or by an administrative law judge, as defined in Section 11475.10, shall not, by itself, be deemed to be inconsistent, incompatible, in conflict with, or inimical to, the duties of the attorney or administrative law judge as a state officer or employee and shall not result in the automatic vacation of either office.

(b) Nothing in this section shall be construed to prohibit an administrative law judge, as defined in Section 11475.10, or an attorney employed by the state in a nonelected position from serving on any other appointed or elected governmental board, commission, committee, or other body, consistent with all applicable conflict-of-interest statutes and regulations and judicial canons of ethics. (Added by Stats. 2002, ch. 411.)

§26540. Defending Persons Accused of Crimes

A district attorney shall not during his incumbency defend or assist in the defense of, or act as counsel for, any person accused of any crime in any county. (Added by Stats. 1947, ch. 424.)

§26543. Prohibition Against Acting as Private Counsel in Cases Against State Governmental Agencies

A district attorney or county counsel shall not during his incumbency act as counsel for any private plaintiff in any action or proceeding in which a city, district, or political subdivision of the State is a party defendant. (Added by Stats. 1953, ch. 422.)

§26810. Authority of Court Clerk to Photocopy, Microphotocopy, Reproduce, and Store Documents Transferred Under Probate Code Sections 732 and 8200

(a) The clerk of the superior court may cause the following documents to be photographed, microphotographed, photocopied, electronically imaged, or otherwise reproduced on film and stored in that form:

(1) A document transferred to the clerk under Section 732 of the Probate Code.

(2) A will delivered to the clerk of the superior court under Section 8200 of the Probate Code if the clerk has held the will for at least 10 years.

(b) The photograph, microphotograph, photocopy, or electronic image shall be made in a manner that meets the minimum standards or guidelines recommended by the American National Standards Institute or the Association for Information and Image Management. All these photographs, microphotographs, photocopies, and electronic images shall be indexed, and shall be stored in a manner and place that reasonably assures their preservation indefinitely against loss, theft, defacement, or destruction.

(c) Before proof of death of the maker of a document or will referred to in subdivision (a), the photographs, microphotographs, photocopies, and electronic images shall be confidential, and shall be made available only to the maker. After proof of death of the maker of the document or will by a certified copy of the death certificate, the photographs, microphotographs, photocopies, and electronic images shall be public records.

(d) Section 26809 does not apply to a will or other document referred to in subdivision (a), or to the reproduction authorized by this section.

(e) Upon making the reproduction authorized by this section, the clerk of the superior court may destroy the original document. (Added by Stats. 1993, ch. 519.)

§31000.6. Employment of Legal Counsel to Assist Assessor or Sheriff; Conflicts of Interest

(a) Upon request of the assessor or the sheriff of the county, the board of supervisors shall contract with and employ legal counsel to assist the assessor or the sheriff in the performance of his or her duties in any case where the county counsel or the district attorney would have a conflict of interest in representing the assessor or the sheriff.

(b) In the event that the board of supervisors does not concur with the assessor or the sheriff that a conflict of interest exists, the assessor or the sheriff, after giving notice to the county counsel or the district attorney, may initiate an ex parte proceeding before the presiding judge of the superior court. The county counsel or district attorney may file an affidavit in the proceeding in opposition to, or in support of, the assessor's or the sheriff's position.

(c) The presiding superior court judge that determines in any ex parte proceeding that a conflict actually exists, must, if requested by one of the parties, also rule whether

representation by the county counsel or district attorney through the creation of an "ethical wall" is appropriate. The factors to be considered in this determination of whether an "ethical wall" should be created are:

(1) equal representation,

(2) level of support,

(3) access to resources,

(4) zealous representation, or

(5) any other consideration that relates to proper representation.

(d) If a court determines that the action brought by the assessor or sheriff is frivolous and in bad faith, the assessor's office or sheriff's office shall pay their own legal costs and all costs incurred in the action by the opposing party. As used in this section, "bad faith" and "frivolous" have the meaning given in Section 128.5 of the Code of Civil Procedure.

(e) If the presiding judge determines that a conflict of interest does exist, and that representation by the county counsel or district attorney through the creation of an ethical wall is inappropriate, the board of supervisors shall immediately employ legal counsel to assist the assessor or the sheriff. (f) As used in this section, "conflict of interest" means a conflict of interest as defined in Rule 3-310 of the Rules of Professional Conduct of the State Bar of California, as construed for public attorneys. (Added by Stats. 1966, ch. 147. Amended by Stats. 1971, ch. 1104; Stats. 2001, ch. 41.)

§68903. Contract for Publication of Official Reports

The official reports shall be published under a contract to be entered into on behalf of state by the Chief Justice of California, the Secretary of State, the Attorney General, the President of the State Bar, and the Reporter of Decisions, who shall serve as secretary. (Added by Stats. 1967, ch. 172.)

§70660. Fee for Storage

(a) The fee for receiving and storing each document transferred to the clerk of the superior court under Section 732 of the Probate Code is twenty dollars ($20).

(b) The superior court may reduce or waive the fee established pursuant to this section under either of the following circumstances: (1) The court has assumed jurisdiction under Article 11 (commencing with Section 6180) of Chapter 4 of Division 3 of the Business and Professions Code over the law practice of the attorney with whom the document is deposited. (2) On a showing of hardship. (Added by Stats. 1993, ch. 519. Amended by Stats. 2001, ch. 824; Stats. 2005, ch. 75.)

§70661. Fee for Document Search

The fee for searching a document transferred to the clerk of the superior court under Section 732 of the Probate Code is the same as the fee under subdivision (c) of Section 70627 for searching records or files. (Added by Stats. 1993, ch. 519. Amended by Stats. 2005, ch. 75.)

INSURANCE CODE

§750. Unlawful to Receive Consideration for Referral of Clients

(a) Except as provided in Section 750.5, any person acting individually or through his or her employees or agents, who engages in the practice of processing, presenting, or negotiating claims, including claims under policies of insurance, and who offers, delivers, receives, or accepts any rebate, refund, commission, or other consideration, whether in the form of money or otherwise, as compensation or inducement to or from any person for the referral or procurement of clients, cases, patients, or customers, is guilty of a crime.

(b) A violation of subdivision (a) is punishable upon a first conviction by imprisonment in the county jail for not more than one year, or by imprisonment in the state prison, or by a fine not exceeding fifty thousand dollars ($50,000), or by both that imprisonment and fine. A second or subsequent conviction is punishable by imprisonment in the state prison or by imprisonment in the state prison and a fine of fifty thousand dollars ($50,000).

(c) Nothing in this section shall prohibit a licensed collection or lien agency from receiving a commission on the collection of delinquent debts nor prohibits the agency from paying its employees a commission for obtaining clients seeking collection on delinquent debts.

(d) Nothing in this section is intended to limit, restrict, or in any way apply to, the rebating of commissions by insurance agents or brokers, as authorized by Proposition 103, enacted by the people at the November 8, 1988,

general election. (Added by Stats. 1991, ch. 116. Amended by Stats. 1991, ch. 934; Stats. 1992, ch. 1352; Stats. 2000, ch. 843.)

§750.4 Exemptions from Section 750

Section 750 of the Insurance Code, Sections 3215 and 3219 of the Labor Code, and Section 549 of the Penal Code shall not apply to any person, corporation, partnership, association, or firm, that is operating under both of the following circumstances:

(a) On behalf of an insurer or self-insured person, company, association, or group.

(b) Pursuant to, and within the scope of, a certificate of consent issued pursuant to Section 3702.1 of the Labor Code or pursuant to, and within the scope of, a license issued pursuant to Article 3 (commencing with Section 14020) of Chapter 1 of Division 5. (Added by Stats. 1991, ch. 116; Amended by Stats 1991, ch. 934; Stats. 1993, ch. 120; Stats. 2006, ch. 538.)

§750.5 Permissible Acts for Attorneys and Law Firms under Section 750

Nothing in Section 750 of the Insurance Code, Section 549 of the Penal Code, or Section 3215 of the Labor Code shall be construed to prevent an attorney or law firm from the following:

(a) Dividing fees for legal services with a lawyer under circumstances expressly permitted by Rule 2-200 of the Rules of Professional Conduct of the State Bar.

(b) Offering or giving an incidental nonmonetary gift or gratuity to a person who has made a recommendation resulting in the employment of the attorney or law firm, provided that the gift or gratuity was not offered in consideration of any promise, agreement, or understanding that the gift or gratuity would be forthcoming or that referrals would be made or encouraged in the future.

(c) Offering or giving a bonus to an employee who has made a referral or recommendation resulting in the employment of the attorney or law firm, provided that the bonus was not offered in consideration of any promise, agreement, or understanding that the bonus would be forthcoming or that referrals or recommendations would be made or encouraged in the future. (Added by Stats. 1991, ch. 116. Amended by Stats. 1993, ch. 120.)

§1724. Prohibition Against Sharing a Commission Between an Attorney and an Insurance Agent, Broker or Solicitor

An agent, broker, or solicitor who is not an active member of the State Bar of California may not share a commission or other compensation with an active member of the State Bar of California. For purposes of this section, "commission or other compensation" means pecuniary or nonpecuniary compensation of any kind relating to the sale or renewal of an insurance policy or certificate or an annuity, including, but not limited to, a bonus, gift, prize, award, or finder's fee. (Added by Stats. 2003, ch. 547.)

§1871. Legislative Intent

The Legislature finds and declares as follows:

(a) The business of insurance involves many transactions that have the potential for abuse and illegal activities. There are numerous law enforcement agencies on the state and local levels charged with the responsibility for investigating and prosecuting fraudulent activity. This chapter is intended to permit the full utilization of the expertise of the commissioner and the department so that they may more effectively investigate and discover insurance frauds, halt fraudulent activities, and assist and receive assistance from federal, state, local, and administrative law enforcement agencies in the prosecution of persons who are parties in insurance frauds.

(b) Insurance fraud is a particular problem for automobile policyholders; fraudulent activities account for 15 to 20 percent of all auto insurance payments. Automobile insurance fraud is the biggest and fastest growing segment of insurance fraud and contributes substantially to the high cost of automobile insurance with particular significance in urban areas.

(c) Prevention of automobile insurance fraud will significantly reduce the incidence of severity and automobile insurance claim payments and will therefore produce a commensurate reduction in automobile insurance premiums.

(d) Workers' compensation fraud harms employers by contributing to the increasingly high cost of workers' compensation insurance and self-insurance and harms employees by undermining the perceived legitimacy of all workers' compensation claims.

(e) Prevention of workers' compensation insurance fraud may reduce the number of workers' compensation claims and claim payments thereby producing a commensurate reduction in workers' compensation costs. Prevention of

workers' compensation insurance fraud will assist in restoring confidence and faith in the workers' compensation system, and will facilitate expedient and full compensation for employees injured at the workplace.

(f) The actions of employers who fraudulently underreport payroll or fail to report payroll for all employees to their insurance company in order to pay a lower workers' compensation premium result in significant additional premium costs and an unfair burden to honest employers and their employees.

(g) The actions of employers who fraudulently fail to secure the payment of workers' compensation as required by Section 3700 of the Labor Code harm employees, cause unfair competition for honest employers, and increase costs to taxpayers.

(h) Health insurance fraud is a particular problem for health insurance policyholders. Although there are no precise figures, it is believed that fraudulent activities account for billions of dollars annually in added health care costs nationally. Health care fraud causes losses in premium dollars and increases health care costs unnecessarily. (Added by Stats. 1989, ch. 1119. Amended by Stats. 1991, ch. 116; Stats. 1991, ch. 1008; Stats. 1995, ch. 885; Stats. 2001, ch. 159; Stats. 2002, ch. 6; Stats. 2004, ch. 635.)

§1871.1 Investigation of Fraudulent Claims, Access to Public Records

Insurers and their agents, while they are investigating suspected fraud claims, shall have access to all relevant public records that are required to be open for inspection under Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, and any regulations thereunder. This section restates existing law, and the Legislature does not intend to grant insurers or their agents access to public records other than to those public records available to them under existing law. (Added by Stats. 1993, ch. 323.)

§1871.4. Unlawful to Make False or Fraudulent Statements or Representations for Purpose of Obtaining or Denying Compensation; Penalties

(a) It is unlawful to do any of the following:

(1) Make or cause to be made any knowingly false or fraudulent material statement or material representation for the purpose of obtaining or denying any compensation, as defined in Section 3207 of the Labor Code.

(2) Present or cause to be presented any knowingly false or fraudulent written or oral material statement in support of, or in opposition to, any claim for compensation for the purpose of obtaining or denying any compensation, as defined in Section 3207 of the Labor Code.

(3) Knowingly assist, abet, conspire with, or solicit any person in an unlawful act under this section.

(4) Make or cause to be made any knowingly false or fraudulent statements with regard to entitlement to benefits with the intent to discourage an injured worker from claiming benefits or pursuing a claim. For the purposes of this subdivision, "statement" includes, but is not limited to, any notice, proof of injury, bill for services, payment for services, hospital or doctor records, X-ray, test results, medical-legal expense as defined in Section 4620 of the Labor Code, other evidence of loss, injury, or expense, or payment.

(5) Make or cause to be made any knowingly false or fraudulent material statement or material representation for the purpose of obtaining or denying any of the benefits or reimbursement provided in the Return-to-Work Program established under Section 139.48 of the Labor Code.

(6) Make or cause to be made any knowingly false or fraudulent material statement or material representation for the purpose of discouraging an employer from claiming any of the benefits or reimbursement provided in the Return-to-Work Program established under Section 139.48 of the Labor Code.

(b) Every person who violates subdivision (a) shall be punished by imprisonment in county jail for one year, or in the state prison, for two, three, or five years, or by a fine not exceeding one hundred fifty thousand dollars ($150,000) or double the value of the fraud, whichever is greater, or by both imprisonment and fine. Restitution shall be ordered, including restitution for any medical evaluation or treatment services obtained or provided. The court shall determine the amount of restitution and the person or persons to whom the restitution shall be paid.

(c) Any person who violates subdivision (a) and who has a prior felony conviction of that subdivision, of former Section 556, of former Section 1871.1, or of Section 548 or 550 of the Penal Code, shall receive a two-year enhancement for each prior conviction in addition to the sentence provided in subdivision (b). The existence of any fact that would subject a person to a penalty enhancement shall be alleged in the information or indictment and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where

guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

(d) This section shall not be construed to preclude the applicability of any other provision of criminal law that applies or may apply to any transaction. (Added by Stats. 1991, ch. 116; Amended by Stats. 1991, ch. 934; Stats. 1992, ch. 675; Stats. 1993, ch. 120; Stats. 1995, ch. 574; Stats. 2002, ch. 6; Stats. 2004, ch. 635.)

§1871.5 Ineligibility to Receive or Retain Compensation, Conviction of Workers' Compensation Fraud

Any person convicted of workers' compensation fraud pursuant to Section 1871.4 or Section 550 of the Penal Code shall be ineligible to receive or retain any compensation, as defined in Section 3207 of the Labor Code, where that compensation was owed or received as a result of a violation of Section 1871.4 or Section 550 of the Penal Code for which the recipient of the compensation was convicted. (Added by Stats. 1993, ch. 120.)

§1871.6 Provisions of Section 1871.4 Do Not Limit Applicability of Section 781 of the Penal Code

The provisions of Section 781 of the Penal Code are applicable to any prosecutions for violations of Section 1871.4. This section is declaratory of existing law and shall not be interpreted to limit the applicability of Section 781 of the Penal Code to any other criminal provisions. (Added by Stats. 1993, ch. 120.)

§1871.7 Unlawful Solicitation of Business

(a) It is unlawful to knowingly employ runners, cappers, steerers, or other persons to procure clients or patients to perform or obtain services or benefits pursuant to Division 4 (commencing with Section 3200) of the Labor Code or to procure clients or patients to perform or obtain services or benefits under a contract of insurance or that will be the basis for a claim against an insured individual or his or her insurer.

(b) Every person who violates any provision of this section or Section 549, 550, or 551 of the Penal Code shall be subject, in addition to any other penalties that may be prescribed by law, to a civil penalty of not less than five thousand dollars ($5,000) nor more than ten thousand dollars ($10,000), plus an assessment of not more than three times the amount of each claim for compensation, as defined in Section 3207 of the Labor Code or pursuant to a contract of insurance. The court shall have the power to grant other equitable relief, including temporary injunctive relief, as is necessary to prevent the transfer, concealment, or dissipation of illegal proceeds, or to protect the public. The penalty prescribed in this paragraph shall be assessed for each fraudulent claim presented to an insurance company by a defendant and not for each violation.

(c) The penalties set forth in subdivision (b) are intended to be remedial rather than punitive, and shall not preclude, nor be precluded by, a criminal prosecution for the same conduct. If the court finds, after considering the goals of disgorging unlawful profit, restitution, compensating the state for the costs of investigation and prosecution, and alleviating the social costs of increased insurance rates due to fraud, that such a penalty would be punitive and would preclude, or be precluded by, a criminal prosecution, the court shall reduce that penalty appropriately.

(d) The district attorney or commissioner may bring a civil action under this section. Before the commissioner may bring that action, the commissioner shall be required to present the evidence obtained to the appropriate local district attorney for possible criminal or civil filing. If the district attorney elects not to pursue the matter due to insufficient resources, then the commissioner may proceed with the action.

(e) (1) Any interested persons, including an insurer, may bring a civil action for a violation of this section for the person and for the State of California. The action shall be brought in the name of the state. The action may be dismissed only if the court and the district attorney or the commissioner, whichever is participating, give written consent to the dismissal and their reasons for consenting.

(2) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the district attorney and commissioner. The complaint shall be filed in camera, shall remain under seal for at least 60 days, and shall not be served on the defendant until the court so orders. The local district attorney or commissioner may elect to intervene and proceed with the action within 60 days after he or she receives both the complaint and the material evidence and information. If more than one governmental entity elects to intervene, the district attorney shall have precedence.

(3) The district attorney or commissioner may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under paragraph (2). The motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to

respond to any complaint filed under this section until 20 days after the complaint is unsealed and served upon the defendant.

(4) Before the expiration of the 60-day period or any extensions obtained under paragraph (3), the district attorney or commissioner shall either:

(A) Proceed with the action, in which case the action shall be conducted by the district attorney or commissioner.

(B) Notify the court that it declines to take over the action, in which case the perso bringing the action shall have the right to conduct the action.

(5) When a person or governmental agency brings an action under this section, no person other than the district attorney or commissioner may intervene or bring a related action based on the facts underlying the pending action unless that action is authorized by another statute or common law.

(f) (1) If the district attorney or commissioner proceeds with the action, he or she shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the person bringing the action. That person shall have the right to continue as a party to the action, subject to the limitations set forth in paragraph (2).

(2) (A) The district attorney or commissioner may dismiss the action notwithstanding the objections of the person initiating the action if the person has been notified by the district attorney or commissioner of the filing of the motion, and the court has provided the person with an opportunity for a hearing on the motion.

(B) The district attorney or commissioner may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, the hearing may be held in camera.

(C) Upon a showing by the district attorney or commissioner that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the district attorney's or commissioner's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, including, but not limited to, the following:

(i) Limiting the number of witnesses the person may call.

(ii) Limiting the length of the testimony of those witnesses.

(iii) Limiting the person's cross-examination of witnesses.

(iv) Otherwise limiting the participation by the person in the litigation.

(D) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

(3) If the district attorney or commissioner elects not to proceed with the action, the person who initiated the action shall have the right to conduct the action. If the district attorney or commissioner so requests, he or she shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts, at the district attorney's or commissioner's expense. When a person proceeds with the action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the district attorney or commissioner to intervene at a later date upon a showing of good cause.

(4) If at any time both a civil action for penalties and equitable relief pursuant to this section and a criminal action are pending against a defendant for substantially the same conduct, whether brought by the government or a private party, the civil action shall be stayed until the criminal action has been concluded at the trial court level. The stay shall not preclude the court from granting or enforcing temporary equitable relief during the pendency of the actions. Whether or not the district attorney or commissioner proceeds with the action, upon a showing by the district attorney or commissioner that certain actions of discovery by the person initiating the action would interfere with a law enforcement or governmental agency investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay discovery for a period of not more than 180 days. A hearing on a request for the stay shall be conducted in camera. The court may

extend the 180-day period upon a further showing in camera that the agency has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

(5) Notwithstanding subdivision (e), the district attorney or commissioner may elect to pursue its claim through any alternate remedy available to the district attorney or commissioner.

(g) (1) (A) (i) If the district attorney proceeds with an action brought by a person under subdivision (e), that person shall, subject to subparagraph (B), receive at least 30 percent but not more than 40 percent of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action.

(ii) If the commissioner has brought an action or has proceeded with an action brought by another person under this section on or after January 1, 2006, and prior to January 1, 2011, the commissioner shall be entitled to attorney's fees and costs in addition to any judgment, regardless of the date that judgment is entered. The court shall determine and award the commissioner the amount of reasonable attorney's fees, including, but not limited to, reasonable fees for time expended by attorneys employed by the department and for costs incurred. Any attorney's fees or costs awarded to the commissioner and collected shall be deposited in the Insurance Fund. In cases in which the commissioner has intervened, the commissioner and the person bringing the claim may stipulate to an allocation. The court may allocate the funds pursuant to the stipulation if, after the court's ruling on objection by the district attorney, if any, the court finds it is in the interests of justice to follow the stipulation.

(iii) If the commissioner has proceeded with an action, if there is no stipulation regarding allocation, and if a judgment has been obtained or a settlement has been reached with the defendants, the court shall determine the allocation, upon motion of the commissioner or the person bringing the action, according to the following priority:

(I) The person bringing the action, regardless of whether that person paid money to the defendants as part of the acts alleged in the complaint, shall first receive the amount the court determines is reasonable for attorney's fees, costs, and expenses that the court determines to have been necessarily incurred.

(II) The commissioner shall receive the amount the court determines for reasonable attorney's fees and costs.

(III) If the person bringing the suit has paid moneys to the defendants as part of the acts alleged in the complaint, that person shall receive the amount paid to the defendants.

(IV) At least 30 percent, but not more than 40 percent, of the remaining assets or moneys, shall be allocated to the person bringing the action, depending upon the extent to which the person substantially contributed to the prosecution of the action.

(iv) Those portions of a judgment or settlement not distributed pursuant to this subdivision shall be paid to the General Fund of the state and, upon appropriation by the Legislature, shall be apportioned between the Department of Justice and the Department of Insurance for enhanced fraud investigation and prevention efforts.

(B) Where the action is one that the court finds to be based primarily on disclosures of specific information, other than information provided by the person bringing the action, relating to allegations or transactions in a criminal, civil, or administrative hearing, in a legislative or administrative report, hearing, audit, or investigation, or from the news media, the court may award those sums that it considers appropriate, but in no case more than 10 percent of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation.

(C) Any payment to a person under subparagraph (A) or under subparagraph (B) shall be made from the proceeds. The person shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorney's fees and costs. All of those expenses, fees, and costs shall be awarded against the defendant.

(2) (A) If the district attorney or commissioner does not proceed with an action under this section, the person bringing the action or settling the claim shall receive an amount that the court decides is reasonable for collecting the civil penalty and damages. Except as provided in subparagraph (B), the amount shall not be less than 40 percent and not more than 50 percent of the proceeds of the action or settlement and shall be paid out of the proceeds. That person shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorney's fees and costs. All of those attorney's fees and costs shall be imposed against the defendant. The parties shall serve the commissioner and the local district attorney with complete copies of any and all settlement agreements, and terms and conditions, for actions brought under this article at least 10 days prior to filing any motion for allocation with the court under this paragraph. The court may allocate the funds pursuant to the settlement agreement if, after the court's ruling on objection by the commissioner or the local district attorney, if any, the court finds it is in the interests of justice to follow the settlement agreement.

(B) If the person bringing the action, as a result of a violation of this section has paid money to the defendant or to an attorney acting on behalf of the defendant in the underlying claim, then he or she shall be entitled to up to double the amount paid to the defendant or the attorney if that amount is greater than 50 percent of the proceeds. That person shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorney's fees and costs. All of those expenses, fees, and costs shall be awarded against the defendant.

(3) If a local district attorney has proceeded with an action under this section, one-half of the penalties not awarded to a private party, as well as any costs awarded shall go to the treasurer of the appropriate county. Those funds shall be used to investigate and prosecute fraud, augmenting existing budgets rather than replacing them. All remaining funds shall go to the state and be deposited in the General Fund and, when appropriated by the Legislature, shall be apportioned between the Department of Justice and the Department of Insurance for enhanced fraud investigation and prevention efforts.

(4) Whether or not the district attorney or commissioner proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation of this section, that person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. The dismissal shall not prejudice the right of the district attorney or commissioner to continue the action on behalf of the state.

(5) If the district attorney or commissioner does not proceed with the action, and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorney's fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

(h) (1) In no event may a person bring an action under subdivision (e) that is based upon allegations or transactions that are the subject of a civil suit or an administrative civil money penalty proceeding in which the Attorney General, district attorney, or commissioner is already a party.

(2) (A) No court shall have jurisdiction over an action under this section based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing in a legislative or administrative report, hearing, audit, or investigation, or from the news media, unless the action is brought by the Attorney General or the person bringing the action is an original source of the information.

(B) For purposes of this paragraph, "original source" means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the district attorney or commissioner before filing an action under this section which is based on the information.

(i) Except as provided in subdivision (j), the district attorney or commissioner is not liable for expenses that a person incurs in bringing an action under this section.

(j) In civil actions brought under this section in which the commissioner or a district attorney is a party, the court shall retain discretion to impose sanctions otherwise allowed by law, including the ability to order a party to pay expenses as provided in Sections 128.5 and 1028.5 of the Code of Civil Procedure.

(k) Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action under this section, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this section, shall be entitled to all relief necessary to make the employee whole. That relief shall include reinstatement with the same seniority status the employee would have had but for the discrimination, two times the amount of backpay, interest on the backpay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney's fees. An employee may bring an action in the appropriate superior court for the relief provided in this subdivision. The remedies under this section are in addition to any other remedies provided by existing law.

(l) (1) An action pursuant to this section may not be filed more than three years after the discovery of the facts constituting the grounds for commencing the action.

(2) Notwithstanding paragraph (1) no action may be filed pursuant to this section more than eight years after the commission of the act constituting a violation of this section or a violation of Section 549, 550, or 551 of the Penal Code. (Added by Stats. 1993, ch. 120. Amended by Stats. 1994, ch. 1247; Stats. 1995, ch. 574; Stats. 1999, ch. 885; Stats. 2005, ch. 380.)

§1872. Creation of Bureau of Fraudulent Claims

There is created within the department the Fraud Division to enforce the provisions of Sections 549, and 550 of the Penal Code, and to administer the provisions of Article 3 (commencing with Section 1873). (Added by Stats. 1989, ch. 1119. Amended by Stats. 1991, ch. 116; Stats. 1991, ch. 934; Stats. 1992, ch. 675; Stats. 2005, ch. 717.)

§1872.83 Reporting Incidents of Fraud to Appropriate Disciplinary Body

(a) The commissioner shall ensure that the Fraud Division aggressively pursues all reported incidents of probable workers' compensation fraud, as defined in Sections 11760 and 11880, and in subdivision (a) of Section 1871.4, and in Section 549 of the Penal Code, and forwards to the appropriate disciplinary body the names, along with all supporting evidence, of any individuals licensed under the Business and Professions Code who are suspected of actively engaging in fraudulent activity. The Fraud Division shall forward to the Insurance Commissioner or the Director of Industrial Relations, as appropriate, the name, along with all supporting evidence, of any insurer, as defined in subdivision (c) of Section 1877.1, suspected of actively engaging in the fraudulent denial of claims.

(b) To fund increased investigation and prosecution of workers' compensation fraud, and of willful failure to secure payment of workers' compensation, in violation of Section 3700.5 of the Labor Code, there shall be an annual assessment as follows:

(1) The aggregate amount of the assessment shall be determined by the Fraud Assessment Commission, which is hereby established. The commission shall be composed of seven members consisting of two representatives of organized labor, two representatives of self-insured employers, one representative of insured employers, one representative of workers' compensation insurers, and the President of the State Compensation Insurance Fund, or his or her designee. The Governor shall appoint members representing organized labor, self-insured employers, insured employers, and insurers. The term of office of members of the commission shall be four years, and a member shall hold office until the appointment of a successor. The President of the State Compensation Insurance Fund shall be an ex officio, voting member of the commission. Members of the commission shall receive one hundred dollars ($100) for each day of actual attendance at commission meetings and other official commission business, and shall also receive their actual and necessary traveling expenses incurred in the performance of commission duties. Payment of per diem and travel expenses shall be made from the Workers' Compensation Fraud Account in the Insurance Fund, established in paragraph (4), upon appropriation by the Legislature.

(2) In determining the aggregate amount of the assessment, the Fraud Assessment Commission shall consider the advice and recommendations of the Fraud Division and the commissioner.

(3) The aggregate amount of the assessment shall be collected by the Director of Industrial Relations pursuant to Section 62.6 of the Labor Code. The Fraud Assessment Commission shall annually advise the Director of Industrial Relations, not later than March

15, of the aggregate amount to be assessed for the next fiscal year.

(4) The amount collected, together with the fines collected for violations of the unlawful acts specified in Sections 1871.4, 11760, and 11880, Section 3700.5 of the Labor Code, and Section 549 of the Penal Code, shall be deposited in the Workers' Compensation Fraud Account in the Insurance Fund, which is hereby created, and may be used, upon appropriation by the Legislature, only for enhanced investigation and prosecution of workers' compensation fraud and of willful failure to secure payment of workers' compensation as provided in this section.

(c) For each fiscal year, the total amount of revenues derived from the assessment pursuant to subdivision (b) shall, together with amounts collected pursuant to fines imposed for unlawful acts described in Sections 1871.4, 11760, and 11880, Section 3700.5 of the Labor Code, and Section 549 of the Penal Code, not be less than three million dollars ($3,000,000). Any funds appropriated by the Legislature pursuant to subdivision (b) that are not expended in the fiscal year for which they have been appropriated, and that have not been allocated under subdivision (f), shall be applied to satisfy for the immediately following fiscal year the minimum total amount required by this subdivision. In no case may that money be transferred to the General Fund.

(d) After incidental expenses, at least 40 percent of the funds to be used for the purposes of this section shall be provided to the Fraud Division of the Department of Insurance for enhanced investigative efforts, and at least 40 percent of the funds shall be distributed to district attorneys, pursuant to a determination by the commissioner with the advice and consent of the division and the Fraud Assessment Commission, as to the most effective distribution of moneys for purposes of the investigation and prosecution of workers' compensation fraud cases and cases relating to the willful failure to secure the payment of workers' compensation. Each district attorney seeking a portion of the funds shall submit to the commissioner an application setting forth in detail the proposed use of any funds provided. A district attorney receiving funds pursuant to this subdivision shall submit an annual report to the commissioner with respect to the success of his or her efforts. Upon receipt, the commissioner shall provide copies to the Fraud Division and the Fraud Assessment Commission of any application, annual report, or other documents with respect to the allocation of money pursuant to this subdivision. Both the application for moneys and the distribution of moneys shall be public documents. Information submitted to the commissioner pursuant to this section concerning criminal investigations, whether active or inactive, shall be confidential.

(e) If a district attorney is determined by the commissioner to be unable or unwilling to investigate and prosecute workers' compensation fraud claims or claims relating to the willful failure to secure the payment of workers' compensation, the commissioner shall discontinue distribution of funds allocated for that county and may redistribute those funds according to this subdivision.

(1) The commissioner shall promptly determine whether any other county could assert jurisdiction to prosecute the fraud claims or claims relating to the willful failure to secure the payment of workers' compensation that would have been brought in the nonparticipating county, and if so, the commissioner may award funds to conduct the prosecutions redirected pursuant to this subdivision. These funds may be in addition to any other fraud prosecution funds or claims relating to the willful failure to secure the payment of workers' compensation prosecution otherwise awarded under this section. Any district attorney receiving funds pursuant to this subdivision shall first agree that the funds shall be used solely for investigating and prosecuting those cases of workers' compensation fraud or claims relating to the willful failure to secure the payment of workers' compensation that are redirected pursuant to this subdivision and submit an annual report to the commissioner with respect to the success of the district attorney's efforts. The commissioner shall keep the Fraud Assessment Commission fully informed of all reallocations of funds under this paragraph.

(2) If the commissioner determines that no district attorney is willing or able to investigate and prosecute the workers' compensation fraud claims or claims relating to the willful failure to secure the payment of workers' compensation arising in the nonparticipating county, the commissioner, with the advice and consent of the Fraud Assessment Commission, may award to the Attorney General some or all of the funds previously awarded to the nonparticipating county. Before the commissioner may award any funds, the Attorney General shall submit to the commissioner an application setting forth in detail his or her proposed use of any funds provided and agreeing that any funds awarded shall be used solely for investigating and prosecuting those cases of workers' compensation fraud or claims relating to the willful failure to secure the payment of workers' compensation that are redirected pursuant to this subdivision. The Attorney General shall submit an annual report to the commissioner with respect to the success of the fraud prosecution efforts of his or her office.

(3) Neither the Attorney General nor any district attorney shall be required to relinquish control of any

investigation or prosecution undertaken pursuant to this subdivision unless the commissioner determines that satisfactory progress is no longer being made on the case or the case has been abandoned.

(4) A county that has become a nonparticipating county due to the inability or unwillingness of its district attorney to investigate and prosecute workers' compensation fraud or the willful failure to secure the payment of workers' compensation shall not become eligible to receive funding under this section until it has submitted a new application that meets the requirements of subdivision (d) and the applicable regulations.

(f) If in any fiscal year the Fraud Division does not use all of the funds made available to it under subdivision (d), any remaining funds may be distributed to district attorneys pursuant to a determination by the commissioner in accordance with the same procedures set forth in subdivision (d).

(g) The commissioner shall adopt rules and regulations to implement this section in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). Included in the rules and regulations shall be the criteria for redistributing funds to district attorneys and the Attorney General. The adoption of the rules and regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, and safety, or general welfare.

(h) The department shall report to the Governor, the Legislature, to the committees of the Senate and Assembly having jurisdiction over insurance, and the Fraud Assessment Commission on the activities of the Fraud Division and district attorneys supported by the funds provided by this section in the annual report submitted pursuant to Section 12922.

The annual report shall include, but is not limited to, all of the following information for the department and each district attorney' s office:

(1) All allocations, distributions, and expenditures of funds.

(2) The number of search warrants issued.

(3) The number of arrests and prosecutions, and the aggregate number of parties involved in each.

(4) The number of convictions and the names of all convicted fraud perpetrators.

(5) The estimated value of all assets frozen, penalties assessed, and restitutions made for each conviction.

(6) Any additional items necessary to fully inform the Fraud Assessment Commission and the Legislature of the fraud-fighting efforts financed through this section.

(i) In order to meet the requirements of subdivision (g), the department shall submit a biannual information request to those district attorneys who have applied for and received funding through the annual assessment process under this section.

(j) Assessments levied or collected to fight workers' compensation fraud and insurance fraud are not taxes. Those funds are entrusted to the state to fight fraud and the willful failure to secure the payment of workers' compensation by funding state and local investigation and prosecution efforts. Accordingly, any funds resulting from assessments, fees, penalties, fines, restitution, or recovery of costs of investigation and prosecution deposited in the Insurance Fund shall not be deemed "unexpended" funds for any purpose and, if remaining in that account at the end of any fiscal year, shall be applied as provided in subdivision (f) and to offset or augment subsequent years' program funding.

(k) The Bureau of State Audits shall evaluate the effectiveness of the efforts of the Fraud Assessment Commission, the Fraud Division, the Department of Insurance, and the Department of Industrial Relations, as well as local law enforcement agencies, including district attorneys, in identifying, investigating, and prosecuting workers' compensation fraud and the willful failure to secure payment of workers' compensation. The report shall specifically identify areas of deficiencies. Included in this report shall be recommendations on whether the current program provides the appropriate levels of accountability for those responsible for the allocation and expenditure of funds raised from the assessment provided in this section. The Bureau of State Audits shall submit a report to the Chairperson of the Senate Committee on Labor and Industrial Relations and the Chairperson of the Assembly Committee on Insurance on or before May 1, 2004. (Added by Stats. 1991, ch. 116. Amended by Stats. 1991, ch. 934; Stats. 1994, ch. 301; Stats. 1995, ch. 885, ch. 886; Stats. 1997, ch. 364; Stats. 2001, ch. 159; Stats. 2002, ch. 6; Stats. 2005, ch. 717; Stats. 2006, ch. 405.)

§1872.95 Medical & Chiropractic Boards and State Bar; Investigation of Motor Vehicle or Disability Insurance Fraud by Licensees

(a) Within existing resources, the Medical Board of California, the Board of Chiropractic Examiners, and the

State Bar shall each designate employees to investigate and report on possible fraudulent activities relating to workers' compensation, motor vehicle insurance, or disability insurance by licensees of the board or the bar. Those employees shall actively cooperate with the Fraud Division in the investigation of those activities.

(b) The Medical Board of California, the Board of Chiropractic Examiners, and the State Bar shall each report annually, on or before March 1, to the committees of the Senate and Assembly having jurisdiction over insurance on their activities established pursuant to subdivision (a) for the previous year. That report shall specify, at a minimum, the number of cases investigated, the number of cases forwarded to the Fraud Division or other law enforcement agencies, the outcome of all cases listed in the report, and any other relevant information concerning those cases or general activities conducted under subdivision (a) for the previous year. The report shall include information regarding activities conducted in connection with cases of suspected automobile insurance fraud. (Added by Stats. 1991, ch. 1222. Another §1872.95, added by Stats. 1991, ch. 1008, was renumbered §1872.96 and amended by Stats. 1992, ch. 427; Stats. 1995, ch. 167; Stats. 1999, ch. 885; Stats. 2005, ch. 717.)

§1877.5 Insurer Communications Under this Article are Privileged; Immunity from Civil Liability

No insurer, agent authorized by an insurer to act on its behalf, or licensed rating organization who furnishes information, written or oral, pursuant to this article, and no authorized governmental agency or its employees who (a) furnishes or receives information, written or oral, pursuant to this article, or (b) assists in any investigation of a suspected violation of Section 1871.1, 1871.4, 11760, or 11880, or of Section 549 of the Penal Code, or of Section 3215 or 3219 of the Labor Code conducted by an authorized governmental agency, shall be subject to any civil liability in a cause or action of any kind where the insurer, authorized agent, licensed rating organization, or authorized governmental agency acts in good faith, without malice, and reasonably believes that the action taken was warranted by the then known facts, obtained by reasonable efforts. Nothing in this chapter is intended to, nor does in any way or manner, abrogate or lessen the existing common law or statutory privileges and immunities of an insurer, agent authorized by that insurer to act on its behalf, licensed rating organization, or any authorized governmental agency or its employees. (Added by Stats. 1991, ch. 116. Amended by Stats. 1991, ch. 934; Stats. 1993, ch. 120; Stats. 2004, ch. 636.)

INTERNAL REVENUE CODE

§6041. Information at Source

(a) Payments of $600 or more.

All persons engaged in a trade or business and making payment in the course of such trade or business to another person, of rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits, and income (other than payments to which section 6042(a)(1), 6044(a)(1), 6047(e), 6049(a), or 6050N(a) applies, and other than payments with respect to which a statement is required under the authority of section 6042(a)(2), 6044(a)(2), or 6045), of $600 or more in any taxable year, or, in the case of such payments made by the United States, the officers or employees of the United States having information as to such payments and required to make returns in regard thereto by the regulations hereinafter provided for, shall render a true and accurate return to the Secretary, under such regulations and in such form and manner and to such extent as may be prescribed by the Secretary, setting forth the amount of such gains, profits, and income, and the name and address of the recipient of such payment.

(b) Collection of foreign items.

In the case of collections of items (not payable in the United States) of interest upon the bonds of foreign countries and interest upon the bonds of and dividends from foreign corporations by any person undertaking as a matter of business or for profit the collection of foreign payments of such interest or dividends by means of coupons, checks, or bills of exchange, such person shall make a return according to the forms or regulations prescribed by the Secretary, setting forth the amount paid and the name and address of the recipient of each such payment.

(c) Recipient to furnish name and address.

When necessary to make effective the provisions of this section, the name and address of the recipient of income shall be furnished upon demand of the person paying the income.

(d) Statements to be furnished to persons with respect to whom information is required.

Every person required to make a return under subsection (a) shall furnish to each person with respect to whom such a return is required a written statement showing-

(1) the name, address, and phone number of the

information contact of the person required to make such return, and

(2) the aggregate amount of payments to the person required to be shown on the return.

The written statement required under the preceding sentence shall be furnished to the person on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made. To the extent provided in regulations prescribed by the Secretary, this subsection shall also apply to persons required to make returns under subsection (b).

(e) Section does not apply to certain tips.

This section shall not apply to tips with respect to which section 6053(a) (relating to reporting of tips) applies.

(f) Section does not apply to certain health arrangements.

This section shall not apply to any payment for medical care (as defined in section 213(d)) made under-

(1) a flexible spending arrangement (as defined in section 106(c)(2)), or

(2) a health reimbursement arrangement which is treated as employer-provided coverage under an accident or health plan for purposed of section 106.

(g) Nonqualified deferred compensation.–

Subsection (a) shall apply to–

(1) any deferrals for the year under a nonqualified deferred compensation plan (within the meaning of section 409(d)), whether or not paid, except that this paragraph shall not apply to deferrals which are required to be reported under section 6051 (a)(13) (without regard to any de minimis exception), and

(2) any amount includible under section 409A and which is not treated as wages under section 3401(a).

(Aug. 16, 1954, c. 736, 68A Stat. 745; Oct. 16, 1962, Pub.L. 87-834, § 19(f), 76 Stat. 1058; Oct. 4, 1976, Pub.L. 94-455, Title XIX, § 1906(b)(13)(A), 90 Stat. 1834; Nov. 6, 1978, Pub.L. 95-600, Title V, § 501(b), 92 Stat. 2878; Aug. 13, 1981, Pub.L. 97-34, Title VII, § 723(b)(1), 95 Stat. 344; Sept. 3, 1982, Pub.L. 97-248, Title III, § 309(b)(1), 96 Stat. 595; July 18, 1984, Pub.L. 98-369, Div. A, Title VII, § 722(h)(4)(B), 98 Stat. 976; Oct. 22, 1986, Pub.L. 99-514, Title XV, §§ 1501(c)(1), 1523(b)(2), 100 Stat. 2736, 2748; July 30, 1996, Pub.L. 104-168, Title XII, § 1201(a)(1), 110 Stat. 1469; Dec. 8, 2003, Pub.L. 108-173, Title XII, § 1203(a), 117 Stat. 2480; October 22, 2004, Pub.L. 108-357, Title VIII, § 855(b)(3), 118 Stat. 1640.)

§6045. Returns of Brokers

(a) General rule.

Every person doing business as a broker shall, when required by the Secretary, make a return, in accordance with such regulations as the Secretary may prescribe, showing the name and address of each customer, with such details regarding gross proceeds and such other information as the Secretary may by forms or regulations require with respect to such business.

(b) Statements to be furnished to customers.

Every person required to make a return under subsection (a) shall furnish to each customer whose name is required to be set forth in such return a written statement showing-

(1) the name, address, and phone number of the information contact of the person required to make such return, and

(2) the information required to be shown on such return with respect to such customer.

The written statement required under the preceding sentence shall be furnished to the customer on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made.

(c) Definitions.

For purposes of this section:

(1) Broker

The term “broker” includes-

(A) a dealer,

(B) a barter exchange, and

(C) any other person who (for a consideration) regularly acts as a middleman with respect to property or services.

A person shall not be treated as a broker with respect to activities consisting of managing a farm on behalf of another person.

(2) Customer

The term "customer" means any person for whom the broker has transacted any business.

(3) Barter exchange

The term "barter exchange" means any organization of members providing property or services who jointly contract to trade or barter such property or services.

(4) Person

The term "person" includes any governmental unit and any agency or instrumentality thereof.

(d) Statements required in case of certain substitute payments.

If any broker-

(1) transfers securities of a customer for use in a short sale or similar transaction, and

(2) receives (on behalf of the customer) a payment in lieu of-

(A) a dividend,

(B) tax-exempt interest, or

(C) such other items as the Secretary may prescribe by regulations, during the period such short sale or similar transaction is open, the broker shall furnish such customer a written statement (at such time and in the manner as the Secretary shall prescribe by regulations) identifying such payment as being in lieu of the dividend, tax-exempt interest, or such other item. The Secretary may prescribe regulations which require the broker to make a return which includes the information contained in such written statement.

(e) Return required in the case of real estate transactions.

(1) In general

In the case of a real estate transaction, the real estate reporting person shall file a return under subsection (a) and a statement under subsection (b) with respect to such transaction.

(2) Real estate reporting person

For purposes of this subsection, the term "real estate reporting person" means any of the following persons involved in a real estate transaction in the following order:

(A) the person (including any attorney or title company) responsible for closing the transaction,

(B) the mortgage lender,

(C) the seller's broker,

(D) the buyer's broker, or

(E) such other person designated in regulations prescribed by the Secretary.

Any person treated as a real estate reporting person under the preceding sentence shall be treated as a broker for purposes of subsection (c)(1).

(3) Prohibition of separate charge for filing return.

It shall be unlawful for any real estate reporting person to separately charge any customer for complying with any requirement of paragraph (1). Nothing in this paragraph shall be construed to prohibit the real estate reporting person from taking into account its cost of complying with such requirement in establishing its charge (other than a separate charge for complying with such requirement) to any customer for performing services in the case of a real estate transaction.

(4) Additional information required.

In the case of a real estate transaction involving a residence, the real estate reporting person shall include the following information on the return under subsection (a) and on the statement under subsection (b):

(A) The portion of any real property tax which is treated as a tax imposed on the purchaser by reason of section 164(d)(1)(B).

(B) Whether or not the financing (if any) of the seller was federally-subsidized indebtedness (as defined in section 143(m)(3)).

(5) Exception for sales or exchanges of certain principal residences.

(A) In general

Paragraph (1) shall not apply to any sale or exchange of a residence for $250,000 or less if the

person referred to in paragraph (2) receives written assurance in a form acceptable to the Secretary from the seller that:

(i) such residence is the principal residence (within the meaning of section 121) of the seller,

(ii) if the Secretary requires the inclusion on the return under subsection (a) of information as to whether there is federally subsidized mortgage financing assistance with respect to the mortgage on residences, that there is no such assistance with respect to the mortgage on such residence, and

(iii) the full amount of the gain on such sale or exchange is excludable from gross income under section 121.

If such assurance includes an assurance that the seller is married, the preceding sentence shall be applied by substituting "$500,000" for "$250,000".

The Secretary may by regulation increase the dollar amounts under this subparagraph if the Secretary determines that such an increase will not materially reduce revenues to the Treasury.

(B) Seller

For purposes of this paragraph, the term "seller" includes the person relinquishing the residence in an exchange.

(f) Return required in the case of payments to attorneys.

(1) In general

Any person engaged in a trade or business and making a payment (in the course of such trade or business) to which this subsection applies shall file a return under subsection (a) and a statement under subsection (b) with respect to such payment.

(2) Application of subsection.

(A) In general

This subsection shall apply to any payment to an attorney in connection with legal services (whether or not such services are performed for the payor).

(B) Exception

This subsection shall not apply to the portion of any payment which is required to be reported under section 6041(a) (or would be so required but for the dollar limitation contained therein) or section 6051.

(Aug. 16, 1954, c. 736, 68A Stat. 747; Oct. 4, 1976, Pub.L. 94-455, Title XIX, § 1906(b)(13)(A), 90 Stat. 1834; Sept. 3, 1982, Pub.L. 97-248, Title III, § 311(a)(1), 96 Stat. 600; July 18, 1984, Pub.L. 98-369, Div. A, Title I, § 150(a), Title VII, § 714(e)(1), 98 Stat. 690, 961; Oct. 22, 1986, Pub.L. 99-514, Title XV, §§ 1501(c)(4), 1521(a), 100 Stat. 2737, 2746; Nov. 10, 1988, Pub.L. 100-647, Title I, § 1015(e)(1)(A), (2)(A), (3), Title IV, § 4005(g)(3), 102 Stat. 3569, 3570, 3650; Dec. 19, 1989, Pub.L. 101-239, Title VII, § 7814(c)(1), 103 Stat. 2413; Nov. 5, 1990, Pub.L. 101-508, Title XI, § 11704(a)(25), 104 Stat. 1388-519; Oct. 24, 1992, Pub.L. 102-486, Title XIX, § 1939(a), 106 Stat. 3034; July 30, 1996, Pub.L. 104-168, Title XII, § 1201(a)(5), 110 Stat. 1469; Aug. 20, 1996, Pub.L. 104-188, Title I, § 1704(o)(1), 110 Stat. 1886; Aug. 5, 1997, Pub.L. 105-34, Title III, § 312(c), Title X, § 1021(a), 111 Stat. 839, 922; Dec. 21, 2005, Pub.L. 109-135, Title IV, § 412(xx), 119 Stat. 2640.)

§6050I Returns Relating to Cash Received in Trade or Business

(a) Cash receipts of more than $10,000

Any person -

(1) who is engaged in a trade or business, and

(2) who, in the course of such trade or business, receives more than $10,000 in cash in 1 transaction (or 2 or more related transactions), shall make the return described in subsection (b) with respect to such transactions (or related transactions) at such time as the Secretary may by regulations prescribe.

(b) Form and manner of returns

A return is described in this subsection if such return -

(1) is in such form as the Secretary may prescribe,

(2) contains -

(A) the name, address, and TIN of the person from whom the cash was received,

(B) the amount of cash received,

(C) the date and nature of the transaction, and

(D) such other information as the Secretary may prescribe.

(c) Exceptions

(1) Cash received by financial institutions.--Subsection (a) shall not apply to--

(A) cash received in a transaction reported under title 31, United States Code, if the Secretary determines that reporting under this section would duplicate the reporting to the Treasury under title 31, United States Code, or

(B) cash received by any financial institution (as defined in subparagraphs (A), (B), (C), (D), (E), (F), (G), (J), (K), (R), and (S) of section 5312(a)(2) of title 31, United States Code).

(2) Transactions occurring outside the United States

Except to the extent provided in regulations prescribed by the Secretary, subsection (a) shall not apply to any transaction if the entire transaction occurs outside the United States.

(d) Cash includes foreign currency and certain monetary instruments

For purposes of this section, the term "cash" includes--

(1) foreign currency, and

(2) to the extent provided in regulations prescribed by the Secretary, any monetary instrument (whether or not in bearer form) with a face amount of not more than $10,000.

Paragraph (2) shall not apply to any check drawn on the account of the writer in a financial institution referred to in subsection (c)(1)(B).

(e) Statements to be furnished to persons with respect to whom information is required

Every person required to make a return under subsection (a) shall furnish to each person whose name is required to be set forth in such return a written statement showing -

(1) the name, address, and phone number of the information contact of the person required to make such return, and

(2) the aggregate amount of cash described in subsection (a) received by the person required to make such return.

The written statement required under the preceding sentence shall be furnished to the person on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made.

(f) Structuring transactions to evade reporting requirements prohibited

(1) In general

No person shall for the purpose of evading the return requirements of this section -

(A) cause or attempt to cause a trade or business to fail to file a return required under this section.

(B) cause or attempt to cause a trade or business to file a return required under this section that contains a material omission or misstatement of fact, or

(C) structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more trades or businesses.

(2) Penalties

A person violating paragraph (1) of this subsection shall be subject to the same civil and criminal sanctions applicable to a person which fails to file or completes a false or incorrect return under this section.

(g) Cash received by criminal court clerks

(1) In general

Every clerk of a Federal or State criminal court who receives more than $10,000 in cash as bail for any individual charged with a specified criminal offense shall make a return described in paragraph (2) (at such time as the Secretary may by regulations prescribe) with respect to the receipt of such bail.

(2) Return

A return is described in this paragraph if such return -

(A) is in such form as the Secretary may prescribe, and

(B) contains -

(i) the name, address, and TIN of—

(I) the individual charged with the specified criminal offense, and

(II) each person posting the bail (other than a person licensed as a bail bondsman),

(ii) the amount of cash received,

(iii) the date the cash was received, and

(iv) such other information as the Secretary may prescribe.

(3) Specified criminal offense

For purposes of this subsection, the term "specified criminal offense" means -

(A) any Federal criminal offense involving a controlled substance,

(B) racketeering (as defined in section 1951, 1952, or 1955 of title 18, United States Code),

(C) money laundering (as defined in section 1956 or 1957 of such title), and

(D) any State criminal offense substantially similar to an offense described in subparagraph (A), (B), or (C).

(4) Information to Federal prosecutors

Each clerk required to include on a return under paragraph (1) the information described in paragraph (2)(B) with respect to an individual described in paragraph (2)(B)(i)(I) shall furnish (at such time as the Secretary may by regulations prescribe) a written statement showing such information to the United States Attorney for the jurisdiction in which such individual resides and the jurisdiction in which the specified criminal offense occurred.

(5) Information to payors of bail

Each clerk required to make a return under paragraph (1) shall furnish (at such time as the Secretary may by regulations prescribe) to each person whose name is required to be set forth in such return by reason of paragraph (2)(B)(i)(II) a written statement showing—

(A) the name and address of the clerk's office required to make the return, and

(B) the aggregate amount of cash described in paragraph (1) received by such clerk.

(Added Pub.L. 98-369, Div. A, Title I, §146(a), July 18, 1984, 98 Stat. 685, and amended Pub.L. 99-514, Title XV §1501(c)(12), Oct. 22, 1986, 100 Stat. 2739; Pub.L. 100-690, Title VII, §7601(a)(1), Nov. 18, 1988, 102 Stat. 4503; Pub.L. 101-508, Title XI, §11318(a), (c), Nov. 5, 1990, 104 Stat. 1388-458, 1388-459; Pub. L. 103-322, Title II, §20415(a), (b)(3), Sept. 13, 1994, 108 Stat. 1832, 1833; Pub.L. 104-168, Title XII, §1201(a)(9), July 30, 1996, 110 Stat. 1469.)

LABOR CODE

§139.45 Promulgation of Regulations re False or Misleading Advertising; Definitions

(a) In promulgating regulations pursuant to Sections 139.4 and 139.43, the administrative director shall take particular care to preclude any advertisements with respect to industrial injuries or illnesses that are false or mislead the public with respect to workers' compensation. In promulgating rules with respect to advertising, the State Bar and physician licensing boards shall also take particular care to achieve the same goal.

(b) For purposes of subdivision (a), false or misleading advertisements shall include advertisements that do any of the following:

(1) Contain an untrue statement.

(2) Contain any matter, or present or arrange any matter in a manner or format that is false, deceptive, or that tends to confuse, deceive, or mislead.

(3) Omit any fact necessary to make the statement made, in the light of the circumstances under which the statement is made, not misleading.

(4) Are transmitted in any manner that involves coercion, duress, compulsion, intimidation, threats, or vexatious or harassing conduct.

(5) Entice a person to respond by the offering of any consideration, including a good or service but excluding free medical evaluations or treatment, that would be provided either at no charge or for less than market value. No free medical evaluation or treatment shall be offered for the purpose of defrauding any entity. (Added by Stats. 1991, ch. 116. Amended by Stats. 1992, ch. 1352; Stats. 2004, ch. 639.)

§5430. Short title

This chapter shall be known and may be cited as the Workers' Compensation Truth in Advertising Act of 1992. (Added by Stats. 1992, ch. 904.)

§5431. Purpose

The purpose of this chapter is to assure truthful and adequate disclosure of all material and relevant information in the advertising which solicits persons to file workers' compensation claims or to engage or consult counsel or a medical care provider or clinic to consider a workers' compensation claim. (Added by Stats. 1992, ch. 904.)

§5432. Advertisement to Solicit Workers' Compensation Claims; Mandatory Notice or Statement

(a) Any advertisement which solicits persons to file workers' compensation claims or to engage or consult counsel or a medical care provider or clinic to consider a workers' compensation claim in any newspaper, magazine, circular, form letter, or open publication, published, distributed, or circulated in this state, or on any billboard, card, label, transit advertisement or other written advertising medium shall state at the top or bottom on the front side or surface of the document in a least 12-point roman boldface type font, except for any billboard which shall be in type whose letters are 12 inches in height or any transit advertisement which shall be in type whose letters are seven inches in height and for any television announcement which shall be in 12-point roman boldface type font and appear in a dark background and remain on the screen for a minimum of five seconds and for any radio announcement which shall be read at an understandable pace with no loud music or sound effects, or both, to compete for the listener's attention, the following:

NOTICE

> Making a false or fraudulent workers' compensation claim is a felony subject to up to 5 years in prison or a fine of up to $50,000 or double the value of the fraud, whichever is greater, or by both imprisonment and fine.

(b) Any television or radio announcement published or disseminated in this state which solicits persons to file workers' compensation claims or to engage or consult counsel to consider a workers' compensation claim under this code shall include the following spoken statement by the announcer of the advertisement:

> "Making a false or fraudulent workers' compensation claim is a felony subject to up to 5 years in prison or a fine of up to $50,000 or double the value of the fraud, whichever is greater, or by both imprisonment and fine."

(c) This chapter does not supersede or repeal any regulation which governs advertising under this code and those regulations shall continue to be in force in addition to this chapter.

(d) For purposes of subdivisions (a) and (b), the notice or statement shall be written or spoken in English. In those cases where the preponderance of the listening or reading public receives information other than in the English language, the written notice or spoken statement shall be in those other languages. (Added by Stats. 1992, ch. 904.)

§5433. Advertisements and Lead Generating Devices; Mandatory Disclosure; Deceptive or Misleading Names or Advertising Techniques

(a) Any advertisement or other device designed to produce leads based on a response from a person to file a workers' compensation claim or to engage or consult counsel or a medical care provider or clinic shall disclose that an agent may contact the individual if that is the fact. In addition, an individual who makes contact with a person as a result of acquiring that individual's name from a lead generating device shall disclose that fact in the initial contact with that person.

(b) No person shall solicit persons to file a workers' compensation claim or to engage or consult counsel or a medical care provider or clinic to consider a workers' compensation claim through the use of a true or fictitious name which is deceptive or misleading with regard to the status, character, or proprietary or representative capacity of the entity or person, or to the true purpose of the advertisement.

(c) For purposes of this section, an advertisement includes a solicitation in any newspaper, magazine, circular, form letter, or open publication, published, distributed, or circulated in this state, or on any billboard, card, label, transit advertisement, or other written advertising medium, and includes envelopes, stationery, business cards, or other material designed to encourage the filing of a workers' compensation claim.

(d) Advertisements shall not employ words, initials, letters, symbols, or other devices which are so similar to those used by governmental agencies, a nonprofit or charitable institution, or other entity that they could have the capacity or tendency to mislead the public. Examples of misleading

materials include, but are not limited to, those that imply any of the following:

(1) The advertisement is in some way provided by or is endorsed by a governmental agency or charitable institution.

(2) The advertiser is the same as, is connected with, or endorsed by a governmental agency or charitable institution.

(e) Advertisements may not use the name of a state or political subdivision thereof in an advertising solicitation.

(f) Advertisements may not use any name, service mark, slogan, symbol, or any device in any manner which implies that the advertiser, or any person or entity associated with the advertiser, or that any agency who may call upon the person in response to the advertisement, is connected with a governmental agency.

(g) Advertisements may not imply that the reader, listener, or viewer may lose a right or privilege or benefits under federal, state, or local law if he or she fails to respond to the advertisement. (Added by Stats. 1992, ch. 904. Amended by Stats. 1998, ch. 485; Stats. 1999, ch. 83.)

§5434. Violation; Misdemeanor

(a) Any advertiser who violates Section 5431 or 5432 is guilty of a misdemeanor.

(b) For the purposes of this chapter, "advertiser" means any person who provides workers' compensation claims services which are described in the written or broadcast advertisements, any person to whom persons solicited by the advertisements are directed to for inquiries or the provision of workers' compensation claims related services, or any person paying for the preparation, broadcast, printing, dissemination, or placement of the advertisements. (Added by Stats. 1992, ch. 904.)

PENAL CODE

§76. Threats Against Public Officials, Appointees, Judges, Staff or Their Families; Intent and Ability to Carry Out threat; Punishment

(a) Every person who knowingly and willingly threatens the life of, or threatens serious bodily harm to, any elected public official, county public defender, county clerk, exempt appointee of the Governor, judge, or Deputy Commissioner of the Board of Prison Terms, or the staff, immediate family, or immediate family of the staff of any elected public official, county public defender, county clerk, exempt appointee of the Governor, judge, or Deputy Commissioner of the Board of Prison Terms, with the specific intent that the statement is to be taken as a threat, and the apparent ability to carry out that threat by any means, is guilty of a public offense, punishable as follows:

(1) Upon a first conviction, the offense is punishable by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in the state prison, or in a county jail not exceeding one year, or by both that fine and imprisonment.

(2) If the person has been convicted previously of violating this section, the previous conviction shall be charged in the accusatory pleading, and if the previous conviction is found to be true by the jury upon a jury trial, or by the court upon a court trial, or is admitted by the defendant, the offense is punishable by imprisonment in the state prison.

(b) Any law enforcement agency that has knowledge of a violation of this section involving a constitutional officer of the state, a Member of the Legislature, or a member of the judiciary shall immediately report that information to the Department of the California Highway Patrol.

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

(1) "Apparent ability to carry out that threat" includes the ability to fulfill the threat at some future date when the person making the threat is an incarcerated prisoner with a stated release date.

(2) "Serious bodily harm" includes serious physical injury or serious traumatic condition.

(3) "Immediate family" means a spouse, parent, or child, or anyone who has regularly resided in the household for the past six months.

(4) "Staff of a judge" means court officers and employees, including commissioners, referees, and retired judges sitting on assignment.

(5) "Threat" means a verbal or written threat or a threat implied by a pattern of conduct or a combination of verbal or written statements and conduct made with the intent and the apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably fear for his or her safety or the safety of his or her immediate family.

(d) As for threats against staff or immediate family of staff, the threat must relate directly to the official duties of the staff of the elected public official, county public defender, county clerk, exempt appointee of the Governor, judge, or Deputy Commissioner of the Board of Prison Terms in order to constitute a public offense under this section.

(e) A threat must relate directly to the official duties of a Deputy Commissioner of the Board of Prison Terms in order to constitute a public offense under this section. (Added by Stats. 1982, ch. 1405. Amended by Stats. 1984, ch. 627; Stats. 1992, ch. 887; Stats. 1993, ch. 134; Stats. 1994, ch. 820; Stats. 1995, ch. 354; Stats. 1996, sh. 305; Stats. 1998, ch. 606, Stats. 2000, ch. 233; Stats. 2004, ch. 512.)

§118. Perjury Defined; Proof

(a) Every person who, having taken an oath that he or she will testify, declare, depose, or certify truly before any competent tribunal, officer, or person, in any of the cases in which the oath may by law of the State of California be administered, willfully and contrary to the oath, states as true any material matter which he or she knows to be false, and every person who testifies, declares, deposes, or certifies under penalty of perjury in any of the cases in which the testimony, declarations, depositions, or certification is permitted by law of the State of California under penalty of perjury and willfully states as true any material matter which he or she knows to be false, is guilty of perjury.

This subdivision is applicable whether the statement, or the testimony, declaration, deposition, or certification is made or subscribed within or without the State of California.

(b) No person shall be convicted of perjury where proof of falsity rests solely upon contradiction by testimony of a single person other than the defendant. Proof of falsity may be established by direct or indirect evidence. (Enacted 1872. Amended by Stats. 1955, ch. 873; Stats. 1957, ch. 1612; Stats. 1980, ch. 889; Stats. 1989, ch. 897; Stats. 1990, ch. 950.)

§118a. False Affidavit as to Perjurious Testimony; Subsequent Testimony

Any person who, in any affidavit taken before any person authorized to administer oaths, swears, affirms, declares, deposes, or certifies that he will testify, declare, depose, or certify before any competent tribunal, officer, or person, in any case then pending or thereafter to be instituted, in any particular manner, or to any particular fact, and in such affidavit willfully and contrary to such oath states as true any material matter which he knows to be false, is guilty of perjury. In any prosecution under this section, the subsequent testimony of such person, in any action involving the matters in such affidavit contained, which is contrary to any of the matters in such affidavit contained, shall be prima facie evidence that the matters in such affidavit were false. (Added by Stats. 1905, ch. 485.)

§126. Punishment

Perjury is punishable by imprisonment in the state prison for two, three or four years. (Enacted 1872. Amended by Stats. 1976, ch. 1139.)

§127. Subornation of Perjury—Definition, Punishment

Every person who willfully procures another person to commit perjury is guilty of subornation of perjury, and is punishable in the same manner as he would be if personally guilty of the perjury so procured. (Enacted 1872.)

§128. Procuring the Execution of an Innocent Person; Punishment

Every person who, by willful perjury or subornation of perjury procures the conviction and execution of any innocent person, is punishable by death or life imprisonment without possibility of parole. The penalty shall be determined pursuant to Sections 190.3 and 190.4. (Enacted 1872. Amended by Stats. 1977, ch. 316.)

§132. Offering False Evidence

Every person who upon any trial, proceeding, inquiry, or investigation whatever, authorized or permitted by law, offers in evidence, as genuine or true, any book, paper, document, record, or other instrument in writing, knowing the same to have been forged or fraudulently altered or ante-dated, is guilty of felony. (Enacted 1872.)

[Publisher's Note: The following two sections concerning separate matters are both numbered §132.5.]

§132.5. Witnessing Crimes, Consideration for Providing Information ; Violations; Penalties

(a) A person who is a witness to an event or occurrence that he or she knows, or reasonably should know, is a crime or who has personal knowledge of facts that he or she knows, or reasonably should know, may require that person to be called as a witness in a criminal prosecution shall not

accept or receive, directly or indirectly, any payment or benefit in consideration for providing information obtained as a result of witnessing the event or occurrence or having personal knowledge of the facts.

(b) A violation of this section is a misdemeanor and shall be punished by imprisonment in a county jail for not exceeding six months, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(c) Upon conviction under this section, in addition to the penalty described in subdivision (b), any compensation received in violation of this section shall be forfeited by the defendant and deposited in the Victim Restitution Fund.

(d) This section shall not apply if more than one year has elapsed from the date of any criminal act related to the information that is provided under subdivision (a) unless prosecution has commenced for that criminal act. If prosecution has commenced, this section shall remain applicable until the final judgment in the action.

(e) This section shall not apply to any of the following circumstances:

(1) Lawful compensation paid to expert witnesses, investigators, employees, or agents by a prosecutor, law enforcement agency, or an attorney employed to represent a person in a criminal matter.

(2) Lawful compensation provided to an informant by a prosecutor or law enforcement agency.

(3) Compensation paid to a publisher, editor, reporter, writer, or other person connected with or employed by a newspaper, magazine, or other publication or a television or radio news reporter or other person connected with a television or radio station, for disclosing information obtained in the ordinary course of business.

(4) Statutorily authorized rewards offered by governmental agencies for information leading to the arrest and conviction of specified offenders.

(5) Lawful compensation provided to a witness participating in the Witness Protection Program established pursuant to Title 7.5 (commencing with Section 14020) of Part 4.

(f) For purposes of this section, "information" does not include a photograph, videotape, audiotape, or any other direct recording of events or occurrences. (Added by Stats. 1994, ch. 869. Amended by Stats. 2002, ch. 210; Stats. 2003, ch. 62.)

[Publisher's Note: The previous and the following sections concerning separate matters are both numbered §132.5.]

§132.5. Witnesses, Findings and Declarations of the Legislature; Prohibitions on Recovering Money for Information; Offenses, Exceptions

(a) The Legislature supports and affirms the constitutional right of every person to communicate on any subject. This section is intended to preserve the right of every accused person to a fair trial, the right of the people to due process of law, and the integrity of judicial proceedings. This section is not intended to prevent any person from disseminating any information or opinion. The Legislature hereby finds and declares that the disclosure for valuable consideration of information relating to crimes by prospective witnesses can cause the loss of credible evidence in criminal trials and threatens to erode the reliability of verdicts. The Legislature further finds and declares that the disclosure for valuable consideration of information relating to crimes by prospective witnesses creates an appearance of injustice that is destructive of public confidence.

(b) A person who is a witness to an event or occurrence that he or she knows is a crime or who has personal knowledge of facts that he or she knows or reasonably should know may require that person to be called as a witness in a criminal prosecution shall not accept or receive, directly or indirectly, any money or its equivalent in consideration for providing information obtained as a result of witnessing the event or occurrence or having personal knowledge of the facts.

(c) Any person who is a witness to an event or occurrence that he or she reasonably should know is a crime shall not accept or receive, directly or indirectly, any money or its equivalent in consideration for providing information obtained as a result of his or her witnessing the event or occurrence.

(d) The Attorney General or the district attorney of the county in which an alleged violation of subdivision (c) occurs may institute a civil proceeding. Where a final judgment is rendered in the civil proceeding, the defendant shall be punished for the violation of subdivision (c) by a fine equal to 150 percent of the amount received or contracted for by the person.

(e) A violation of subdivision (b) is a misdemeanor punishable by imprisonment for a term not exceeding six months in a county jail, a fine not exceeding three times the amount of compensation requested, accepted, or received, or both the imprisonment and fine.

(f) This section does not apply if more than one year has elapsed from the date of any criminal act related to the information that is provided under subdivision (b) or (c)

unless prosecution has commenced for that criminal act. If prosecution has commenced, this section shall remain applicable until the final judgment in the action.

(g) This section does not apply to any of the following circumstances:

(1) Lawful compensation paid to expert witnesses, investigators, employees, or agents by a prosecutor, law enforcement agency, or an attorney employed to represent a person in a criminal matter.

(2) Lawful compensation provided to an informant by a prosecutor or law enforcement agency.

(3) Compensation paid to a publisher, editor, reporter, writer, or other person connected with or employed by a newspaper, magazine, or other publication or a television or radio news reporter or other person connected with a television or radio station, for disclosing information obtained in the ordinary course of business.

(4) Statutorily authorized rewards offered by governmental agencies or private reward programs offered by victims of crimes for information leading to the arrest and conviction of specified offenders.

(5) Lawful compensation provided to a witness participating in the Witness Protection Program established pursuant to Title 7.5 (commencing with Section 14020) of Part 4.

(h) For purposes of this section, "information" does not include a photograph, videotape, audiotape, or any other direct recording of an event or occurrence.

(i) For purposes of this section, "victims of crimes" shall be construed in a manner consistent with Section 28 of Article I of the California Constitution, and shall include victims, as defined in subdivision (3) of Section 136. (Added by Stats. 1994, ch. 870. Amended by Stats. 1995, ch. 53; Stats. 2002, ch. 210; Stats. 2003, ch. 62.)

[Publisher's Note: The previous two sections concerning separate matters are both numbered §132.5.]

§133. Deceiving a Witness

Every person who practices any fraud or deceit, or knowingly makes or exhibits any false statement, representation, token, or writing, to any witness or person about to be called as a witness upon any trial, proceeding, inquiry, or investigation whatever, authorized by law, with intent to affect the testimony of such witness, is guilty of a misdemeanor. (Enacted 1872.)

§134. Preparing False Evidence

Every person guilty of preparing any false or ante-dated book, paper, record, instrument in writing, or other matter or thing, with intent to produce it, or allow it to be produced for any fraudulent or deceitful purpose, as genuine or true, upon any trial, proceeding, or inquiry whatever, authorized by law, is guilty of felony. (Enacted 1872.)

§135. Destroying Evidence

Every person who, knowing that any book, paper, record, instrument in writing, or other matter or thing, is about to be produced in evidence upon any trial, inquiry, or investigation whatever, authorized by law, willfully destroys or conceals the same, with intent thereby to prevent it from being produced, is guilty of a misdemeanor. (Enacted 1872.)

§135.5. Tampering with Evidence in a Disciplinary Proceeding Against a Public Safety Officer

Any person who knowingly alters, tampers with, conceals, or destroys relevant evidence in any disciplinary proceeding against a public safety officer, for the purpose of harming that public safety officer, is guilty of a misdemeanor. (Added by Stats. 1998, ch. 759.)

§136. Definitions

As used in this chapter:

(1) "Malice" means an intent to vex, annoy, harm, or injure in any way another person, or to thwart or interfere in any manner with the orderly administration of justice.

(2) "Witness" means any natural person, (i) having knowledge of the existence or nonexistence of facts relating to any crime, or (ii) whose declaration under oath is received or has been received as evidence for any purpose, or (iii) who has reported any crime to any peace officer, prosecutor, probation or parole officer, correctional officer or judicial officer, or (iv) who has been served with a subpoena issued under the authority of any court in the state, or of any other state or of the United States, or (v) who would be believed by any reasonable person to be an individual described in subparagraphs (i) to (iv), inclusive.

(3) "Victim" means any natural person with respect to whom there is reason to believe that any crime as defined under the laws of this state or any other state or of the United States is being or has been perpetrated or attempted to be perpetrated. (Added by Stats. 1980, ch. 686.)

§136.1. Intimidation of Witnesses and Victims; Offenses; Penalties; Enhancement; Aggravation

(a) Except as provided in subdivision (c), any person who does any of the following is guilty of a public offense and shall be punished by imprisonment in a county jail for not more than one year or in the state prison:

(1) Knowingly and maliciously prevents or dissuades any witness or victim from attending or giving testimony at any trial, proceeding, or inquiry authorized by law.

(2) Knowingly and maliciously attempts to prevent or dissuade any witness or victim from attending or giving testimony at any trial, proceeding, or inquiry authorized by law.

(3) For purposes of this section, evidence that the defendant was a family member who interceded in an effort to protect the witness or victim shall create a presumption that the act was without malice.

(b) Except as provided in subdivision (c), every person who attempts to prevent or dissuade another person who has been the victim of a crime or who is witness to a crime from doing any of the following is guilty of a public offense and shall be punished by imprisonment in a county jail for not more than one year or in the state prison:

(1) Making any report of that victimization to any peace officer or state or local law enforcement officer or probation or parole or correctional officer or prosecuting agency or to any judge.

(2) Causing a complaint, indictment, information, probation or parole violation to be sought and prosecuted, and assisting in the prosecution thereof.

(3) Arresting or causing or seeking the arrest of any person in connection with that victimization.

(c) Every person doing any of the acts described in subdivision (a) or (b) knowingly and maliciously under any one or more of the following circumstances, is guilty of a felony punishable by imprisonment in the state prison for two, three, or four years under any of the following circumstances:

(1) Where the act is accompanied by force or by an express or implied threat of force or violence, upon a witness or victim or any third person or the property of any victim, witness, or any third person.

(2) Where the act is in furtherance of a conspiracy.

(3) Where the act is committed by any person who has been convicted of any violation of this section, any predecessor law hereto or any federal statute or statute of any other state which, if the act prosecuted was committed in this state, would be a violation of this section.

(4) Where the act is committed by any person for pecuniary gain or for any other consideration acting upon the request of any other person. All parties to such a transaction are guilty of a felony.

(d) Every person attempting the commission of any act described in subdivisions (a), (b), and (c) is guilty of the offense attempted without regard to success or failure of the attempt. The fact that no person was injured physically, or in fact intimidated, shall be no defense against any prosecution under this section.

(e) Nothing in this section precludes the imposition of an enhancement for great bodily injury where the injury inflicted is significant or substantial.

(f) The use of force during the commission of any offense described in subdivision (c) shall be considered a circumstance in aggravation of the crime in imposing a term of imprisonment under subdivision (b) of Section 1170. (Added by Stats. 1980, ch. 686. Amended by Stats. 1982, ch. 1098, Stats. 1990, ch. 350, Stats. 1997, ch. 500.)

§136.2. Witness or Victim—Good Cause Belief of Harm to, Intimidation of, or Dissuasion of; Court Order; Violation of Orders

(a) Except as provided in subdivision (c), upon a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur, any court with jurisdiction over a criminal matter may issue orders including, but not limited to, the following:

(1) Any order issued pursuant to Section 6320 of the Family Code.

(2) An order that a defendant shall not violate any provision of Section 136.1.

(3) An order that a person before the court other than a defendant, including, but not limited to, a subpoenaed witness or other person entering the courtroom of the court, shall not violate any provisions of Section 136.1.

(4) An order that any person described in this section shall have no communication whatsoever with any

specified witness or any victim, except through an attorney under any reasonable restrictions that the court may impose.

(5) An order calling for a hearing to determine if an order as described in paragraphs (1) to (4), inclusive, should be issued.

(6) An order that a particular law enforcement agency within the jurisdiction of the court provide protection for a victim or a witness, or both, or for immediate family members of a victim or a witness who reside in the same household as the victim or witness or within reasonable proximity of the victim's or witness' household, as determined by the court. The order shall not be made without the consent of the law enforcement agency except for limited and specified periods of time and upon an express finding by the court of a clear and present danger of harm to the victim or witness or immediate family members of the victim or witness. For purposes of this paragraph, "immediate family members" include the spouse, children, or parents of the victim or witness.

(7) (A) Any order protecting victims of violent crime from all contact by the defendant, or contact, with the intent to annoy, harass, threaten, or commit acts of violence, by the defendant. The court or its designee shall transmit orders made under this paragraph to law enforcement personnel within one business day of the issuance, modification, extension, or termination of the order, pursuant to subdivision (a) of Section 6380 of the Family Code. It is the responsibility of the court to transmit the modification, extension, or termination orders made under this paragraph to the same agency that entered the original protective order into the Domestic Violence Restraining Order System.

(B) (i) If a court does not issue an order pursuant to subparagraph (A) in a case in which the defendant is charged with a crime of domestic violence as defined in Section 13700, the court on its own motion shall consider issuing a protective order upon a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur, that provides as follows:

(I) The defendant shall not own, possess, purchase, receive, or attempt to purchase or receive, a firearm while the protective order is in effect.

(II) The defendant shall relinquish any firearms that he or she owns or possesses pursuant to Section 527.9 of the Code of Civil Procedure.

(ii) Every person who owns, possesses, purchases, or receives, or attempts to purchase or receive, a firearm while this protective order is in effect is punishable pursuant to subdivision (g) of Section 12021.

(C) Any order issued, modified, extended, or terminated by a court pursuant to this paragraph shall be issued on forms adopted by the Judicial Council of California and that have been approved by the Department of Justice pursuant to subdivision (i) of Section 6380 of the Family Code. However, the fact that an order issued by a court pursuant to this section was not issued on forms adopted by the Judicial Council and approved by the Department of Justice shall not, in and of itself, make the order unenforceable.

(b) Any person violating any order made pursuant to paragraphs (1) to (7), inclusive, of subdivision (a) may be punished for any substantive offense described in Section 136.1, or for a contempt of the court making the order. A finding of contempt shall not be a bar to prosecution for a violation of Section 136.1. However, any person so held in contempt shall be entitled to credit for any punishment imposed therein against any sentence imposed upon conviction of an offense described in Section 136.1. Any conviction or acquittal for any substantive offense under Section 136.1 shall be a bar to a subsequent punishment for contempt arising out of the same act.

(c) (1) Notwithstanding subdivisions (a) and (e), an emergency protective order issued pursuant to Chapter 2 (commencing with Section 6250) of Part 3 of Division 10 of the Family Code or Section 646.91 of the Penal Code shall have precedence in enforcement over any other restraining or protective order, provided the emergency protective order meets all of the following requirements:

(A) The emergency protective order is issued to protect one or more individuals who are already protected persons under another restraining or protective order.

(B) The emergency protective order restrains the individual who is the restrained person in the other restraining or protective order specified in subparagraph (A).

(C) The provisions of the emergency protective order are more restrictive in relation to the restrained person than are the provisions of the other restraining or protective order specified in subparagraph (A).

(2) An emergency protective order that meets the requirements of paragraph (1) shall have precedence in enforcement over the provisions of any other restraining or protective order only with respect to those provisions of the emergency protective order that are more restrictive in relation to the restrained person.

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

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

(3) Every person who owns, possesses, purchases or receives, or attempts to purchase or receive a firearm while the protective order is in effect is punishable pursuant to subdivision (g) of Section 12021 of the Penal Code.

(e) (1) In all cases where the defendant is charged with a crime of domestic violence, as defined in Section 13700, the court shall consider issuing the above-described orders on its own motion. All interested parties shall receive a copy of those orders. In order to facilitate this, the court's records of all criminal cases involving domestic violence shall be marked to clearly alert the court to this issue.

(2) In those cases in which a complaint, information, or indictment charging a crime of domestic violence, as defined in Section 13700, has been issued, a restraining order or protective order against the defendant issued by the criminal court in that case has precedence in enforcement over any civil court order against the defendant, unless a court issues an emergency protective order pursuant to Chapter 2 (commencing with Section 6250) of Part 3 of Division 10 of the Family Code or Section 646.91 of the Penal Code, in which case the emergency protective order shall have precedence in enforcement over any other restraining or protective order, provided the emergency protective order meets the following requirements:

(A) The emergency protective order is issued to protect one or more individuals who are already protected persons under another restraining or protective order.

(B) The emergency protective order restrains the individual who is the restrained person in the other restraining or protective order specified in subparagraph (A).

(C) The provisions of the emergency protective order are more restrictive in relation to the restrained person than are the provisions of the other restraining or protective order specified in subparagraph (A).

(3) Custody and visitation with respect to the defendant and his or her minor children may be ordered by a family or juvenile court consistent with the protocol established pursuant to subdivision (f), but if ordered after a criminal protective order has been issued pursuant to this section, the custody and visitation order shall make reference to, and acknowledge the precedence of enforcement of, any appropriate criminal protective order. On or before July 1, 2006, the Judicial Council shall modify the criminal and civil court forms consistent with this subdivision.

(f) On or before January 1, 2003, the Judicial Council shall promulgate a protocol, for adoption by each local court in substantially similar terms, to provide for the timely coordination of all orders against the same defendant and in favor of the same named victim or victims. The protocol shall include, but shall not be limited to, mechanisms for assuring appropriate communication and information sharing between criminal, family, and juvenile courts concerning orders and cases that involve the same parties, and shall permit a family or juvenile court order to coexist with a criminal court protective order subject to the following conditions:

(1) Any order that permits contact between the restrained person and his or her children shall provide for the safe exchange of the children and shall not contain language either printed or handwritten that violates a "no contact order" issued by a criminal court.

(2) Safety of all parties shall be the courts' paramount concern. The family or juvenile court shall specify the time, day, place, and manner of transfer of the child, as provided in Section 3100 of the Family Code.

(g) On or before January 1, 2003, the Judicial Council shall modify the criminal and civil court protective order forms consistent with this section. (Added by Stats. 1980, ch. 686. Amended by Stats. 1988, ch. 182; Stats. 1989, ch. 1378; Stats. 1990, ch. 935; Stats. 1996, ch. 904; Stats. 1997, ch. 48; Stats. 1997, ch. 847, Stats. 1998, ch. 187; Stats. 1999, ch. 83, Stats. 1999, ch. 661; Stats. 2001, ch. 698; Stats. 2003, ch. 498; Stats. 2005, ch. 132; Stats. 2005, ch. 465; Stats. 2005, ch. 631; Stats. 2005, ch. 702.)

§136.3. Court Order to Protect the Address or Location of a Protected Party

(a) The court shall order that any party enjoined pursuant to Section 136.2 be prohibited from taking any action to obtain the address or location of a protected party or a protected party's family members, caretakers, or guardian, unless there is good cause not to make that order.

(B) The Judicial Council shall promulgate forms necessary to effectuate this section. (Added by Stats. 2005, ch. 472.)

§136.5. Intent to Use Deadly Weapon to Intimidate Witness; Offense; Penalty

Any person who has upon his person a deadly weapon with the intent to use such weapon to commit a violation of Section 136.1 is guilty of an offense punishable by imprisonment in the county jail for not more than one year, or in the state prison. (Added by Stats. 1982, ch. 1101.)

§136.7. Revealing Names and Addresses of Witnesses or Victims by Sexual Offender with the Intent that Another Prisoner will Initiate Harassing Correspondence

Every person imprisoned in a county jail or the state prison who has been convicted of a sexual offense, including, but not limited to, a violation of Section 243.4, 261, 261.5, 262, 264.1, 266, 266a, 266b, 266c, 266f, 285, 286, 288, 288a, or 289, who knowingly reveals the name and address of any witness or victim to that offense to any other prisoner with the intent that the other prisoner will intimidate or harass the witness or victim through the initiation of unauthorized correspondence with the witness or victim, is guilty of a public offense, punishable by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison.

Nothing in this section shall prevent the interviewing of witnesses. (Added by Stats. 1987, ch. 520.)

§137. Influencing the Testimony or Information Given to Law Enforcement Officials

(a) Every person who gives or offers, or promises to give, to any witness, person about to be called as a witness, or person about to give material information pertaining to a crime to a law enforcement official, any bribe, upon any understanding or agreement that the testimony of such witness or information given by such person shall be thereby influenced is guilty of a felony.

(b) Every person who attempts by force or threat of force or by the use of fraud to induce any person to give false testimony or withhold true testimony or to give false material information pertaining to a crime to, or withhold true material information pertaining to a crime from, a law enforcement official is guilty of a felony, punishable by imprisonment in the state prison for two, three, or four years.

As used in this subdivision, "threat of force" means a credible threat of unlawful injury to any person or damage to the property of another which is communicated to a person for the purpose of inducing him to give false testimony or withhold true testimony or to give false material information pertaining to a crime to, or to withhold true material information pertaining to a crime from, a law enforcement official.

(c) Every person who knowingly induces another person to give false testimony or withhold true testimony not privileged by law or to give false material information pertaining to a crime to, or to withhold true material information pertaining to a crime from, a law enforcement official is guilty of a misdemeanor.

(d) At the arraignment, on a showing of cause to believe this section may be violated, the court, on motion of a party, shall admonish the person who there is cause to believe may violate this section and shall announce the penalties and other provisions of this section.

(e) As used in this section "law enforcement official" includes any district attorney, deputy district attorney, city attorney, deputy city attorney, the Attorney General or any deputy attorney general, or any peace officer included in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

(f) The provisions of subdivision (c) shall not apply to an attorney advising a client or to a person advising a member of his or her family. (Enacted 1872. Amended by Code Am. 1873-74, ch. 614; Stats. 1970, ch. 353; Stats. 1977, ch. 67; Stats. 1979, ch. 944; Stats. 1980, ch. 1126.)

§138. Witnesses—Offering or Accepting Bribes

(a) Every person who gives or offers or promises to give to any witness or person about to be called as a witness, any bribe upon any understanding or agreement that the person shall not attend upon any trial or other judicial proceeding, or every person who attempts by means of any offer of a bribe to dissuade any person from attending upon any trial or other judicial proceeding, is guilty of a felony.

(b) Every person who is a witness, or is about to be called as such, who receives, or offers to receive, any bribe, upon any understanding that his or her testimony shall be influenced thereby, or that he or she will absent himself or herself from the trial or proceeding upon which his or her testimony is required, is guilty of a felony. (Enacted 1872. Amended by Code Am. 1873-74, ch. 614; Stats. 1987, ch. 828.)

§158. Common Barratry Defined; Punishment

Common barratry is the practice of exciting groundless judicial proceedings, and is punishable by imprisonment in the county jail not exceeding six months and by fine not exceeding one thousand dollars ($1,000). (Enacted in 1872. Amended by Stats. 1983, ch. 1092.)

§166. Contempt Constituting Misdemeanor

(a) Except as provided in subdivisions (b), (c), and (d), every person guilty of any contempt of court, of any of the following kinds, is guilty of a misdemeanor:

(1) Disorderly, contemptuous, or insolent behavior committed during the sitting of any court of justice, in the immediate view and presence of the court, and directly tending to interrupt its proceedings or to impair the respect due to its authority.

(2) Behavior as specified in paragraph (1) committed in the presence of any referee, while actually engaged in any trial or hearing, pursuant to the order of any court, or in the presence of any jury while actually sitting for the trial of a cause, or upon any inquest or other proceedings authorized by law.

(3) Any breach of the peace, noise, or other disturbance directly tending to interrupt the proceedings of any court.

(4) Willful disobedience of the terms as written of any process or court order or out-of-state court order, lawfully issued by any court, including orders pending trial.

(5) Resistance willfully offered by any person to the lawful order or process of any court.

(6) The contumacious and unlawful refusal of any person to be sworn as a witness; or, when so sworn, the like refusal to answer any material question.

(7) The publication of a false or grossly inaccurate report of the proceedings of any court.

(8) Presenting to any court having power to pass sentence upon any prisoner under conviction, or to any member of the court, any affidavit or testimony or representation of any kind, verbal or written, in aggravation or mitigation of the punishment to be imposed upon the prisoner, except as provided in this code.

(b) (1) Any person who is guilty of contempt of court under paragraph (4) of subdivision (a) by willfully contacting a victim by phone or mail, or directly, and who has been previously convicted of a violation of Section 646.9 shall be punished by imprisonment in a county jail for not more than one year, by a fine of five thousand dollars ($5,000), or by both that fine and imprisonment.

(2) For the purposes of sentencing under this subdivision, each contact shall constitute a separate violation of this subdivision.

(3) The present incarceration of a person who makes contact with a victim in violation of paragraph (1) is not a defense to a violation of this subdivision.

(c) (1) Notwithstanding paragraph (4) of subdivision (a), any willful and knowing violation of any protective order or stay away court order issued pursuant to Section 136.2, in a pending criminal proceeding involving domestic violence, as defined in Section 13700, or issued as a condition of probation after a conviction in a criminal proceeding involving domestic violence, as defined in Section 13700, or that is an order described in paragraph (3), shall constitute contempt of court, a misdemeanor, punishable by imprisonment in a county jail for not more than one year, by a fine of not more than one thousand dollars ($1,000), or by both that imprisonment and fine.

(2) If a violation of paragraph (1) results in a physical injury, the person shall be imprisoned in a county jail for at least 48 hours, whether a fine or imprisonment is imposed, or the sentence is suspended.

(3) Paragraphs (1) and (2) apply to the following court orders:

(A) Any order issued pursuant to Section 6320 or 6389 of the Family Code.

(B) An order excluding one party from the family dwelling or from the dwelling of the other.

(C) An order enjoining a party from specified behavior that the court determined was necessary to effectuate the orders described in paragraph (1).

(4) A second or subsequent conviction for a violation of any order described in paragraph (1) occurring within seven years of a prior conviction for a violation of any of those orders and involving an act of violence or "a credible threat" of violence, as provided in subdivisions (c) and (d) of Section 139, is punishable by imprisonment in a county jail not to exceed one year, or in the state prison for 16 months or two or three years.

(5) The prosecuting agency of each county shall have the primary responsibility for the enforcement of the orders described in paragraph (1).

(d) (1) A person who owns, possesses, purchases, or receives a firearm knowing he or she is prohibited from doing so by the provisions of a protective order as defined in Section 136.2 of this code, Section 6218 of the Family Code, or Sections 527.6 or 527.8 of the Code of Civil Procedure, shall be punished under the provisions of subdivision (g) of Section 12021.

(2) A person subject to a protective order described in paragraph (1) shall not be prosecuted under this section for owning, possessing, purchasing, or receiving a firearm to the extent that firearm is granted an exemption pursuant to subdivision (h) of Section 6389 of the Family Code.

(e) (1) If probation is granted upon conviction of a violation of subdivision (c), the court shall impose probation consistent with the provisions of Section 1203.097 of the Penal Code.

(2) If probation is granted upon conviction of a violation of subdivision (c), the conditions of probation may include, in lieu of a fine, one or both of the following requirements:

(A) That the defendant make payments to a battered women's shelter, up to a maximum of one thousand dollars ($1,000).

(B) That the defendant provide restitution to reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's offense.

(3) For any order to pay a fine, make payments to a battered women' s shelter, or pay restitution as a condition of probation under this subdivision or subdivision (c), the court shall make a determination of the defendant's ability to pay. In no event shall any order to make payments to a battered women's shelter be made if it would impair the ability of the defendant to pay direct restitution to the victim or court-ordered child support.

(4) If the injury to a married person is caused in whole or in part by the criminal acts of his or her spouse in violation of subdivision (c), the community property may not be used to discharge the liability of the offending spouse for restitution to the injured spouse required by Section 1203.04, as operative on or before August 2, 1995, or Section 1202.4, or to a shelter for costs with regard to the injured spouse and dependents required by this subdivision, until all separate property of the offending spouse is exhausted.

(5) Any person violating any order described in subdivision (c) may be punished for any substantive offenses described under Section 136.1 or 646.9. No finding of contempt shall be a bar to prosecution for a violation of Section 136.1 or 646.9. However, any person held in contempt for a violation of subdivision (c) shall be entitled to credit for any punishment imposed as a result of that violation against any sentence imposed upon conviction of an offense described in Section 136.1 or 646.9. Any conviction or acquittal for any substantive offense under Section 136.1 or 646.9 shall be a bar to a subsequent punishment for contempt arising out of the same act. (Enacted 1872. Amended by Stats. 1993, ch. 583; Stats. 1996, ch. 1077; Stats. 1999, ch. 662; Stats. 2002, ch. 830.)

§506. Misappropriation of the Property of Another by One Controlling or Intrusted with the Property

Every trustee, banker, merchant, broker, attorney, agent, assignee in trust, executor, administrator, or collector, or person otherwise intrusted with or having in his control property for the use of any other person, who fraudulently appropriates it to any use or purpose not in the due and lawful execution of his trust, or secretes it with a fraudulent intent to appropriate it to such use or purpose, and any contractor who appropriates money paid to him for any use or purpose, other than for that which he received it, is guilty of embezzlement, and the payment of laborers and materialmen for work performed or material furnished in the performance of any contract is hereby declared to be the use and purpose to which the contract price of such contract, or any part thereof, received by the contractor shall be applied. (Enacted 1872. Amended by Stats. 1907, ch. 490; Stats. 1919, ch. 518.)

§506a. Account or Debt Collectors; Definition; Prosecution; Punishment

Any person who, acting as collector, or acting in any capacity in or about a business conducted for the collection of accounts or debts owing by another person, and who violates Section 506 of the Penal Code, shall be deemed to be an agent or person as defined in Section 506, and subject for a violation of Section 506, to be prosecuted, tried, and punished in accordance therewith and with law; and "collector" means every such person who collects, or who has in his or her possession or under his or her control property or money for the use of any other person, whether in his or her own name and mixed with his or her own property or money, or otherwise, or whether he or she has any interest, direct or indirect, in or to such property or money, or any portion thereof, and who fraudulently appropriates to his or her own use, or the use of any person other than the true owner, or person entitled thereto, or secretes that property or money, or any portion thereof, or interest therein not his or her own, with a fraudulent intent to appropriate it to any use or purpose not in the due and lawful execution of his or her trust. (Added by Stats. 1917, ch. 603. Amended by Stats. 1987, ch. 828.)

§549. Penalties for Referrals with Intent to Violate Insurance Code Section 1871.1 or 1871.4

Any firm, corporation, partnership, or association, or any person acting in his or her individual capacity, or in his or her capacity as a public or private employee, who solicits, accepts, or refers any business to or from any individual or entity with the knowledge that, or with reckless disregard for whether, the individual or entity for or from whom the solicitation or referral is made, or the individual or entity who is solicited or referred, intends to violate Section 550 of this code or Section 1871.4 of the Insurance Code is guilty of a crime, punishable upon a first conviction by imprisonment in the county jail for not more than one year or by imprisonment in the state prison for 16 months, two years, or three years, or by a fine not exceeding fifty thousand dollars ($50,000) or double the amount of the fraud, whichever is greater, or by both that imprisonment and fine. A second or subsequent conviction is punishable by imprisonment in the state prison or by imprisonment in the state prison and a fine of fifty thousand dollars ($50,000). Restitution shall be ordered, including restitution for any medical evaluation or treatment services obtained or provided. The court shall determine the amount of restitution and the person or persons to whom the restitution shall be paid. (Added by Stats. 1991, ch. 116. Amended by Stats. 1991, ch. 934; Stats. 1992, ch. 1352; Stats. 1993, ch. 589; Stats. 1994, ch. 1031; Stats. 2000, ch. 843; Stats. 2004, ch. 2.)

§550. (Section 3.2 added by Stats. 1994, ch. 1008. Repealed by Stats. 1995, ch. 574.)

§550. Fraudulent Insurance Claims; Felony Violations

(a) It is unlawful to do any of the following, or to aid, abet, solicit, or conspire with any person to do any of the following:

(1) Knowingly present or cause to be presented any false or fraudulent claim for the payment of a loss or injury, including payment of a loss or injury under a contract of insurance.

(2) Knowingly present multiple claims for the same loss or injury, including presentation of multiple claims to more than one insurer, with an intent to defraud.

(3) Knowingly cause or participate in a vehicular collision, or any other vehicular accident, for the purpose of presenting any false or fraudulent claim.

(4) Knowingly present a false or fraudulent claim for the payments of a loss for theft, destruction, damage, or conversion of a motor vehicle, a motor vehicle part, or contents of a motor vehicle.

(5) Knowingly prepare, make, or subscribe any writing, with the intent to present or use it, or to allow it to be presented, in support of any false or fraudulent claim.

(6) Knowingly make or cause to be made any false or fraudulent claim for payment of a health care benefit.

(7) Knowingly submit a claim for a health care benefit that was not used by, or on behalf of, the claimant.

(8) Knowingly present multiple claims for payment of the same health care benefit with an intent to defraud.

(9) Knowingly present for payment any undercharges for health care benefits on behalf of a specific claimant unless any known overcharges for health care benefits for that claimant are presented for reconciliation at that same time.

(10) For purposes of paragraphs (6) to (9), inclusive, a claim or a claim for payment of a health care benefit also means a claim or claim for payment submitted by or on the behalf of a provider of any workers' compensation health benefits under the Labor Code.

(b) It is unlawful to do, or to knowingly assist or conspire with any person to do, any of the following:

(1) Present or cause to be presented any written or oral statement as part of, or in support of or opposition to, a claim for payment or other benefit pursuant to an insurance policy, knowing that the statement contains any false or misleading information concerning any material fact.

(2) Prepare or make any written or oral statement that is intended to be presented to any insurer or any insurance claimant in connection with, or in support of or opposition to, any claim or payment or other benefit pursuant to an insurance policy, knowing that the statement contains any false or misleading information concerning any material fact.

(3) Conceal, or knowingly fail to disclose the occurrence of, an event that affects any person's initial or continued right or entitlement to any insurance benefit or payment, or the amount of any benefit or payment to which the person is entitled.

(4) Prepare or make any written or oral statement, intended to be presented to any insurer or producer for the purpose of obtaining a motor vehicle insurance policy, that the person to be the insured resides or is domiciled in this state when, in fact, that person resides or is domiciled in a state other than this state.

(c) (1) Every person who violates paragraph (1), (2), (3), (4), or (5) of subdivision (a) is guilty of a felony punishable by imprisonment in the state prison for two, three, or five years, and by a fine not exceeding fifty thousand dollars ($50,000), or double the amount of the fraud, whichever is greater.

(2) Every person who violates paragraph (6), (7), (8), or (9) of subdivision (a) is guilty of a public offense.

(A) When the claim or amount at issue exceeds four hundred dollars ($400), the offense is punishable by imprisonment in the state prison for two, three, or five years, or by a fine not exceeding fifty thousand dollars ($50,000) or double the amount of the fraud, whichever is greater, or by both that imprisonment and fine, or by imprisonment in a county jail not to exceed one year, by a fine of not more than ten thousand dollars ($10,000), or by both that imprisonment and fine.

(B) When the claim or amount at issue is four hundred dollars ($400) or less, the offense is punishable by imprisonment in a county jail not to exceed six months, or by a fine of not more than one thousand dollars ($1,000), or by both that imprisonment and fine, unless the aggregate amount of the claims or amount at issue exceeds four hundred dollars ($400) in any 12-consecutive-month period, in which case the claims or amounts may be charged as in subparagraph (A).

(3) Every person who violates paragraph (1), (2), (3), or (4) of subdivision (b) shall be punished by imprisonment in the state prison for two, three, or five years, or by a fine not exceeding fifty thousand dollars ($50,000) or double the amount of the fraud, whichever is greater, or by both that imprisonment and fine, or by imprisonment in a county jail not to exceed one year, or by a fine of not more than ten thousand dollars ($10,000), or by both that imprisonment and fine.

(4) Restitution shall be ordered for a person convicted of violating this section, including restitution for any medical evaluation or treatment services obtained or provided. The court shall determine the amount of restitution and the person or persons to whom the restitution shall be paid.

(d) Notwithstanding any other provision of law, probation shall not be granted to, nor shall the execution or imposition of a sentence be suspended for, any adult person convicted of felony violations of this section who previously has been convicted of felony violations of this section or Section 548, or of Section 1871.4 of the Insurance Code, or former Section 556 of the Insurance Code, or former Section 1871.1 of the Insurance Code as an adult under charges separately brought and tried two or more times. The existence of any fact that would make a person ineligible for probation under this subdivision shall be alleged in the information or indictment, and either admitted by the defendant in an open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

Except when the existence of the fact was not admitted or found to be true or the court finds that a prior felony conviction was invalid, the court shall not strike or dismiss any prior felony convictions alleged in the information or indictment.

This subdivision does not prohibit the adjournment of criminal proceedings pursuant to Division 3 (commencing with Section 3000) or Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

(e) Except as otherwise provided in subdivision (f), any person who violates subdivision (a) or (b) and who has a prior felony conviction of an offense set forth in either subdivision (a) or (b), in Section 548, in Section 1871.4 of the Insurance Code, in former Section 556 of the Insurance Code, or in former Section 1871.1 of the Insurance Code shall receive a two-year enhancement for each prior felony conviction in addition to the sentence provided in subdivision (c). The existence of any fact that would subject a person to a penalty enhancement shall be alleged in the information or indictment and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury. Any person who violates this section shall be subject to appropriate orders of restitution pursuant to Section 13967 of the Government Code.

(f) Any person who violates paragraph (3) of subdivision (a) and who has two prior felony convictions for a violation of paragraph (3) of subdivision (a) shall receive a five-year enhancement in addition to the sentence provided in subdivision (c). The existence of any fact that would subject a person to a penalty enhancement shall be alleged in the information or indictment and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

(g) Except as otherwise provided in Section 12022.7, any person who violates paragraph (3) of subdivision (a) shall receive a two-year enhancement for each person other than an accomplice who suffers serious bodily injury resulting from the vehicular collision or accident in a violation of paragraph (3) of subdivision (a).

(h) This section shall not be construed to preclude the applicability of any other provision of criminal law or equitable remedy that applies or may apply to any act committed or alleged to have been committed by a person.

(i) Any fine imposed pursuant to this section shall be doubled if the offense was committed in connection with any claim pursuant to any automobile insurance policy in an auto insurance fraud crisis area designated by the Insurance Commissioner pursuant to Article 4.6 (commencing with Section 1874.90) of Chapter 12 of Part 2 of Division 1 of the Insurance Code. (Added by Stats. 1994, ch. 1008. Amended by Stats. 1995, ch. 574; Stats. 1998, ch. 189; Stats. 1999, ch. 83; Stats. 2000, ch. 867; Stats. 2004, ch. 2.)

§551.Unlawful Consideration for Referring Insured to an Automotive Repair Dealer

(a) It is unlawful for any automotive repair dealer, contractor, or employees or agents thereof to offer to any insurance agent, broker, or adjuster any fee, commission, profit sharing, or other form of direct or indirect consideration for referring an insured to an automotive repair dealer or its employees or agents for vehicle repairs covered under a policyholder's automobile physical damage or automobile collision coverage, or to a contractor or its employees or agents for repairs to or replacement of a structure covered by a residential or commercial insurance policy.

(b) Except in cases in which the amount of the repair or replacement claim has been determined by the insurer and the repair or replacement services are performed in accordance with that determination or in accordance with provided estimates that are accepted by the insurer, it is unlawful for any automotive repair dealer, contractor, or employees or agents thereof to knowingly offer or give any discount intended to offset a deductible required by a policy of insurance covering repairs to or replacement of a motor vehicle or residential or commercial structure. This subdivision does not prohibit an advertisement for repair or replacement services at a discount as long as the amount of the repair or replacement claim has been determined by the insurer and the repair or replacement services are performed in accordance with that determination or in accordance with provided estimates that are accepted by the insurer.

(c) A violation of this section is a public offense. Where the amount at issue exceeds four hundred dollars ($400), the offense is punishable by imprisonment in the state prison for 16 months, or 2 or 3 years, by a fine of not more than ten thousand dollars ($10,000), or by both that imprisonment and fine; or by imprisonment in a county jail not to exceed one year, by a fine of not more than one thousand dollars ($1,000), or by both that imprisonment and fine. In all other cases, the offense is punishable by imprisonment in a county jail not to exceed six months, by a fine of not more than one thousand dollars ($1,000), or by both that imprisonment and fine.

(d) Every person who, having been convicted of subdivision (a) or (b), or Section 7027.3 or former Section 9884.75 of the Business and Professions Code and having served a term therefor in any penal institution or having been imprisoned therein as a condition of probation for that offense, is subsequently convicted of subdivision (a) or (b), upon a subsequent conviction of one of those offenses, shall be punished by imprisonment in the state prison for 16 months, or 2 or 3 years, by a fine of not more than ten

thousand dollars ($10,000), or by both that imprisonment and fine; or by imprisonment in a county jail not to exceed one year, by a fine of not more than one thousand dollars ($1,000), or by both that imprisonment and fine.

(e) For purposes of this section:

(1) "Automotive repair dealer" means a person who, for compensation, engages in the business of repairing or diagnosing malfunctions of motor vehicles.

(2) "Contractor" has the same meaning as set forth in Section 7026 of the Business and Professions Code. (Added by Stats. 1992, ch. 675. Amended by Stats. 1993, ch. 462; Stats. 1995, ch. 373.)

§646. Soliciting Personal Injury Claims with the Intent of Suing Out of State; Offense; Punishment

It is unlawful for any person with the intent, or for the purpose of instituting a suit thereon outside of this state, to seek or solicit the business of collecting any claim for damages for personal injury sustained within this state, or for death resulting therefrom, with the intention of instituting suit thereon outside of this state, in cases where such right of action rests in a resident of this state, or his legal representative, and is against a person, copartnership, or corporation subject to personal service within this state.

Any person violating any of the provisions of this section is guilty of a misdemeanor, and is punishable by a fine of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000), by imprisonment in the county jail not less than 30 days nor more than six months, or by both fine and imprisonment at the discretion of the court but within said limits. (Added by Stats. 1953, ch. 32. Amended by Stats. 1983, ch. 1092.)

§936.5 Special Counsel and Special Investigators—Superior Court Judge May Employ

(a) When requested to do so by the grand jury of any county, the presiding judge of the superior court may employ special counsel and special investigators, whose duty it shall be to investigate and present the evidence of the investigation to the grand jury.

(b) Prior to the appointment, the presiding judge shall conduct an evidentiary hearing and find that a conflict exists that would prevent the local district attorney, the county counsel, and the Attorney General from performing such investigation. Notice of the hearing shall be given to each of them unless he or she is a subject of the investigation. The finding of the presiding judge may be appealed by the district attorney, the county counsel, or the Attorney General. The order shall be stayed pending the appeal made under this section.

(c) The authority to appoint is contingent upon the certification by the auditor-comptroller of the county, that the grand jury has funds appropriated to it sufficient to compensate the special counsel and investigator for services rendered pursuant to the court order. In the absence of a certification the court has no authority to appoint. In the event the county board of supervisors or a member thereof is under investigation, the county has an obligation to appropriate the necessary funds. (Added by Stats. 1980, ch. 290.)

§1050.5 Sanctions for Failure to Comply With Notice Requirements for Continuances

(a) When, pursuant to subdivision (c) of Section 1050, the court imposes sanctions for failure to comply with the provisions of subdivision (b) of Section 1050, the court may impose one or both of the following sanctions when the moving party is the prosecuting or defense attorney:

(1) A fine not exceeding one thousand dollars ($1,000) upon counsel for the moving party.

(2) The filing of a report with an appropriate disciplinary committee.

(b) The authority to impose sanctions provided for by this section shall be in addition to any other authority or power available to the court, except that the court or magistrate shall not dismiss the case. (Added by Stats. 1985, ch. 949. Amended by Stats. 2003, ch. 133.)

§1424 Disqualification of the District Attorney

(a) (1) Notice of a motion to disqualify a district attorney from performing an authorized duty shall be served on the district attorney and the Attorney General at least 10 court days before the motion is heard. The notice of motion shall contain a statement of the facts setting forth the grounds for the claimed disqualification and the legal authorities relied upon by the moving party and shall be supported by affidavits of witnesses who are competent to testify to the facts set forth in the affidavit. The district attorney or the Attorney General, or both, may file affidavits in opposition to the motion and may appear at the hearing on the motion and may file with the court hearing the motion a written opinion on the disqualification issue. The

judge shall review the affidavits and determine whether or not an evidentiary hearing is necessary. The motion may not be granted unless the evidence shows that a conflict of interest exists that would render it unlikely that the defendant would receive a fair trial. An order recusing the district attorney from any proceeding may be reviewed by extraordinary writ or may be appealed by the district attorney or the Attorney General. The order recusing the district attorney shall be stayed pending any review authorized by this section. If the motion is brought at or before the preliminary hearing, it may not be renewed in the trial court on the basis of facts that were raised or could have been raised at the time of the original motion.

(2) An appeal from an order of recusal or from a case involving a charge punishable as a felony shall be made pursuant to Chapter 1 (commencing with Section 1235) of Title 9, regardless of the court in which the order is made. An appeal from an order of recusal in a misdemeanor case shall be made pursuant to Chapter 2 (commencing with Section 1466) of Title 11, regardless of the court in which the order is made.

(b) (1) Notice of a motion to disqualify a city attorney from performing an authorized duty involving a criminal matter shall be served on the city attorney and the district attorney at least 10 court days before the motion is heard. The notice of motion shall set forth a statement of the facts relevant to the claimed disqualification and the legal authorities relied on by the moving party. The district attorney may appear at the hearing on the motion and may file with the court hearing the motion a written opinion on the disqualification issue. The motion may not be granted unless the evidence shows that a conflict of interest exists that would render it unlikely that the defendant would receive a fair trial.

(2) An order recusing the city attorney from a proceeding may be appealed by the city attorney or the district attorney. The order recusing the city attorney shall be stayed pending an appeal authorized by this section. An appeal from an order of disqualification in a misdemeanor case shall be made pursuant to Chapter 2 (commencing with Section 1466) of Title 11.

(c) Motions to disqualify the city attorney and the district attorney shall be separately made. (Added by Stats. 1996, ch. 91. Amended by Stats. 1998, ch. 931; Stats. 1999, ch. 363.)

§1524. Search Warrant; Special Master; Attorney Work Product

(a) A search warrant may be issued upon any of the following grounds:

(1) When the property was stolen or embezzled.

(2) When the property or things were used as the means of committing a felony.

(3) When the property or things are in the possession of any person with the intent to use them as a means of committing a public offense, or in the possession of another to whom he or she may have delivered them for the purpose of concealing them or preventing them from being discovered.

(4) When the property or things to be seized consist of any item or constitute any evidence that tends to show a felony has been committed, or tends to show that a particular person has committed a felony.

(5) When the property or things to be seized consist of evidence that tends to show that sexual exploitation of a child, in violation of Section 311.3, or possession of matter depicting sexual conduct of a person under the age of 18 years, in violation of Section 311.11, has occurred or is occurring.

(6) When there is a warrant to arrest a person.

(7) When a provider of electronic communication service or remote computing service has records or evidence, as specified in Section 1524.3, showing that property was stolen or embezzled constituting a misdemeanor, or that property or things are in the possession of any person with the intent to use them as a means of committing a misdemeanor public offense, or in the possession of another to whom he or she may have delivered them for the purpose of concealing them or preventing their discovery.

(8) When the property or things to be seized include an item or any evidence that tends to show a violation of Section 3700.5 of the Labor Code, or tends to show that a particular person has violated Section 3700.5 of the Labor Code.

(b) The property, things, person, or persons described in subdivision (a) may be taken on the warrant from any place, or from any person in whose possession the property or things may be.

(c) Notwithstanding subdivision (a) or (b), no search warrant shall issue for any documentary evidence in the possession or under the control of any person who is a lawyer as defined in Section 950 of the Evidence Code, a physician as defined in Section 990 of the Evidence Code, a psychotherapist as defined in Section 1010 of the Evidence Code, or a member of the clergy as defined in Section 1030 of the Evidence Code, and who is not reasonably suspected of engaging or having engaged in criminal activity related to the documentary evidence for which a warrant is requested unless the following procedure has been complied with:

(1) At the time of the issuance of the warrant, the court shall appoint a special master in accordance with subdivision (d) to accompany the person who will serve the warrant. Upon service of the warrant, the special master shall inform the party served of the specific items being sought and that the party shall have the opportunity to provide the items requested. If the party, in the judgment of the special master, fails to provide the items requested, the special master shall conduct a search for the items in the areas indicated in the search warrant.

(2) (A) If the party who has been served states that an item or items should not be disclosed, they shall be sealed by the special master and taken to court for a hearing.

(B) At the hearing, the party searched shall be entitled to raise any issues that may be raised pursuant to Section 1538.5 as well as a claim that the item or items are privileged, as provided by law. The hearing shall be held in the superior court. The court shall provide sufficient time for the parties to obtain counsel and make any motions or present any evidence. The hearing shall be held within three days of the service of the warrant unless the court makes a finding that the expedited hearing is impracticable. In that case the matter shall be heard at the earliest possible time.

(C) If an item or items are taken to court for a hearing, any limitations of time prescribed in Chapter 2 (commencing with Section 799) of Title 3 of Part 2 shall be tolled from the time of the seizure until the final conclusion of the hearing, including any associated writ or appellate proceedings.

(3) The warrant shall, whenever practicable, be served during normal business hours. In addition, the warrant shall be served upon a party who appears to have possession or control of the items sought. If, after reasonable efforts, the party serving the warrant is unable to locate the person, the special master shall seal and return to the court, for determination by the court, any item that appears to be privileged as provided by law.

(d) (1) As used in this section, a "special master" is an attorney who is a member in good standing of the California State Bar and who has been selected from a list of qualified attorneys that is maintained by the State Bar particularly for the purposes of conducting the searches described in this section. These attorneys shall serve without compensation. A special master shall be considered a public employee, and the governmental entity that caused the search warrant to be issued shall be considered the employer of the special master and the applicable public entity, for purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, relating to claims and actions against public entities and public employees. In selecting the special master, the court shall make every reasonable effort to ensure that the person selected has no relationship with any of the parties involved in the pending matter. Any information obtained by the special master shall be confidential and may not be divulged except in direct response to inquiry by the court.

(2) In any case in which the magistrate determines that, after reasonable efforts have been made to obtain a special master, a special master is not available and would not be available within a reasonable period of time, the magistrate may direct the party seeking the order to conduct the search in the manner described in this section in lieu of the special master.

(e) Any search conducted pursuant to this section by a special master may be conducted in a manner that permits the party serving the warrant or his or her designee to accompany the special master as he or she conducts his or her search. However, that party or his or her designee may not participate in the search nor shall he or she examine any of the items being searched by the special master except upon agreement of the party upon whom the warrant has been served.

(f) As used in this section, "documentary evidence" includes, but is not limited to, writings, documents, blueprints, drawings, photographs, computer printouts, microfilms, X-rays, files, diagrams, ledgers, books, tapes, audio and video recordings, films, and papers of any type or description.

(g) No warrant shall issue for any item or items described in Section 1070 of the Evidence Code.

(h) Notwithstanding any other law, no claim of attorney work product as described in Chapter 4 (commencing with Section 2018.010) of Title 4 of Part 4 of the Code of Civil Procedure shall be sustained where there is probable cause to believe that the lawyer is engaging or has engaged in criminal activity related to the documentary evidence for which a warrant is requested unless it is established at the hearing with respect to the documentary evidence seized under the warrant that the services of the lawyer were not sought or obtained to enable or aid anyone to commit or plan to commit a crime or a fraud.

(i) Nothing in this section is intended to limit an attorney's ability to request an in camera hearing pursuant to the holding of the Supreme Court of California in People v. Superior Court (Laff) (2001) 25 Cal.4th 703.

(j) In addition to any other circumstance permitting a magistrate to issue a warrant for a person or property in another county, when the property or things to be seized consist of any item or constitute any evidence that tends to show a violation of Section 530.5, the magistrate may issue a warrant to search a person or property located in another county if the person whose identifying information was taken or used resides in the same county as the issuing court. (Added by Stats. 1851, ch. 20. Amended by Stats. 1899, ch. 72; Stats. 1957, ch. 1884; Stats. 1978, ch. 1054; Stats. 1979, ch. 1034; Stats. 1980, ch. 441; Stats. 1982, ch. 438; Stats. 1996, ch. 1078; Stats. 1996, ch. 1079; Stats. 2002, ch. 864; Stats. 2002, ch. 1059; Stats. 2003, ch. 137; Stats. 2004, ch. 182; Stats. 2003-2004 Ex.Sess., ch. 2, effective March 1, 2005; Stats. 2005, ch. 294; Stats. 2006, ch. 538.**)**

§1525. Search Warrant; Probable Cause

A search warrant cannot be issued but upon probable cause, supported by affidavit, naming or describing the person to be searched or searched for, and particularly describing the property, thing, or things and the place to be searched.

The application shall specify when applicable, that the place to be searched is in the possession or under the control of an attorney, physician, psychotherapist or clergyman. (Added by Stats. 1851, ch. 29. Amended by Stats. 1979, ch. 1034; Stats. 1996, ch. 1078.)

§3215. Referral of Clients or Patients for Compensation; Penalty

Except as otherwise permitted by law, any person acting individually or through his or her employees or agents, who offers, delivers, receives, or accepts any rebate, refund, commission, preference, patronage, dividend, discount or other consideration, whether in the form of money or otherwise, as compensation or inducement for referring clients or patients to perform or obtain services or benefits pursuant to this division, is guilty of a crime. (Added by Stats. 1991, ch. 116.)

§3217. Employment Recommendations Not Prohibited Under the California Rules of Professional Conduct Are Permissible

(a) Section 3215 shall not be construed to prevent the recommendation of professional employment where that recommendation is not prohibited by the Rules of Professional Conduct of the State Bar.

(b) Section 3215 shall not be construed to prohibit a public defender or assigned counsel from making known his or her availability as a criminal defense attorney to persons unable to afford legal counsel, whether or not those persons are in custody.

(c) Any person who commits an act that violates both Section 3215 and either Section 650 of the Business and Professions Code and Section 750 of the Insurance Code shall, upon conviction, have judgment and sentence imposed for only one violation for any act. (Added by Stats. 1991, ch. 116; Stats. 1993, ch. 120.)

§3218. Violations of §3215; Penalties

A violation of Section 3215 is a public offense punishable upon a first conviction by incarceration in the county jail for not more than one year, or by incarceration in the state prison, or by a fine not exceeding ten thousand dollars ($10,000), or by both incarceration and fine. A second or subsequent conviction is punishable by incarceration in a state prison. (Added by Stats. 1991, ch. 116.)

§3219. Rebate, Refund, Commission, Preference or Other Consideration to Claims Adjustor—Felony

(a) (1) Except as otherwise permitted by law, any person acting individually or through his or her employees or agents, who offers or delivers any rebate, refund,

commission, preference, patronage, dividend, discount, or other consideration to any adjuster of claims for compensation, as defined in Section 3207, as compensation, inducement, or reward for the referral or settlement of any claim, is guilty of a felony.

(2) Except as otherwise permitted by law, any adjuster of claims for compensation, as defined in Section 3207, who accepts or receives any rebate, refund, commission, preference, patronage, dividend, discount, or other consideration, as compensation, inducement, or reward for the referral or settlement of any claim, is guilty of a felony.

(b) Any contract for professional services secured by any medical clinic, laboratory, physician or other health care provider in this state in violation of Section 550 of the Penal Code, Section 1871.4 of the Insurance Code, Section 650 or 650 of the Business and Professions Code, or Section 3215 or subdivision (a) of Section 3219 of this code is void. In any action against any medical clinic, laboratory, physician, or other health care provider, or the owners or operators thereof, under Chapter 4 (commencing with Section 17000) or Chapter 5 (commencing with Section 17200) of Division 7 of the Business and Professions Code, any judgment shall include an order divesting the medical clinic, laboratory, physician, or other health care provider, and the owners and operators thereof, of any fees and other compensation received pursuant to any such void contract. Those fees and compensation shall be recoverable as additional civil fees and compensation shall be recoverable as additional civil penalties under Chapter 4 (commencing with Section 17000) or Chapter 5 (commencing with Section 17200) of Division 7 of the Business and Professions Code. The judgment may also include an order prohibiting the person from further participating in any manner in the entity in which that person directly or indirectly owned or operated for a time period that the court deems appropriate. For the purpose of this section, "operated" means participated in the management, direction, or control of the entity.

(c) Notwithstanding Section 17206 or any other provision of law, any fees recovered pursuant to subdivision (b) in an action involving professional services related to the provision of workers' compensation shall be allocated as follows: if the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the State General Fund, and one-half of the penalty collected shall be paid to the Workers' Compensation Fraud Account in the Insurance Fund; if the action is brought by a district attorney, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half of the penalty collected shall be paid to the Workers' Compensation Fraud Account in the Insurance Fund; 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 of the penalty collected shall be paid to the Workers' Compensation Fraud Account in the Insurance Fund. Moneys deposited into the Workers' Compensation Fraud Account pursuant to this subdivision shall be used in the investigation and prosecution of workers' compensation fraud, as appropriated by the Legislature. (Added by Stats. 1993, ch. 120.)

§14150. Alternative Dispute Resolution Programs

The Legislature hereby finds and declares:

(a) Over the last 10 years, criminal case filings, including misdemeanor filings, have been increasing faster than any other type of filing in California's courts. Between 1981 and 1991, nontraffic misdemeanor and infraction filings in municipal and justice courts increased by 35 percent.

(b) These misdemeanor cases add to the workload which is now straining the California court system. In addition, many of these cases are ill-suited to complete resolution through the criminal justice system because they involve underlying disputes which may result in continuing conflict and criminal conduct within the community.

(c) Many victims of misdemeanor criminal conduct feel excluded from the criminal justice process. Although they were the direct victims of the offenders' criminal conduct, the process does not currently provide them with a direct role in holding the offender accountable for this conduct.

(d) Community conflict resolution programs utilizing alternative dispute resolution (ADR) processes such as mediation and arbitration have been effectively used in California and elsewhere to resolve conflicts involving conduct that could be charged as a misdemeanor. These programs can assist in reducing the number of cases burdening the court system. By utilizing ADR processes, these programs also provide an opportunity for direct participation by the victims of the conduct, thereby increasing victims' satisfaction with the criminal justice process. In addition, by bringing the parties together, these programs may reduce conflict within the community by facilitating the settlement of disputes which are causing repeated misdemeanor criminal conduct and may increase compliance with restitution agreements by encouraging the offender to accept personal responsibility.

(e) As of the effective date of this section, the San Francisco and Contra Costa district attorney offices refer between 1,000 and 1,500 cases per year involving conduct

which could be charged as a misdemeanor to California Community Dispute Services, which provides ADR services. Between 70 and 75 percent of these cases are successfully resolved through the ADR process, and the rate of compliance with the agreements reached is between 80 and 93 percent.

(f) The State of New York has developed a substantial statewide alternative dispute resolution program in which 65 percent of the cases using the services are of a criminal nature. These cases are referred to arbitration, conciliation, and mediation. Of the criminal misdemeanor cases that were mediated, 82 percent reached an agreement through the mediation process.

(g) It is in the public interest for community dispute resolution programs to be established to provide ADR services in cases involving conduct which could be charged as a misdemeanor and for district attorneys and courts to be authorized to refer cases to these programs. (Added by Stats. 1992, ch. 696.)

§14151. District Attorney Establishment of Program Providing Alternative Dispute Resolution

The district attorney may establish a community conflict resolution program pursuant to this title to provide alternative dispute resolution (ADR) services, such as mediation, arbitration, or a combination of both mediation and arbitration (med-arb) in cases, including those brought by a city prosecutor, involving conduct which could be charged as a misdemeanor. The district attorney may contract with a private entity to provide these services and may establish minimum training requirements for the neutral persons conducting the ADR processes. (Added by Stats. 1992, ch. 696.)

§14152. District Attorney Referral of Potential Misdemeanor Cases

(a) The district attorney may refer cases involving conduct which could be charged as a misdemeanor to the community conflict resolution program. In determining whether to refer a case to the community conflict resolution program, the district attorney shall consider, but is not limited to considering, all of the following:

(1) The nature of the conduct in question.

(2) The nature of the relationship between the alleged victim and the person alleged to have committed the conduct.

(3) Whether referral to the community conflict resolution program is likely to help resolve underlying issues which are likely to result in additional conduct which could be the subject of criminal charges.

(b) No case where there has been a history of child abuse, sexual assault, or domestic violence, as that term is defined in Section 6211 of the Family Code, between the alleged victim and the person alleged to have committed the conduct, or where a protective order, as defined in Section 6218 of the Family Code, is in effect, shall be referred to the community conflict resolution program. (Added by Stats. 1992, ch. 696. Amended by Stats. 1993, ch. 219.)

§14153. Consent to Participate in Alternative Dispute Resolution

Both the alleged victim and the person alleged to have committed the conduct shall knowingly and voluntarily consent to participate in the ADR process conducted by the community conflict resolution program. (Added by Stats. 1992, ch. 696.)

§14154. Court Referral of Misdemeanor Cases

In a county in which the district attorney has established a community conflict resolution program, the municipal court or the superior court in a county in which there is no municipal court may, with the consent of the district attorney and the defendant, refer misdemeanor cases, including those brought by a city prosecutor, to that program. In determining whether to refer a case to the community conflict resolution program, the court shall consider, but is not limited to considering, all of the following:

(a) The factors listed in Section 14152.

(b) Any other referral criteria established by the district attorney for the program.

The court shall not refer any case to the community conflict resolution program which was previously referred to that program by the district attorney. (Added by Stats. 1992, ch. 696. Amended by Stats. 1998, ch. 931.)

§14155. Referral of Case Back to District Attorney or Court; Recommendation for Prosecution or Dismissal

(a) If the alleged victim or the person alleged to have committed the conduct does not agree to participate in the

community conflict resolution program or the case is not resolved through the ADR process provided by that program, the community conflict resolution program shall promptly refer the case back to the district attorney or to the court that made the referral for appropriate action.

(b) If the community conflict resolution program determines that a case referred to it prior to the filing of a complaint has been resolved through that referral, the program shall recommend to the district attorney that the case not be prosecuted.

(c) If a case referred to the community conflict resolution program after the filing of a complaint but prior to adjudication is resolved through that referral, the court may dismiss the action pursuant to Section 1378 or 1385. (Added by Stats. 1992, ch. 696.)

§14156. Effect of Title on Other Programs

It is the intent of the Legislature that neither this title nor any other provision of law be construed to preempt other precomplaint or pretrial diversion programs. It is also the intent of the Legislature that this title not preempt other posttrial diversion programs. (Added by Stats. 1992, ch. 696.)

POLITICAL REFORM ACT

§82011. Code Reviewing Body

"Code reviewing body" means all of the following:

(a) The commission, with respect to the conflict-of-interest code of a state agency other than an agency in the judicial branch of government, or any local government agency with jurisdiction in more than one county.

(b) The board of supervisors, with respect to the conflict-of-interest code of any county agency other than the board of supervisors, or any agency of the judicial branch of government, and of any local government agency, other than a city agency, with jurisdiction wholly within the county.

(c) The city council, with respect to the conflict-of-interest code of any city agency other than the city council.

(d) The Attorney General, with respect to the conflict-of-interest code of the commission.

(e) The Chief Justice of California or his or her designee, with respect to the conflict-of-interest code of the members of the Judicial Council, Commission on Judicial Performance, and Board of Governors of the State Bar of California.

(f) The Board of Governors of the State Bar of California with respect to the conflict-of-interest code of the State Bar of California.

(g) The Chief Justice of California, the administrative presiding judges of the courts of appeal, and the presiding judges of superior courts, or their designees, with respect to the conflict-of-interest code of any agency of the judicial branch of government subject to the immediate administrative supervision of that court.

(h) The Judicial Council of California, with respect to the conflict-of-interest code of any state agency within the judicial branch of government not included under subdivisions (e), (f), and (g). (Added by initiative measure adopted June 4, 1974, effective January 7, 1975. Amended by Stats. 1980, ch. 779; Stats. 1984, ch 727, effective July 1, 1985; Stats. 1985, ch. 775; Stats. 1995, ch. 587; Stats. 2003, ch. 62.)

§82019. Designated Employee

(a) "Designated employee" means any officer, employee, member, or consultant of any agency whose position with the agency:

(1) Is exempt from the state civil service system by virtue of subdivision (a), (c), (d), (e), (f), (g), or (m) of Section 4 of Article VII of the Constitution, unless the position is elective or solely secretarial, clerical, or manual.

(2) Is elective, other than an elective state office.

(3) Is designated in a Conflict of Interest Code because the position entails the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest.

(4) Is involved as a state employee at other than a clerical or ministerial level in the functions of negotiating or signing any contract awarded through competitive bidding, in making decisions in conjunction with the competitive bidding process, or in negotiating, signing, or making decisions on contracts executed pursuant to Section 10122 of the Public Contract Code.

(b) (1) "Designated employee" does not include an elected state officer, any unsalaried member of any board or commission which serves a solely advisory function, any public official specified in Section 87200, and also does not include any unsalaried member of a nonregulatory committee, section, commission, or other such entity of the State Bar of California.

(2) "Designated employee" does not include a federal officer or employee serving in an official federal capacity on a state or local government agency. The state or local government agency shall annually obtain, and maintain in its files for public inspection, a copy of any public financial disclosure report filed by the federal officer or employee pursuant to federal law. (Added by initiative measure adopted June 4, 1974, effective January 7, 1975. Amended by Stats. 1979, ch 674; Stats. 1983, ch. 1108, effective September 28, 1983; Stats. 1984, ch. 727, effective July 1, 1985; Stats. 1985, ch. 611; Stats. 2004, ch. 484.)

§82041. Local Government Agency

"Local government agency" means a county, city or district of any kind including school district, or any other local or regional political subdivision, or any department, division, bureau, office, board, commission or other agency of the foregoing. (Added by initiative measure adopted June 4, 1974, effective January 7, 1975. Amended by Stats. 1984, ch. 727, effective July 1, 1985.)

§82048. Public Official

(a) "Public official" means every member, officer, employee or consultant of a state or local government agency.

(b) Notwithstanding subdivision (a), "public official" does not include the following:

(1) A judge or court commissioner in the judicial branch of government.

(2) A member of the Board of Governors and designated employees of the State Bar of California.

(3) A member of the Judicial Council.

(4) A member of the Commission on Judicial Performance, provided that he or she is subject to the provisions of Article 2.5 (commencing with Section 6035) of Chapter 4 of Division 3 of the Business and Professions Code as provided in Section 6038 of that article.

(5) A federal officer or employee serving in an official federal capacity on a state or local government agency. (Added by initiative measure adopted June 4, 1974, effective January 7, 1975. Amended by Stats. 1984, ch. 727; effective July 1, 1985; Stats. 2004, ch. 484.)

§82049. State Agency

"State agency" means every state office, department, division, bureau, board and commission, and the Legislature. (Added by initiative measure adopted June 4, 1974. Amended by Stats. 1984, ch. 727, effective July 1, 1985.)

§87311.5 Applicability of Administrative Procedure Act: Local Procedures

(a) Notwithstanding the provisions of Section 87311, the review of the Conflict of Interest Code of an agency in the judicial branch of government shall not be subject to the provisions of the Administrative Procedure Act [Gov. Code, 11370 et seq.]. The review and preparation of Conflict of Interest Codes by these agencies shall be carried out under procedures which guarantee to officers, employees, members, and consultants of the agency and to residents of the jurisdiction adequate notice and a fair opportunity to present their views.

(b) Conflict of Interest Codes of the Judicial Council, the Commission on Judicial Performance, and the Board of Governors and designated employees of the State Bar of California shall not be subject to the provisions of subdivision (c) of Section 87302. (Added by Stats. 1984, ch. 727, effective July 1, 1985.)

§91013. Late Filing of Statement of Economic Interest; Penalties

(a) If any person files an original statement or report after any deadline imposed by this act, he or she shall, in addition to any other penalties or remedies established by this act, be liable in the amount of ten dollars ($10) per day after the deadline until the statement or report is filed, to the officer with whom the statement or report is required to be filed. Liability need not be enforced by the filing officer if on an impartial basis he or she determines that the late filing was not willful and that enforcement of the liability will not further the purposes of the act, except that no liability shall be waived if a statement or report is not filed within 30 days for a statement of economic interest, other than a candidate's statement filed pursuant to Section 87201, five days for a campaign statement required to be filed 12 days before an election, and 10 days for all other statements or reports, after the filing officer has sent specific written notice of the filing requirement.

(b) If any person files a copy of a statement or report after any deadline imposed by this act, he or she shall, in addition to any other penalties or remedies established by this chapter, be liable in the amount of ten dollars ($10) per day, starting 10 days, or five days in the case of a campaign statement required to be filed 12 days before an election, after the officer has sent specific written notice of the filing requirement and until the statement is filed.

(c) The officer shall deposit any funds received under this section into the general fund of the jurisdiction of which he or she is an officer. No liability under this section shall exceed the cumulative amount stated in the late statement or report, or one hundred dollars ($100) whichever is greater. (Added by initiative measure June 4, 1974, effective January 7, 1975. Amended by Stats. 1975, ch. 915, effective September 20, 1975; Stats. 1977, ch. 555; Stats. 1985, ch. 1200; Stats. 1993, ch. 1140.)

§91013.5 Collection of Unpaid Penalties

(a) In addition to any other available remedies, the commission or the filing officer may bring a civil action and obtain a judgment in superior court for the purpose of collecting any unpaid monetary penalties, fees, or civil penalties imposed pursuant to this title. The action may be filed as a small claims, limited civil, or unlimited civil case, depending on the jurisdictional amount. The venue for this action shall be in the county where the monetary penalties, fees, or civil penalties were imposed by the commission or the filing officer. In order to obtain a judgment in a proceeding under this section, the commission or filing officer shall show, following the procedures and rules of evidence as applied in ordinary civil actions, all of the following:

(1) That the monetary penalties, fees, or civil penalties were imposed following the procedures set forth in this title and implementing regulations.

(2) That the defendant or defendants in the action were notified, by actual or constructive notice, of the imposition of the monetary penalties, fees, or civil penalties.

(3) That a demand for payment has been made by the commission or the filing officer and full payment has not been received.

(b) A civil action brought pursuant to subdivision (a) shall be commenced within four years after the date on which the monetary penalty, fee, or civil penalty was imposed. (Added by Stats. 1984, ch. 670. Amended by Stats. 2004, ch. 483.)

PROBATE CODE

§700. Definitions for This Chapter

Unless the provision or context otherwise requires, the definitions in this chapter govern the construction of this part. (Added by Stats. 1993, ch. 519.)

§701. Attorney Defined

"Attorney" means an individual licensed to practice law in this state. (Added by Stats. 1993, ch. 519.)

§702. Deposit Defined

"Deposit" means delivery of a document by a depositor to an attorney for safekeeping or authorization by a depositor for an attorney to retain a document for safekeeping. (Added by Stats. 1993, ch. 519.)

§703. Depositor Defined

"Depositor" means a natural person who deposits the person's document with an attorney. (Added by Stats. 1993, ch. 519.)

§704. Document Defined

"Document" means any of the following:

(a) A signed original will, declaration of trust, trust amendment, or other document modifying a will or trust.

(b) A signed original power of attorney.

(c) A signed original nomination of conservator.

(d) Any other signed original instrument that the attorney and depositor agree in writing to make subject to this part. (Added by Stats. 1993, ch. 519.)

§710. Preservation of Documents Transferred to Attorney

If a document is deposited with an attorney, the attorney, and a successor attorney that accepts transfer of the document, shall use ordinary care for preservation of the document on and after July 1, 1994, whether or not consideration is given, and shall hold the document in a safe, vault, safe deposit box, or other secure place where it will be reasonably protected against loss or destruction. (Added by Stats. 1993, ch. 519.)

§711. Notice of Loss or Destruction of Document

If a document deposited with an attorney is lost or destroyed, the attorney shall give notice of the loss or destruction to the depositor by one of the following methods:

(a) By mailing the notice to the depositor's last known address.

(b) By the method most likely to give the depositor actual notice. (Added by Stats. 1993, ch. 519.)

§712. Liability for Lost or Destroyed Document

Notwithstanding failure of an attorney to satisfy the standard of care required by Section 710 or 716, the attorney is not liable for loss or destruction of the document if the depositor has actual notice of the loss or destruction and a reasonable opportunity to replace the document, and the attorney offers without charge either to assist the depositor in replacing the document, or to prepare a substantially similar document and assist in its execution. (Added by Stats. 1993, ch. 519.)

§713. No Duty as to Content of Document; Provision of Legal Services Arising from Document Retention

The acceptance by an attorney of a document for deposit imposes no duty on the attorney to do either of the following:

(a) Inquire into the content, validity, invalidity, or completeness of the document, or the correctness of any information in the document.

(b) Provide continuing legal services to the depositor or to any beneficiary under the document. This subdivision does not affect the duty, if any, of the drafter of the document to provide continuing legal services to any person. (Added by Stats. 1993, ch. 519.)

§714. Attorney Compensation for Preservation of Documents; No Lien Rights Created

(a) If so provided in a written agreement signed by the depositor, an attorney may charge the depositor for compensation and expenses incurred in safekeeping or delivery of a document deposited with the attorney.

(b) No lien arises for the benefit of an attorney on a document deposited with the attorney, whether before or after its transfer, even if provided by agreement. (Added by Stats. 1993, ch. 519.)

§715. Notice and Acknowledgment of Deposit, Form and Content

An attorney may give written notice to a depositor, and obtain written acknowledgment from the depositor, in the following form:

NOTICE AND ACKNOWLEDGMENT

To:_____
(Name of Depositor)

_____
(Address)

_____
(City, State, and ZIP)

I have accepted your will or other estate planning document for safekeeping. I must use ordinary care for preservation of the document.

You must keep me advised of any change in your address shown above. If you do not and I cannot return this document to you when necessary, I will no longer be required to use ordinary care for preservation of the document, and I may transfer it to another attorney, or I may transfer it to the clerk of the superior court of the county of your last know domicile, and give notice of the transfer to the State Bar of California.

_____
(Signature of Attorney)

_____
(Address of Attorney)

_____
(City, State, and ZIP)

My address shown above is correct. I understand that I must keep you advised of any change in this address.

_____ _____
(Dated) (Signature of depositor)

(Added by Stats. 1993, ch. 519.)

§716. Preservation and Standard of Care—Effect of Compliance with Section 715

Notwithstanding Section 710, if an attorney has given written notice to the depositor, and has obtained written acknowledgment from the depositor, in substantially the form provided in Section 715, and the requirements of

subdivision (a) of Section 732 are satisfied, the attorney, and a successor attorney that accepts transfer of a document, shall use at least slight care for preservation of a document deposited with the attorney. (Added by Stats. 1993, ch. 519.)

§720. Termination of Deposit

A depositor may terminate a deposit on demand, in which case the attorney shall deliver the document to the depositor. (Added by Stats. 1993, ch. 519.)

§730. Termination of Deposit—Attorney

An attorney with whom a document has been deposited, or to whom a document has been transferred pursuant to this article, may terminate the deposit only as provided in this article. (Added by Stats. 1993, ch. 519.)

§731. Termination of Deposit—Methods

An attorney may terminate the deposit by one of the following methods:

(a) Personal delivery of the document to the depositor.

(b) Mailing the document to the depositor's last know address, by registered or certified mail with return receipt requested, and receiving a signed receipt.

(c) The method agreed on by the depositor and attorney. (Added by Stats. 1993, ch. 519.)

§732. Termination of Deposit After Notice to Reclaim Mailed, Methods of Transfer

(a) An attorney may terminate a deposit under this section if the attorney has mailed notice to reclaim the document to the depositor's last know address and the depositor has failed to reclaim the document within 90 days after the mailing.

(b) Subject to subdivision (f), an attorney may terminate a deposit under this section by transferring the document to another attorney. All documents transferred under this subdivision shall be transferred to the same attorney.

(c) Subject to subdivision (f), if an attorney is deceased, lacks legal capacity, or is no longer an active member of the State Bar, a deposit may be terminated under this section by transferring the document to the clerk of the superior court of the county of the depositor's last known domicile. The attorney shall advise the clerk that the document is being transferred pursuant to Section 732.

(d) An attorney may not accept a fee or compensation from a transferee for transferring a document under this section. An attorney may charge a fee for receiving a document under this section.

(e) Transfer of a document by an attorney under this section is not a waiver or breach of any privilege or confidentiality associated with the document, and is not a violation of the rules of professional conduct. If the document is privileged under Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code, the document remains privileged after the transfer.

(f) If the document is a will and the attorney has actual notice that the depositor has died, the attorney may terminate a deposit only as provided in Section 734. (Added by Stats. 1993, ch. 519.)

§733. Notice to State Bar of Transfers Under Section 732

(a) An attorney transferring one or more documents under Section 732 shall mail notice of the transfer to the State Bar of California. The notice shall contain all of the following information:

(1) The name of the depositor.

(2) The date of the transfer.

(3) The name, address, and State Bar number of the transferring attorney.

(4) Whether any documents are transferred to an attorney, and the name, address, and State Bar number of the attorney to whom the documents are transferred.

(5) Whether any documents are transferred to a superior court clerk.

(b) The State Bar shall record only one notice of transfer for each transferring attorney. The State Bar shall prescribe the form for the notice of transfer. On request by any person, the State Bar shall give that person information in the notice of transfer. At its sole election, the State Bar may give the information orally or in writing. (Added by Stats. 1993, ch. 519.)

§734. Termination of Deposit, Death of Depositor

(a) In cases not governed by subdivision (b) or (c), after the death of the depositor an attorney may terminate a deposit by personal delivery of the document to the depositor's personal representative.

(b) If the document is a will and the attorney has actual notice that the depositor has died but does not have actual notice that a personal representative has been appointed for the depositor, an attorney may terminate a deposit only as provided in Section 8200.

(c) If the document is a trust, after the death of the depositor an attorney may terminate a deposit by personal delivery of the document either to the depositor's personal representative or to the trustee named in the document. (Added by Stats. 1993, ch. 519.)

§735. Termination of Deposit—Death or Incapacity of Attorney

(a) If the attorney is deceased or lacks legal capacity, a deposit may be terminated as provided in this article by the attorney's law partner, by a shareholder of the attorney's law corporation, or by a lawyer or nonlawyer employee of the attorney's firm, partnership, or corporation.

(b) If the attorney lacks legal capacity and there is no person to act under subdivision (a), a deposit may be terminated by the conservator of the attorney's estate or by an attorney in fact acting under a durable power of attorney. A conservator of the attorney's estate may act without court approval.

(c) If the attorney is deceased and there is no person to act under subdivision (a), a deposit may be terminated by the attorney's personal representative.

(d) If a person authorized under this section terminates a deposit as provided in Section 732, the person shall give the notice required by Section 733. (Added by Stats. 1993, ch. 519.)

§2468. Disabled Attorney—Petition for Appointment of Practice Administrator; Notice and Hearing, Contents, Compensation, Termination

(a) The conservator of the estate of a disabled attorney who was engaged in the practice of law at the time of his or her disability, or other person interested in the estate, may bring a petition seeking the appointment of an active member of the State Bar of California to take control of the files and assets of the practice of the disabled member.

(b) The petition may be filed and heard on such notice that the court determines is in the best interests of the persons interested in the estate of the disabled member. If the petition alleges that the immediate appointment of a practice administrator is required to safeguard the interests of the estate, the court may dispense with notice provided that the conservator is the petitioner or has joined in the petition or has otherwise waived notice of hearing on the petition.

(c) The petition shall indicate the powers sought for the practice administrator from the list of powers set forth in Section 6185 of the Business and Professions Code. These powers shall be specifically listed in the order appointing the practice administrator.

(d) The petition shall allege the value of the assets that are to come under the control of the practice administrator, including but not limited by the amount of funds in all accounts used by the disabled member. The court shall require the filing of a surety bond in the amount of the value of the personal property to be filed with the court by the practice administrator. No action may be taken by the practice administrator unless a bond has been duly filed with the court.

(e) The practice administrator shall not be the attorney representing the conservator.

(f) The court shall appoint the attorney nominated by the disabled member in a writing, including but not limited to the disabled member's will, unless the court concludes that the appointment of the nominated person would be contrary to the best interests of the estate or would create a conflict of interest with any of the clients of the disabled member.

(g) The practice administrator shall be compensated only upon order of the court making the appointment for his or her reasonable and necessary services. The law practice shall be the source of the compensation for the practice administrator unless the assets are insufficient, in which case, the compensation of the practice administrator shall be charged against the assets of the estate as a cost of administration. The practice administrator shall also be entitled to reimbursement of his or her costs.

(h) Upon conclusion of the services of the practice administrator, the practice administrator shall render an accounting and petition for its approval by the superior court making the appointment. Upon settlement of the accounting, the practice administrator shall be discharged and the surety on his or her bond exonerated.

(i) If the court appointing the practice administrator determines upon petition that the disabled attorney has recovered his or her capacity to resume his or her law practice, the appointment of a practice administrator shall forthwith terminate and the disabled attorney shall be restored to his or her practice.

(j) For purposes of this section, the person appointed to take control of the practice of the disabled member shall be referred to as the "practice administrator" and the conservatee shall be referred to as the "disabled member." (Added by Stats. 1998, ch. 683.)

§2586. Court Examination of Estate Plan of a Conservatee

(a) As used in this section, "estate plan of the conservatee" includes, but is not limited to, the conservatee's will, any trust of which the conservatee is the settlor or beneficiary, any power of appointment created by or exercisable by the conservatee, and any contract, transfer, or joint ownership arrangement with provisions for payment or transfer of benefits or interests at the conservatee's death to another or others which the conservatee may have originated.

(b) Notwithstanding Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code (lawyer- client privilege), the court, in its discretion, may order that any person having possession of any document constituting all or part of the estate plan of the conservatee shall deliver the document to the court for examination by the court, and, in the discretion of the court, by the attorneys for the persons who have appeared in the proceedings under this article, in connection with the petition filed under this article.

(c) Unless the court otherwise orders, no person who examines any document produced pursuant to an order under this section shall disclose the contents of the document to any other person. If that disclosure is made, the court may adjudge the person making the disclosure to be in contempt of court.

(d) For good cause, the court may order that a document constituting all or part of the estate plan of the conservatee, whether or not produced pursuant to an order under this section, shall be delivered for safekeeping to the custodian designated by the court. The court may impose those conditions it determines are appropriate for holding and safeguarding the document. The court may authorize the conservator to take any action a depositor may take under Part 15 (commencing with Section 700) of Division 2. (Added by Stats. 1990, ch. 79, operative July 1, 1991. Amended by Stats. 1993, ch. 519.)

§2620.2 Failure to File Account by Conservator or Guardian; Court Appointed Counsel

(a) Whenever the conservator or guardian has failed to file an accounting as required by Section 2620, the court shall require that written notice be given to the conservator or guardian and the attorney of record for the conservatorship or guardianship directing the conservator or guardian to file an accounting and to set the accounting for hearing before the court within 30 days of the date of the notice or, if the conservator or guardian is a public agency, within 45 days of the date of the notice. The court may, upon cause shown, grant an additional 30 days to file the accounting.

(b) Failure to file the accounting within the time specified under subdivision (a), or within 45 days of actual receipt of the notice, whichever is later, shall constitute a contempt of the authority of the court as described in Section 1209 of the Code of Civil Procedure.

(c) If the conservator or guardian does not file an accounting with all appropriate supporting documentation and set the accounting for hearing as required by Section 2620, the court shall do one or more of the following and shall report that action to the bureau established pursuant to Section 6510 of the Business and Professions Code:

(1) Remove the conservator or guardian as provided under Article 1 (commencing with Section 2650) of Chapter 9 of Part 4 of Division 4.

(2) Issue and serve a citation requiring a guardian or conservator who does not file a required accounting to appear and show cause why the guardian or conservator should not be punished for contempt. If the guardian or conservator purposely evades personal service of the citation, the guardian or conservator shall be immediately removed from office.

(3) Suspend the powers of the conservator or guardian and appoint a temporary conservator or guardian, who shall take possession of the assets of the conservatorship or guardianship, investigate the actions of the conservator or guardian, and petition for surcharge if this is in the best interests of the ward or conservatee. Compensation for the temporary conservator or guardian, and counsel for the temporary conservator or guardian, shall be treated as a surcharge against the conservator or guardian, and if unpaid shall be considered a breach of condition of the bond.

(4) (A) Appoint legal counsel to represent the ward or conservatee if the court has not suspended the powers of the conservator or guardian and appoint a temporary conservator or guardian pursuant to paragraph (3). Compensation for the counsel

appointed for the ward or conservatee shall be treated as a surcharge against the conservator or guardian, and if unpaid shall be considered a breach of a condition on the bond, unless for good cause shown the court finds that counsel for the ward or conservatee shall be compensated according to Section 1470. The court shall order the legal counsel to do one or more of the following:

(i) Investigate the actions of the conservator or guardian, and petition for surcharge if this is in the best interests of the ward or conservatee.

(ii) Recommend to the court whether the conservator or guardian should be removed.

(iii) Recommend to the court whether money or other property in the estate should be deposited pursuant to Section 2453, 2453.5, 2454, or 2455, to be subject to withdrawal only upon authorization of the court.

(B) After resolution of the matters for which legal counsel was appointed in subparagraph (A), the court shall terminate the appointment of legal counsel, unless the court determines that continued representation of the ward or conservatee and the estate is necessary and reasonable.

(5) If the conservator or guardian is exempt from the licensure requirements of Chapter 6 (commencing with Section 6500) of Division 3 of the Business and Professions Code, upon ex parte application or any notice as the court may require, extend the time to file the accounting, not to exceed an additional 30 days after the expiration of the deadline described in subdivision (a), where the court finds there is good cause and that the estate is adequately bonded. After expiration of any extensions, if the accounting has not been filed, the court shall take action as described in paragraphs (1) to (3), inclusive.

(d) Subdivision (c) does not preclude the court from additionally taking any other appropriate action in response to a failure to file a proper accounting in a timely manner. (Added by Stats. 1990, ch. 79. Amended by Stats. 1991, ch. 1019; Stats. 1992; ch. 572, Stats. 2001, ch. 359; Stats. 2002, ch. 664; Stats. 2006, ch. 493; Stats. 2007, ch. 553.)

§2645. Attorney Guardian or Conservator, Compensation for Legal Services Performed

(a) No attorney who is a guardian or conservator shall receive any compensation from the guardianship or conservatorship estate for legal services performed for the guardian or conservator unless the court specifically approves the right to the compensation and finds that it is to the advantage, benefit, and best interests of the ward or conservatee.

(b) No parent, child, sibling, or spouse of a person who is a guardian or conservator, and no law partnership or corporation whose partner, shareholder, or employee is serving as a guardian or conservator shall receive any compensation for legal services performed for the guardian or conservator unless the court specifically approves the right to the compensation and finds that it is to the advantage, benefit, and best interests of the ward or conservatee.

(c) This section shall not apply if the guardian or conservator is related by blood or marriage to, or is a cohabiting with, the ward or conservatee.

(d) After full disclosure of the relationships of all persons to receive compensation for legal services under this section, the court may, in its discretion and at any time, approve the right to that compensation, including any time during the pendency of any of the following orders:

(1) An order appointing the guardian or conservator.

(2) An order approving the general plan under Section 1831.

(3) An order settling any account of the guardian or conservator.

(4) An order approving a separate petition, with notice given under Section 2581. (Added by Stats. 1993, ch. 293.)

§9764. Deceased Attorney—Petition for Appointment of Practice Administrator; Notice and Hearing, Contents, Compensation, Termination

(a) The personal representative of the estate of a deceased attorney who was engaged in a practice of law at the time of his or her death or other person interested in the estate may bring a petition for appointment of an active member of the State Bar of California to take control of the files and assets of the practice of the deceased member.

(b) The petition may be filed and heard on such notice that the court determines is in the best interests of the estate of the deceased member. If the petition alleges that the immediate appointment of a practice administrator is required to safeguard the interests of the estate, the court may dispense with notice only if the personal representative

is the petitioner or has joined in the petition or has otherwise waived notice of hearing on the petition.

(c) The petition shall indicate the powers sought for the practice administrator from the list of powers set forth in Section 6185 of the Business and Professions Code. These powers shall be specifically listed in the order appointing the practice administrator.

(d) The petition shall allege the value of the assets that are to come under the control of the practice administrator, including, but not limited by the amount of funds in all accounts used by the deceased member. The court shall require the filing of a surety bond in the amount of the value of the personal property to be filed with the court by the practice administrator. No action may be taken by the practice administrator unless a bond has been fully filed with the court.

(e) The practice administrator shall not be the attorney representing the personal representative.

(f) The court shall appoint the attorney nominated by the deceased member in a writing, including, but not limited to, the deceased member's will, unless the court concludes that the appointment of the nominated person would be contrary to the best interests of the estate or would create a conflict of interest with any of the clients of the deceased member.

(g) The practice administrator shall be compensated only upon order of the court making the appointment for his or her reasonable and necessary services. The law practice shall be the source of the compensation for the practice administrator unless the assets are insufficient in which case, the compensation of the practice administrator shall be charged against the assets of the estate as a cost of administration. The practice administrator shall also be entitled to reimbursement of his or her costs.

(h) Upon conclusion of the services of the practice administrator, the practice administrator shall render an accounting and petition for its approval by the superior court making the appointment. Upon settlement of the accounting, the practice administrator shall be discharged and the surety on his or her bond exonerated.

(i) For the purposes of this section, the person appointed to take control of the practice of the deceased member shall be referred to as the "practice administrator" and the decedent shall be referred to as the "deceased member." (Added by Stats. 1998, ch. 682.)

§9880. Purchases or Interests Prohibited

Except as provided in this chapter, neither the personal representative nor the personal representative's attorney may do any of the following:

(a) Purchase any property of the estate or any claim against the estate, directly or indirectly.

(b) Be interested in any such purchase. (Added by Stats. 1990, ch. 79, operative July 1, 1991.)

§9881. Orders Authorizing Purchase; Requirements

Upon a petition filed under Section 9883, the court may make an order under this section authorizing the personal representative or the personal representative's attorney to purchase property of the estate if all of the following requirements are satisfied:

(a) Written consent to the purchase is signed by (1) each known heir whose interest in the estate would be affected by the proposed purchase and (2) each know devisee whose interest in the estate would be affected by the proposed purchase.

(b) The written consents are filed with the court.

(c) The purchase is shown to be to the advantage of the estate. (Added by Stats. 1990, ch. 79, operative July 1, 1991.)

§9882. Orders Authorizing Purchase; Will Authorization

Upon a petition filed under Section 9883, the court may make an order under this section authorizing the personal representative or the personal representative's attorney to purchase property of the estate if the will of the decedent authorizes the personal representative or the personal representative's attorney to purchase the property. (Added by Stats. 1990, ch. 79, operative July 1, 1991.)

§9883. Petitions; Confirmation of Sale; Notice of Hearing; Orders; Conveyance

(a) The personal representative may file a petition requesting that the court make an order under Section 9881 or 9882. The petition shall set forth the facts upon which the request for the order is based.

(b) If court confirmation of the sale is required, the court may make its order under Section 9881 or 9882 at the time of the confirmation.

(c) Notice of the hearing on the petition shall be given as provided in Section 1220 to all of the following persons:

(1) Each person listed in Section 1220.

(2) Each known heir whose interest in the estate would be affected by the proposed purchase.

(3) Each known devisee whose interest in the estate would be affected by the proposed purchase.

(d) If the court is satisfied that the purchase should be authorized, the court shall make an order authorizing the purchase upon the terms and conditions specified in the order, and the personal representative may execute a conveyance or transfer according to the terms of the order. Unless otherwise provided in the will or in the order of the court, the sale of the property shall be made in the same manner as the sale of other estate property of the same nature. (Added by Stats. 1990, ch. 79, operative July 1, 1991.)

§9884. Purchases Pursuant to Contract

This chapter does not prohibit the purchase of property of the estate by the personal representative or the personal representative's attorney pursuant to a contract in writing made during the lifetime of the decedent if the contract is one that can be specifically enforced and the requirements of Part 19 (commencing with Section 850) of Division 2 are satisfied. (Added by Stats. 1990, ch. 79, operative July 1, 1991. Amended by Stats. 2003, ch. 32.)

§9885. Options to Purchase

This chapter does not prevent the exercise by the personal representative or the personal representative's attorney of an option to purchase property of the estate given in the will of the decedent if the requirements of Chapter 17 (commencing with Section 9980) are satisfied. (Added by Stats. 1990, ch. 79, operative July 1, 1991.)

§10804. Estate Attorney Acting as Personal Representative—Court Approval of Compensation

Notwithstanding any provision in the decedent's will, a personal representative who is an attorney shall be entitled to receive the personal representative's compensation as provided in this part, but shall not receive compensation for services as the attorney for the personal representative unless the court specifically approves the right to the compensation in advance and finds that the arrangement is to the advantage, benefit, and best interests of the decedent's estate. (Added by Stats. 1990, ch. 79, operative July 1, 1991. Amended by Stats. 1993, ch. 293; Stats. 1996, ch. 563; Stats. 2001, ch. 699.)

§15642. Grounds for Removal of a Trustee

(a) A trustee may be removed in accordance with the trust instrument, by the court on its own motion, or on petition of a settlor, cotrustee, or beneficiary under Section 17200.

(b) The grounds for removal of a trustee by the court include the following:

(1) Where the trustee has committed a breach of the trust.

(2) Where the trustee is insolvent or otherwise unfit to administer the trust.

(3) Where hostility or lack of cooperation among cotrustees impairs the administration of the trust.

(4) Where the trustee fails or declines to act.

(5) Where the trustee's compensation is excessive under the circumstances.

(6) Where the sole trustee is a person described in subdivision (a) of Section 21350, whether or not the person is the transferee of a donative transfer by the transferor, unless, based upon any evidence of the intent of the settlor and all other facts and circumstances, which shall be made known to the court, the court finds that it is consistent with the settlor's intent that the trustee continue to serve and that this intent was not the product of fraud, menace, duress, or undue influence. Any waiver by the settlor of this provision is against public policy and shall be void. This paragraph shall not apply to instruments that became irrevocable on or before January 1, 1994. This paragraph shall not apply if any of the following conditions are met:

(A) The settlor is related by blood or marriage to, or is a cohabitant with, any one or more of the trustees, the person who drafted or transcribed the instrument, or the person who caused the instrument to be transcribed.

(B) The instrument is reviewed by an independent attorney who (1) counsels the

settlor about the nature of his or her intended trustee designation and (2) signs and delivers to the settlor and the designated trustee a certificate in substantially the following form:

"CERTIFICATE OF INDEPENDENT REVIEW

I,_____,
(attorney's name)
have reviewed _____
(name of instrument)

and have counseled my client, _____,
(name of client)
fully and privately on the nature and legal effect

of the designation as trustee of _____
(name of trustee)
contained in that instrument. I am so disassociated from the interest of the person named as trustee as to be in a position to advise my client impartially and confidentially as to the consequences of the designation. On the basis of this counsel, I conclude that the designation of a person who would otherwise be subject to removal under paragraph (6) of subdivision (b) of Section 15642 of the Probate Code is clearly the settlor's intent and that intent is not the product of fraud, menace, duress, or undue influence.

_____ _____"
(Name of Attorney) (Date)

This independent review and certification may occur either before or after the instrument has been executed, and if it occurs after the date of execution, the named trustee shall not be subject to removal under this paragraph. Any attorney whose written engagement signed by the client is expressly limited to the preparation of a certificate under this subdivision, including the prior counseling, shall not be considered to otherwise represent the client.

(C) After full disclosure of the relationships of the persons involved, the instrument is approved pursuant to an order under Article 10 (commencing with Section 2580) of Chapter 6 of Part 4 of Division 4.

(7) If, as determined under Part 17 (commencing with Section 810) of Division 2, the trustee is substantially unable to manage the trust's financial resources or is otherwise substantially unable to execute properly the duties of the office. When the trustee holds the power to revoke the trust, substantial inability to manage the trust's financial resources or otherwise execute properly the duties of the office may not be proved solely by isolated incidents of negligence or improvidence.

(8) If the trustee is substantially unable to resist fraud or undue influence. When the trustee holds the power to revoke the trust, substantial inability to resist fraud or undue influence may not be proved solely by isolated incidents of negligence or improvidence.

(9) For other good cause.

(c) If, pursuant to paragraph (6) of subdivision (b), the court finds that the designation of the trustee was not consistent with the intent of the settlor or was the product of fraud, menace, duress, or undue influence, the person being removed as trustee shall bear all costs of the proceeding, including reasonable attorney's fees.

(d) If the court finds that the petition for removal of the trustee was filed in bad faith and that removal would be contrary to the settlor's intent, the court may order that the person or persons seeking the removal of the trustee bear all or any part of the costs of the proceeding, including reasonable attorney's fees.

(e) If it appears to the court that trust property or the interests of a beneficiary may suffer loss or injury pending a decision on a petition for removal of a trustee and any appellate review, the court may, on its own motion or on petition of a cotrustee or beneficiary, compel the trustee whose removal is sought to surrender trust property to a cotrustee or to a receiver or temporary trustee. The court may also suspend the powers of the trustee to the extent the court deems necessary.

(f) For purposes of this section, the term "related by blood or marriage" shall include persons within the seventh degree. (Added by Stats. 1990, ch. 79, operative July 1, 1991. Amended by Stats. 1993, ch. 293; Stats. 1995, ch. 730; Stats. 2006, ch. 84.)

§15687. Attorney Acting as Trustee—Compensation for Legal Services Performed

(a) Notwithstanding any provision of a trust to the contrary, a trustee who is an attorney may receive only (1) the trustee's compensation provided in the trust or otherwise provided in this article or (2) compensation for legal services performed for the trustee, unless the trustee obtains approval for the right to dual compensation as provided in subdivision (d).

(b) No parent, child, sibling, or spouse of a person who is a trustee, and no law partnership or corporation whose partner, shareholder, or employee is serving as a trustee shall receive any compensation for legal services performed for the trustee unless the trustee waives trustee compensation or unless the trustee obtains approval for the right to dual compensation as provided in subdivision (d).

(c) This section shall not apply if the trustee is related by blood or marriage to, or is a cohabiting with, the settlor.

(d) After full disclosure of the nature of the compensation and relationship of the trustee to all persons receiving compensation under this section, the trustee may obtain approval for dual compensation by either of the following:

(1) An order pursuant to paragraph (21) of subdivision (b) of Section 17200.

(2) Giving 30 days' advance written notice to the persons entitled to notice under Section 17203. Within that 30-day period, any person entitled to notice may object to the proposed action by written notice to the trustee or by filing a petition pursuant to paragraph (21) of subdivision (b) of Section 17200. If the trustee receives this objection during that 30-day period and if the trustee wishes dual compensation, the trustee shall file a petition for approval pursuant to paragraph (21) of subdivision (b) of Section 17200.

(e) Any waiver of the requirements of this section is against public policy and shall be void.

(f) This section applies to services rendered on or after January 1, 1994. (Added by Stats. 1993, ch. 293. Amended by Stats. 1995, ch. 730.)

§15688. Public Guardian appointed as trustee; authorized payments

Notwithstanding any other provision of this article and the terms of the trust, a public guardian who is appointed as a trustee of a trust pursuant to Section 15660.5 shall be paid from the trust property for all of the following:

(a) Reasonable expenses incurred in the administration of the trust.

(b) Compensation for services of the public guardian and the attorney of the public guardian, and for the filing and processing services of the county clerk in the amount the court determines is just and reasonable.

(c) An annual bond fee in the amount of twenty-five dollars ($25) plus one-fourth of 1 percent of the amount of the trust assets greater than ten thousand dollars ($10,000). The amount charged shall be deposited in the county treasury. (Added by Stats. 1997, ch. 93.)

§17200. Trusts—Existence of; Petitions to Appoint a Practice Administrator for a Deceased or Disabled Member

(a) Except as provided in Section 15800, a trustee or beneficiary of a trust may petition the court under this chapter concerning the internal affairs of the trust or to determine the existence of the trust.

(b) Proceedings concerning the internal affairs of a trust include, but are not limited to, proceedings for any of the following purposes:

(1) Determining questions of construction of a trust instrument.

(2) Determining the existence or nonexistence of any immunity, power, privilege, duty, or right.

(3) Determining the validity of a trust provision.

(4) Ascertaining beneficiaries and determining to whom property shall pass or be delivered upon final or partial termination of the trust, to the extent the determination is not made by the trust instrument.

(5) Settling the accounts and passing upon the acts of the trustee, including the exercise of discretionary powers.

(6) Instructing the trustee.

(7) Compelling the trustee to report information about the trust or account to the beneficiary, if (A) the trustee has failed to submit a requested report or account within 60 days after written request of the beneficiary and (B) no report or account has been made within six months preceding the request.

(8) Granting powers to the trustee.

(9) Fixing or allowing payment of the trustee's compensation or reviewing the reasonableness of the trustee's compensation.

(10) Appointing or removing a trustee.

(11) Accepting the resignation of a trustee.

(12) Compelling redress of a breach of the trust by any available remedy.

(13) Approving or directing the modification or termination of the trust.

(14) Approving or directing the combination or division of trusts.

(15) Amending or conforming the trust instrument in the manner required to qualify a decedent's estate for the charitable estate tax deduction under federal law, including the addition of mandatory governing instrument requirements for a charitable remainder trust as required by final regulations and rulings of the United States Internal Revenue Service.

(16) Authorizing or directing transfer of a trust or trust property to or from another jurisdiction.

(17) Directing transfer of a testamentary trust subject to continuing court jurisdiction from one county to another.

(18) Approving removal of a testamentary trust from continuing court jurisdiction.

(19) Reforming or excusing compliance with the governing instrument of an organization pursuant to Section 16105.

(20) Determining the liability of the trust for any debts of a deceased settlor. However, nothing in this paragraph shall provide standing to bring an action concerning the internal affairs of the trust to a person whose only claim to the assets of the decedent is as a creditor.

(21) Determining petitions filed pursuant to Section 15687 and reviewing the reasonableness of compensation for legal services authorized under that section. In determining the reasonableness of compensation under this paragraph, the court may consider, together with all other relevant circumstances, whether prior approval was obtained pursuant to Section 15687.

(22) If a member of the State Bar of California has transferred the economic interest of his or her practice to a trustee and if the member is a deceased member under Section 9764, a petition may be brought to appoint a practice administrator. The procedures, including, but not limited to, notice requirements, that apply to the appointment of a practice administrator for a deceased member shall apply to the petition brought under this section.

(23) If a member of the State Bar of California has transferred the economic interest of his or her practice to a trustee and if the member is a disabled member under Section 2468, a petition may be brought to appoint a practice administrator. The procedures, including, but not limited to, notice requirements, that apply to the appointment of a practice administrator for a disabled member shall apply to the petition brought under this section.

(c) The court may, on its own motion, set and give notice of an order to show cause why a trustee should not be removed for failing to register in the Statewide Registry under Section 2850. (Added by Stats. 1990, ch. 79. Amended by Stats. 1991, ch. 992; Stats. 1993, ch. 293; Stats. 1996, ch. 862; Stats. 1997, ch. 724; Stats. 1998, ch. 682; Stats. 1999, ch. 175; Stats. 2004, ch. 629.)

§21350. Instrument Making Donative Transfer to Draftor of Instrument is Invalid

(a) Except as provided in Section 21351, no provision, or provisions, of any instrument shall be valid to make any donative transfer to any of the following:

(1) The person who drafted the instrument.

(2) A person who is related by blood or marriage to, is a domestic partner of, is a cohabitant with, or is an employee of, the person who drafted the instrument.

(3) Any partner or shareholder of any law partnership or law corporation in which the person described in paragraph (1) has an ownership interest, and any employee of that law partnership or law corporation.

(4) Any person who has a fiduciary relationship with the transferor, including, but not limited to, a conservator or trustee, who transcribes the instrument or causes it to be transcribed.

(5) A person who is related by blood or marriage to, is a domestic partner of, is a cohabitant with, or is an employee of a person who is described in paragraph (4).

(6) A care custodian of a dependent adult who is the transferor.

(7) A person who is related by blood or marriage to, is a domestic partner of, is a cohabitant with, or is an employee of, a person who is described in paragraph (6).

(b) For purposes of this section, "a person who is related by blood or marriage" to a person means all of the following:

(1) The person's spouse or predeceased spouse.

(2) Relatives within the third degree of the person and of the person's spouse.

(3) The spouse of any person described in paragraph (2).

In determining any relationship under this subdivision, Sections 6406, 6407, and Chapter 2 (commencing with Section 6450) of Part 2 of Division 6 shall be applicable.

(c) For purposes of this section, the term "dependent adult" has the meaning as set forth in Section 15610.23 of the Welfare and Institutions Code and also includes those persons who (1) are older than age 64 and (2) would be dependent adults, within the meaning of Section 15610.23, if they were between the ages of 18 and 64. The term "care custodian" has the meaning as set forth in Section 15610.17 of the Welfare and Institutions Code.

(d) For purposes of this section, “domestic partner” means a domestic partner as defined under Section 297 of the Family Code. (Added by Stats. 1993, ch. 293; Amended by Stats. 1995, ch 730; Stats. 1996, ch. 862; Stats. 1997, ch. 724; Stats. 2003, ch. 444.)

§21350.5. Disqualified Person Defined

For purposes of this part, "disqualified person" means a person specified in subdivision (a) of Section 21350, but only in cases where Section 21351 does not apply. (Added by Stats. 1995, ch 730.)

§21351. Exemptions and Exceptions to Section 21350

Section 21350 does not apply if any of the following conditions are met:

(a) The transferor is related by blood or marriage to, or is a cohabiting with, the transferee, or the person who drafted the instrument. This subdivision shall retroactively apply to an instrument that becomes irrevocable on or after July 1, 1993.

(b) The instrument is reviewed by an independent attorney who (1) counsels the client (transferor) about the nature of his or her intended transfer and (2) signs and delivers to the transferor and the drafter a certificate in substantially the following form:

"CERTIFICATE OF INDEPENDENT REVIEW

I_____,
(attorney's name)

have reviewed_____
(name of instrument)

and counseled my client, _____
(name of client)

on the nature of the transfer, or transfers, of property to

_____
(name of potentially disqualified person)

contained in such instrument. I am so disassociated from the interest of the transferee as to be in a position to advise my client impartially and confidentially as to the consequences of the transfer. On the basis of this counsel, I conclude that the transfer, or transfers, in such instrument that otherwise might be invalid under Section 21350 of the Probate Code are valid because such transfer, or transfers, are not the product of fraud, menace, duress, or undue influence.

_____
(Name of Attorney) (Date)

Any attorney whose written engagement signed by the client is expressly limited solely to the preparation of a certificate under this subdivision, including the prior counseling, shall not be considered to otherwise represent the client.

(c) After full disclosure of the relationships of the persons involved, the instrument is approved pursuant to an order under Article 10 (commencing with Section 2580) of Chapter 6 of Part 4 of Division 4.

(d) The court determines, upon clear and convincing evidence, excluding the testimony of any person described in subdivision (a) of Section 21350, that the transfer was not the product of fraud, menace, duress, or undue influence. If the court finds that the transfer was the product of fraud, menace, duress, or undue influence, the disqualified person shall bear all costs of the proceeding, including reasonable attorney's fees.

(e) Subdivision (d) shall apply only to the following instruments:

(A) Any instrument executed by a person who was not a resident of this state at the time the instrument was executed.

(B) Any instrument other than one making a transfer to a person described in paragraph (1) of subdivision (a) of Section 21350.

(C) Any instrument executed on or before July 1, 1993, by a person who was a resident of this state at the time the instrument was executed.

(f) The transferee is a federal, state, or local public entity, an entity that qualifies for an exemption from taxation under Section 501(c)(3) or 501(c)(19) of the Internal Revenue Code, or a trust holding an interest for this entity, but only to the extent of the interest of the entity, or the trustee of this trust. This subdivision shall retroactively apply to an instrument that becomes irrevocable, on or after July 1, 1993.

(g) For purposes of this section, "related by blood or marriage shall include persons within the seventh degree. (Added by Stats. 1993, ch. 293. Amended by Stats. 1994, ch. 40, effective April 19, 1994; Stats. 1995, ch 730.)

§21352. Liability for Prohibited Transfer

No person shall be liable for making any transfer pursuant to an instrument that is prohibited by this part unless that person has received actual notice of the possible invalidity of the transfer to the disqualified person under Section 21350 prior to making the transfer. A person who receives actual notice of the possible invalidity of a transfer prior to the transfer shall not be held liable for failing to make the transfer unless the validity of the transfer has been conclusively determined by a court. (Added by Stats. 1993, ch. 293.)

§21353. Failed Transfer; Disqualified Person

If a transfer fails under this part, the transfer shall be made as if the disqualified person predeceased the transferor without spouse or issue, but only to the extent that the value of the transfer exceeds the intestate interest of the disqualified person. (Added by Stats. 1993, ch. 293. Amended by Stats. 1995, ch. 730.)

§21354. Disqualification Despite Contrary Provision

This part applies notwithstanding a contrary provision in the instrument. (Added by Stats. 1993, ch. 293.)

§21355. Effective Date

This part shall apply to instruments that become irrevocable on or after September 1, 1993. For the purposes of this section, an instrument which is otherwise revocable or amendable shall be deemed to be irrevocable if on September 1, 1993, the transferor by reason of incapacity was unable to change the disposition of his or her property and did not regain capacity before the date of his or her death. (Added by Stats. 1993, ch. 293. Amended by Stats. 1995, ch. 730.)

§21356. Periods Prescribed to Invalidate Instrument Making Donative Transfer to Draftor

An action to establish the invalidity of any transfer described in Section 21350 can only be commenced within the periods prescribed in this section as follows:

(a) In case of a transfer by will, at any time after letters are first issued to a general representative and before an order for final distribution is made.

(b) In case of any transfer other than by will, within the later of three years after the transfer becomes irrevocable or three years from the date the person bringing the action discovers, or reasonably should have discovered, the facts material to the transfer. (Added by Stats. 1995, ch. 730.)

[***Publisher's Note:*** *The following paragraph relating to the foregoing provisions (§§ 21350 -21356) concerning restrictions on donative transfers was added by Stats. 2006, ch. 215, but not codified and is provided below for your information.*]

SECTION 1. (a) The California Law Revision Commission shall study the operation and effectiveness of the provisions of the Probate Code restricting donative transfers to certain classes of individuals, and shall recommend revisions and improvements to those provisions. The commission shall report all of its findings to the Legislature on or before January 1, 2009.

(b) In considering the overall effectiveness of the current statutory scheme in protecting prospective transferors from fraud, menace, or undue influence, while still ensuring the freedom of transferors to dispose of their estates as they desire and reward true "good Samaritans," the commission shall address the following specific issues:

(1) Whether the potential for abuse by care custodians militates in favor of creating a separate, more restrictive, regulatory scheme for donative transfers to that class and how the common law presumption of undue influence that arises when a person having a confidential relationship with a transferor, who actively participates in the transfer and unduly benefits from it, bears on this.

(2) Whether the provisions concerning gifts to care custodians should be moved to a separate section of the Probate Code.

(3) Whether the definition of "care custodian" contained in subdivision (c) of Section 21350 of the Probate Code should be changed and whether it should include long time family friends, nonprofessional caregivers who have a preexisting relationship with the transferor, or other "good Samaritans."

(4) Whether it should be necessary to have a second attorney, rather than the drafting attorney, sign a certificate of independent review in cases in which the drafting attorney is independent of the transferee.

(5) Whether the potential for fraud, menace, or undue influence by a drafting attorney in cases where the drafting attorney, his or her employees, or family, relatives, or any person with a close relationship to the drafting attorney is a transferee, should be addressed in the statute. Also, whether the uses of the drafting attorney's testimony is or should be limited pursuant to subdivision (d) of Section 21351 of the Probate Code, in cases in which that attorney is independent, and if so, whether the statute should be changed accordingly.

(6) What is or should be the meaning of the phrase "not based solely upon the testimony of any person described in subdivision (a) of Section 21350" contained in subdivision (d) of Section 21351 of the Probate Code, and to what extent there is an actual need for a limitation on testimony.

(7) Whether donative transfers to care custodians should be invalid if the transferor executes the instrument making the donative transfer within a given period after the relationship between the donor and the care custodian begins.

PUBLIC CONTRACT CODE

§10353.5 Legal Services Contract

(a) Any contract for legal services shall contain the following provisions:

(1) The contractor shall agree to adhere to legal cost and billing guidelines designated by the state agency.

(2) The contractor shall adhere to litigation plans designated by the state agency.

(3) The contractor shall adhere to case phasing of activities designated by the state agency.

(4) The contractor shall submit and adhere to legal budgets as designated by the state agency.

(5) The contractor shall maintain legal malpractice insurance in an amount not less than the amount designated by the state agency.

(6) The contractor shall submit to legal bill audits and law firm audits if requested by the state agency. The audits may be conducted by employees or designees of the state agency or by any legal cost control providers retained by the state agency for that purpose.

(b) A contractor may be required to submit to a legal cost and utilization review, as determined by the state agency.

(c) As used in this section, the following definitions apply:

(1) "Legal bill audits," means an evaluation and analysis of the reasonableness of particular legal bills submitted to a state agency for reimbursement.

(2) "Law firm audit," means a review of law firm files applicable to legal services provided to a state agency for a particular time period.

(3) "Legal cost and utilization review," means a review performed by the state agency or its legal cost provider of the utilization and billing practices of a contractor for the purpose of developing or revising guidelines to be followed prospectively by the contractor in representing the state agency.

(4) "Contract for legal service," shall include any contract between a state agency and any law firm, professional corporation, law firm partnership, or individual attorney to perform legal work on behalf of the state agency.

(5) "Legal cost control provider," means any corporation, professional corporation, partnership, or sole proprietorship which possesses the following qualifications:

(A) Maintains an office in the state.

(B) Is authorized to do business in the state.

(C) Has existed as a legal cost control provider for at least two complete, successive years, as evidenced by filings of tax returns.

(D) All legal cost control services are provided by attorneys.

(E) All attorneys providing the legal cost control services are admitted to practice in this state.

(F) All attorneys have been admitted to practice in this state for a minimum of five years prior to the performance of any legal cost control services for any state agency.

(G) Any legal cost control provider shall maintain professional liability insurance in the amount designated by the state agency. (Added by Stats. 1992, ch. 734.)

PUBLIC RESOURCES CODE

§40432. Legal Representative

The Attorney General shall represent the board and the state in litigation concerning affairs of the board, unless the Attorney General represents another state agency that is a party to the action. In that case, the Attorney General may represent the board with the written consent of the board and the other state agency, the board may contract for the services of private counsel, subject to Section 11040 of the Government Code, or the legal counsel of the board may represent the board. Sections 11041, 11042, and 11043 of the Government Code are not applicable to the board. (Added by Stats. 1989, ch. 1095. Amended by Stats. 2002, ch. 396, operative September 6, 2002.)

WATER CODE

§186. Powers of Board Necessary for Exercise of its Duties; Employment of Legal Counsel and Other Persons; Organization; Representation by Attorney General

(a) The board shall have any powers, and may employ any legal counsel and other personnel and assistance, that may be necessary or convenient for the exercise of its duties authorized by law.

(b) For the purpose of administration, the board shall organize itself, with the approval of the Governor, in the manner it deems necessary properly to segregate and conduct the work of the board. The work of the board shall be divided into at least two divisions, known as the Division of Water Rights and the Division of Water Quality. The board shall appoint a chief of each division, who shall supervise the work thereof and act as technical adviser to the board on functions under his or her jurisdiction.

(c) The Attorney General shall represent the board, or any affected regional water quality control board, or both the board and the regional board, and the state in litigation concerning affairs of the board, or a regional board, or both, unless the Attorney General represents another state agency that is a party to the action. In that case, the Attorney General may represent the board, the regional board, or both, with the written consent of the board and the other state agency, the board may contract for the services of private counsel to represent the board, the regional board, or both, subject to Section 11040 of the Government Code, or the legal counsel of the board may represent the board, the regional board, or both. Sections 11041, 11042, and 11043 of the Government Code are not applicable to the board. The legal counsel of the board shall advise and furnish legal services, except representation in litigation, to the regional boards upon their request. (Formerly §196 added by Stats. 1956, ch. 52. Renumbered to §186 by Stats. 1957, ch. 1932. Amended by Stats. 1967, ch. 284; Stats. 1969, ch. 482; Stats. 1971, ch. 794; Stats. 2002, ch. 396, operative September 6, 2002.)

WELFARE AND INSTITUTIONS CODE

§11350.6. Enforcement of Support Obligations; Notice to Licensing Boards and Obligor; Judicial Review; Duration of Section

(a) As used in this section:

(1) "Applicant" means any person applying for issuance or renewal of a license.

(2) "Board" means any entity specified in Section 101 of the Business and Professions Code, the entities referred to in Sections 1000 and 3600 of the Business and Professions Code, the State Bar, the Department of Real Estate, the Department of Motor Vehicles, the Secretary of State, the Department of Fish and Game, and any other state commission, department, committee, examiner, or agency that issues a license, certificate, credential, permit, registration, or any other authorization to engage in a business, occupation, or profession, or to the extent required by federal law or regulations, for recreational purposes. This term

includes all boards, commissions, departments, committees, examiners, entities, and agencies that issue a license, certificate, credential, permit, registration, or any other authorization to engage in a business, occupation, or profession. The failure to specifically name a particular board, commission, department, committee, examiner, entity, or agency that issues a license, certificate, credential, permit, registration, or any other authorization to engage in a business, occupation, or profession, does not exclude that board, commission, department, committee, examiner, entity, or agency from this term.

(3) "Certified list" means a list provided by the local child support agency to the State Department of Social Services in which the local child support agency verifies, under penalty of perjury, that the names contained therein are support obligors found to be out of compliance with a judgment or order for support in a case being enforced under Title IV-D of the Social Security Act.

(4) "Compliance with a judgment or order for support" means that, as set forth in a judgment or order for child or family support, the obligor is no more than 30 calendar days in arrears in making payments in full for current support, in making periodic payments in full, whether court ordered or by agreement with the local child support agency, on a support arrearage, or in making periodic payments in full, whether court ordered or by agreement with the local child support agency, on a judgement for reimbursement for public assistance, or has obtained a judicial finding that equitable estoppel as provided in statute or case law precludes enforcement of the order. The local child support agencies are authorized to use this section to enforce orders for spousal support only when the local child support agency is also enforcing a related child support obligation owed to the obligee parent by the same obligor, pursuant to Sections 11475.1 and 11475.2.

(5) "License" includes membership in the State Bar, and a certificate, credential, permit, registration, or any other authorization issued by a board that allows a person to engage in a business, occupation, or profession, or to operate a commercial motor vehicle, including appointment and commission by the Secretary of State as a notary public. "License" also includes any driver's license issued by the Department of Motor Vehicles, any commercial fishing license issued by the Department of Fish and Game, and to the extent required by federal law or regulations, any license used for recreational purposes. This term includes all licenses, certificates, credentials, permits, registrations, or any other authorization issued by a board that allows a person to engage in a business, occupation, or profession. The failure to specifically name a particular type of license, certificate, credential, permit, registration, or other authorization issued by a board that allows a person to engage in a business, occupation, or profession, does not exclude that license, certificate, credential, permit, registration, or other authorization from this term.

(6) "Licensee" means any person holding a license, certificate, credential, permit, registration, or other authorization issued by a board, to engage in a business, occupation, or profession, or a commercial driver's license as defined in Section 15210 of the Vehicle Code, including appointment and commission by the Secretary of State as a notary public. "Licensee" also means any person holding a driver's license issued by the Department of Motor Vehicles, any person holding a commercial fishing license issued by the Department of Fish and Game, and to the extent required by federal law or regulations, any person holding a license used for recreational purposes. This term includes all persons holding a license, certificate, credential, permit, registration, or any other authorization to engage in a business, occupation, or profession, and the failure to specifically name a particular type of license, certificate, credential, permit, registration, or other authorization issued by a board does not exclude that person from this term. For licenses issued to an entity that is not an individual person, "licensee" includes any individual who is either listed on the license or who qualifies [for] the license.

(b) The local child support agency shall maintain a list of those persons included in a case being enforced under Title IV-D of the Social Security Act against whom a support order or judgment has been rendered by, or registered in, a court of this state, and who are not in compliance with that order or judgment. The local child support agency shall submit a certified list with the names, social security numbers, and last known addresses of these persons and the name, address, and telephone number of the local child support agency who certified the list to the State Department of Social Services. The local child support agency shall verify, under penalty of perjury, that the persons listed are subject to an order or judgment for the payment of support and that these persons are not in compliance with the order or judgment. The local child support agency shall submit to the State Department of Social Services an updated certified list on a monthly basis.

(c) The State Department of Social Services shall consolidate the certified lists received from the local child support agencies and, within 30 calendar days of receipt, shall provide a copy of the consolidated list to each board which is responsible for the regulation of licenses, as specified in this section.

(d) On or before November 1, 1992, or as soon thereafter as economically feasible, as determined by the State Department of Social Services, all boards subject to this

section shall implement procedures to accept and process the list provided by the State Department of Social Services, in accordance with this section. Notwithstanding any other provision of law, all boards shall collect social security numbers from all applicants for the purposes of matching the names of the certified list provided by the State Department of Social Services to applicants and licensees and of responding to requests for this information made by child support agencies.

(e) (1) Promptly after receiving the certified consolidated list from the State Department of Social Services, and prior to the issuance or renewal of a license, each board shall determine whether the applicant is on the most recent certified consolidated list provided by the State Department of Social Services. The board shall have the authority to withhold issuance or renewal of the license of any applicant on the list.

(2) If an applicant is on the list, the board shall immediately serve notice as specified in subdivision (f) on the applicant of the board's intent to withhold issuance or renewal of the license. The notice shall be made personally or by mail to the applicant's last known mailing address on file with the board. Service by mail shall be complete in accordance with Section 1013 of the Code of Civil Procedure.

(A) The board shall issue a temporary license valid for a period of 150 days to any applicant whose name is on the certified list if the applicant is otherwise eligible for a license.

(B) Except as provided in subparagraph (D), the 150-day time period for a temporary license shall not be extended. Except as provided in subparagraph (D), only one temporary license shall be issued during a regular license term and it shall coincide with the first 150 days of that license term. As this paragraph applies to commercial driver's licenses, "license term" shall be deemed to be 12 months from the date the application fee is received by the Department of Motor Vehicles. A license for the full or remainder of the license term shall be issued or renewed only upon compliance with this section.

(C) In the event that a license or application for a license or the renewal of a license is denied pursuant to this section, any funds paid by the applicant or licensee shall not be refunded by the board.

(D) This paragraph shall apply only in the case of a driver's license, other than a commercial driver's license. Upon the request of the local child support agency or by order of the court upon a showing of good cause, the board shall extend a 150-day temporary license for a period not to exceed 150 extra days.

(3) (A) The State Department of Social Services may, when it is economically feasible for the department and the boards to do so as determined by the department, in cases where the department is aware that certain child support obligors listed on the certified lists have been out of compliance with a judgment or order for support for more than four months, provide a supplemental list of these obligors to each board with which the department has an interagency agreement to implement this paragraph. Upon request by the department, the licenses of these obligors shall be subject to suspension, provided that the licenses would not otherwise be eligible for renewal within six months from the date of the request by the department. The board shall have the authority to suspend the license of any licensee on this supplemental list.

(B) If a licensee is on a supplemental list, the board shall immediately serve notice as specified in subdivision (f) on the licensee that his or her license will be automatically suspended 150 days after notice is served, unless compliance with this section is achieved. The notice shall be made personally or by mail to the licensee's last known mailing address on file with the board. Service by mail shall be complete in accordance with Section 1013 of the Code of Civil Procedure.

(C) The 150-day notice period shall not be extended.

(D) In the event that any license is suspended pursuant to this section, any funds paid by the licensee shall not be refunded by the board.

(E) This paragraph shall not apply to licenses subject to annual renewal or annual fee.

(f) Notices shall be developed by each board in accordance with guidelines provided by the State Department of Social Services and subject to approval by the State Department of Social Services. The notice shall include the address and telephone number of the local child support agency who submitted the name on the certified list, and shall emphasize the necessity of obtaining a release from that local child support agency office as a condition for the

issuance, renewal, or continued valid status of a license or licenses.

(1) In the case of applicants not subject to paragraph (3) of subdivision (e), the notice shall inform the applicant that the board shall issue a temporary license, as provided in subparagraph (A), of paragraph (2) of subdivision (e), for 150 calendar days if the applicant is otherwise eligible and that upon expiration of that time period the license will be denied unless the board has received a release from the local child support agency who submitted the name on the certified list.

(2) In the case of licensees named on a supplemental list, the notice shall inform the licensee that his or her license will continue in its existing status for no more than 150 calendar days from the date of the mailing or service of the notice and thereafter will be suspended indefinitely unless, during the 150-day notice period, the board has received a release from the local child support agency who submitted the name on the certified list. Additionally, the notice shall inform the licensee that any license suspended under this section will remain so until the expiration of the remaining license term, unless the board receives a release along with applications and fees, if applicable, to reinstate the license during the license term.

(3) The notice shall also inform the applicant or licensee that if an application is denied or a license is suspended pursuant to this section, any funds paid by the applicant or licensee shall not be refunded by the board. The State Department of Social Services shall also develop a form that the applicant shall use to request a review by the local child support agency. A copy of this form shall be included with every notice sent pursuant to this subdivision.

(g) (1) Each local child support agency shall maintain review procedures consistent with this section to allow an applicant to have the underlying arrearage and any relevant defenses investigated, to provide an applicant information on the process of obtaining a modification of a support order, or to provide an applicant assistance in the establishment of a payment schedule on arrearages if the circumstances so warrant.

(2) It is the intent of the Legislature that a court or local child support agency, when determining an appropriate payment schedule for arrearages, base its decision on the facts of the particular case and the priority of payment of child support over other debts. The payment schedule shall also recognize that certain expenses may be essential to enable an obligor to be employed. Therefore, in reaching its decision, the court or the local child support agency shall consider both of these goals in setting a payment schedule for arrearages.

(h) If the applicant wishes to challenge the submission of his or her name on the certified list, the applicant shall make a timely written request for review on the form specified in subdivision (f) to the local child support agency who certified the applicant's name. The local child support agency shall, within 75 days of receipt of the written request, inform the applicant in writing of its findings upon completion of the review. The local child support agency shall immediately send a release to the appropriate board and the applicant, if any of the following conditions are met:

(1) The applicant is found to be in compliance or negotiates an agreement with the local child support agency for a payment schedule on arrearages or reimbursement.

(2) The applicant has submitted a request for review, but the local child support agency will be unable to complete the review and send notice of its findings to the applicant within 75 days. This paragraph applies only if the delay in completing the review process is not the result of the applicant's failure to act in a reasonable, timely, and diligent manner upon receiving notice from the board that his or her name is on the list.

(3) The applicant has filed and served a request for judicial review pursuant to this section, but a resolution of that review will not be made within 150 days of the date of service of notice pursuant to subdivision (f). This paragraph applies only if the delay in completing the judicial review process is not the result of the applicant’s failure to act in a reasonable, timely, and diligent manner upon receiving the local child support agency’s notice of its findings.

(4) The applicant has obtained a judicial finding of compliance as defined in this section.

(i) An applicant is required to act with diligence in responding to notices from the board and the local child support agency with the recognition that the temporary license will lapse or the license suspension will go into effect after 150 days and that the local child support agency and, where appropriate, the court must have time to act within that period. An applicant's delay in acting, without good cause, which directly results in the inability of the local child support agency to complete a review of the applicant's request or the court to hear the request for

judicial review within the 150-day period shall not constitute the diligence required under this section which would justify the issuance of a release.

(j) Except as otherwise provided in this section, the local child support agency shall not issue a release if the applicant is not in compliance with the judgment or order for support. The local child support agency shall notify the applicant in writing that the applicant may, by filing an order to show cause or notice of motion, request any or all of the following:

(1) Judicial review of the local child support agency's decision not to issue a release.

(2) A judicial determination of compliance.

(3) A modification of the support judgment or order.

The notice shall also contain the name and address of the court in which the applicant shall file the order to show cause or notice of motion and inform the applicant that his or her name shall remain on the certified list if the applicant does not timely request judicial review. The applicant shall comply with all statutes and rules of court regarding orders to show cause and notices of motion.

Nothing in this section shall be deemed to limit an applicant from filing an order to show cause or notice of motion to modify a support judgment or order or to fix a payment schedule on arrearages accruing under a support judgment or order or to obtain a court finding of compliance with a judgment or order for support.

(k) The request for judicial review of the local child support agency's decision shall state the grounds for which review is requested and judicial review shall be limited to those stated grounds. The court shall hold an evidentiary hearing within 20 calendar days of the filing of the request for review. Judicial review of the local child support agency's decision shall be limited to a determination of each of the following issues:

(1) Whether there is a support judgment, order, or payment schedule on arrearages or reimbursement.

(2) Whether the petitioner is the obligor covered by the support judgment or order.

(3) Whether the support obligor is or is not in compliance with the judgment or order of support.

(4) The extent to which the needs of the obligor, taking into account the obligor's payment history and the current circumstances of both the obligor and obligee, warrant a conditional release as described in this subdivision.

The request for judicial review shall be served by the applicant upon the local child support agency who submitted the applicant's name on the certified list within seven calendar days of the filing of the petition. The court has the authority to uphold the action, unconditionally release the license, or conditionally release the license.

If the judicial review results in a finding by the court that the obligor is in compliance with the judgment or order for support, the local child support agency shall immediately send a release in accordance with subdivision (h) to the appropriate board and the applicant. If the judicial review results in a finding by the court that the needs of the obligor warrant a conditional release, the court shall make findings of fact stating the basis for the release and the payment necessary to satisfy the unrestricted issuance or renewal of the license without prejudice to a later judicial determination of the amount of support arrearages, including interest, and shall specify payment terms, compliance with which are necessary to allow the release to remain in effect.

(l) The State Department of Social Services shall prescribe release forms for use by local child support agencies. When the obligor is in compliance, the local child support agency shall mail to the applicant and the appropriate board a release stating that the applicant is in compliance. The receipt of a release shall serve to notify the applicant and the board that, for the purposes of this section, the applicant is in compliance with the judgment or order for support. Any board that has received a release from the local child support agency pursuant to this subdivision shall process the release within five business days of its receipt.

If the local child support agency determines subsequent to the issuance of a release that the applicant is once again not in compliance with a judgment or order for support, or with the terms of repayment as described in this subdivision, the local child support agency may notify the board, the obligor, and the State Department of Social Services in a format prescribed by the State Department of Social Services that the obligor is not in compliance.

The State Department of Social Services may, when it is economically feasible for the department and the boards to develop an automated process for complying with this subdivision, notify the boards in a manner prescribed by the department, that the obligor is once again not in compliance. Upon receipt of this notice, the board shall immediately notify the obligor on a form prescribed by the department, that the obligor's license will be suspended on a specific date, and this date shall be no longer than 30 days from the date the form is mailed. The obligor shall be

further notified that the license will remain suspended until a new release is issued in accordance with subdivision (h). Nothing in this section shall be deemed to limit the obligor from seeking judicial review of suspension pursuant to the procedures described in subdivision (k).

(m) The State Department of Social Services may enter into interagency agreements with the state agencies that have responsibility for the administration of boards necessary to implement this section, to the extent that it is cost-effective to implement this section. These agreements shall provide for the receipt by the other state agencies and boards of federal funds to cover that portion of costs allowable in federal law and regulation and incurred by the state agencies and boards in implementing this section. Notwithstanding any other provision of law, revenue generated by a board or state agency shall be used to fund the nonfederal share of costs incurred pursuant to this section. These agreements shall provide that boards shall reimburse the State Department of Social Services for the nonfederal share of costs incurred by the department in implementing this section. The boards shall reimburse the State Department of Social Services for the nonfederal share of costs incurred pursuant to this section from moneys collected from applicants and licensees.

(n) Notwithstanding any other provision of law, in order for the boards subject to this section to be reimbursed for the costs incurred in administering its provisions, the boards may, with the approval of the appropriate department director, levy on all licensees and applicants a surcharge on any fee or fees collected pursuant to law, or, alternatively, with the approval of the appropriate department director, levy on the applicants or licensees named on the certified list or supplemental list, a special fee.

(o) The process described in subdivision (h) shall constitute the sole administrative remedy for contesting the issuance of a temporary license or the denial or suspension of a license under this section. The procedures specified in the administrative adjudication provisions of the Administrative Procedure Act (Chapter 4.5 (commencing with Section 11400) and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code) shall not apply to the denial, suspension, or failure to issue or renew a license or the issuance of a temporary license pursuant to this section.

(p) In furtherance of the public policy of increasing child support enforcement and collections, on or before November 1, 1995, the State Department of Social Services shall make a report to the Legislature and the Governor based on data collected by the boards and the local child support agency in a format prescribed by the State Department of Social Services. The report shall contain all of the following:

(1) The number of delinquent obligors certified by local child support agencies under this section.

(2) The number of support obligors who also were applicants or licensees subject to this section.

(3) The number of new licenses and renewals that were delayed, temporary licenses issued, and licenses suspended subject to this section and the number of new licenses and renewals granted and licenses reinstated following board receipt of releases as provided by subdivision (h) by May 1, 1995.

(4) The costs incurred in the implementation and enforcement of this section.

(q) Any board receiving an inquiry as to the licensed status of an applicant or licensee who has had a license denied or suspended under this section or has been granted a temporary license under this section shall respond only that the license was denied or suspended or the temporary license was issued pursuant to this section. Information collected pursuant to this section by any state agency, board, or department shall be subject to the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code).

(r) Any rules and regulations issued pursuant to this section by any state agency, board, or department may be adopted as emergency regulations in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The adoption of these regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, and safety, or general welfare. The regulations shall become effective immediately upon filing with the Secretary of State.

(s) The State Department of Social Services and boards, as appropriate, shall adopt regulations necessary to implement this section.

(t) The Judicial Council shall develop the forms necessary to implement this section, except as provided in subdivisions (f) and (l).

(u) The release or other use of information received by a board pursuant to this section, except as authorized by this section, is punishable as a misdemeanor.

(v) The State Board of Equalization shall enter into interagency agreements with the State Department of Social Services and the Franchise Tax Board that will require the State Department of Social Services and the

Franchise Tax Board to maximize the use of information collected by the State Board of Equalization, for child support enforcement purposes, to the extent it is cost-effective and permitted by the Revenue and Taxation Code.

(w) (1) The suspension or revocation of any driver's license, including a commercial driver's license, under this section shall not subject the licensee to vehicle impoundment pursuant to Section 14602.6 of the Vehicle Code.

(2) Notwithstanding any other provision of law, the suspension or revocation of any driver's license, including a commercial driver's license, under this section shall not subject the licensee to increased costs for vehicle liability insurance.

(x) If any provision of this section or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

(y) All rights to administrative and judicial review afforded by this section to an applicant shall also be afforded to a licensee. (Added by Stats. 1992, ch. 50. Amended by Stats. 1994, ch. 906; Stats. 1995, ch. 938; Stats. 1996, ch. 756, operative July 1, 1997; Stats. 1999, ch. 652.)

§15610.17 Care Custodian

"Care custodian" means an administrator or an employee of any of the following public or private facilities or agencies, or persons providing care or services for elders or dependent adults, including members of the support staff and maintenance staff:

(a) Twenty-four-hour health facilities, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

(b) Clinics.

(c) Home health agencies.

(d) Agencies providing publicly funded in-home supportive services, nutrition services, or other home and community-based support services.

(e) Adult day health care centers and adult day care.

(f) Secondary schools that serve 18- to 22-year-old dependent adults and postsecondary educational institutions that serve dependent adults or elders.

(g) Independent living centers.

(h) Camps.

(i) Alzheimer's Disease day care resource centers.

(j) Community care facilities, as defined in Section 1502 of the Health and Safety Code, and residential care facilities for the elderly, as defined in Section 1569.2 of the Health and Safety Code.

(k) Respite care facilities.

(l) Foster homes.

(m) Vocational rehabilitation facilities and work activity centers.

(n) Designated area agencies on aging.

(o) Regional centers for persons with developmental disabilities.

(p) State Department of Social Services and State Department of Health Services licensing divisions.

(q) County welfare departments.

(r) Offices of patients' rights advocates and clients' rights advocates, including attorneys.

(s) The office of the long-term care ombudsman.

(t) Offices of public conservators, public guardians, and court investigators.

(u) Any protection or advocacy agency or entity that is designated by the Governor to fulfill the requirements and assurances of the following:

(1) The federal Developmental Disabilities Assistance and Bill of Rights Act of 2000, contained in Chapter 144 (commencing with Section 15001) of Title 42 of the United States Code, for protection and advocacy of the rights of persons with developmental disabilities.

(2) The Protection and Advocacy for the Mentally Ill Individuals Act of 1986, as amended, contained in Chapter 114 (commencing with Section 10801) of Title 42 of the United States Code, for the protection and advocacy of the rights of persons with mental illness.

(v) Humane societies and animal control agencies.

(w) Fire departments.

(x) Offices of environmental health and building code enforcement.

(y) Any other protective, public, sectarian, mental health, or private assistance or advocacy agency or person providing health services or social services to elders or dependent adults. (Added by Stats. 1994, ch. 594. Amended by Stats. 1998, ch. 946; Stats. 2002, ch. 54.)

§15610.30 Financial Abuse of Elder or Dependent Adult

(a) "Financial abuse" of an elder or dependent adult occurs when a person or entity does any of the following:

(1) Takes, secretes, appropriates, or retains real or personal property of an elder or dependent adult to a wrongful use or with intent to defraud, or both.

(2) Assists in taking, secreting, appropriating, or retaining real or personal property of an elder or dependent adult to a wrongful use or with intent to defraud, or both.

(b) A person or entity shall be deemed to have taken, secreted, appropriated, or retained property for a wrongful use if, among other things, the person or entity takes, secretes, appropriates or retains possession of property in bad faith.

(1) A person or entity shall be deemed to have acted in bad faith if the person or entity knew or should have known that the elder or dependent adult had the right to have the property transferred or made readily available to the elder or dependent adult or to his or her representative.

(2) For purposes of this section, a person or entity should have known of a right specified in paragraph (1) if, on the basis of the information received by the person or entity or the person or entity' s authorized third party, or both, it is obvious to a reasonable person that the elder or dependent adult has a right specified in paragraph (1).

(c) For purposes of this section, "representative" means a person or entity that is either of the following:

(1) A conservator, trustee, or other representative of the estate of an elder or dependent adult.

(2) An attorney-in-fact of an elder or dependent adult who acts within the authority of the power of attorney. (Added by Stats. 1994, ch. 594. Amended by Stats. 1997, ch. 724; Stats. 1998, ch. 946; Stats. 2000, ch. 442.)

§15657.1. Attorney's Fees; Factors

The award of attorney's fees pursuant to subdivision (a) of Section 15657 shall be based on all factors relevant to the value of the services rendered, including, but not limited to, the factors set forth in Rule 4-200 of the Rules of Professional Conduct of the State Bar of California, and all of the following:

(a) The value of the abuse-related litigation in terms of the quality of life of the elder or dependent adult, and the results obtained.

(b) Whether the defendant took reasonable and timely steps to determine the likelihood and extent of liability.

(c) The reasonableness and timeliness of any written offer in compromise made by a party to the action. (Added by Stats. 1991, ch. 774. Amended by Stats. 1994, ch. 594.)