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Health and Welfare

University of the Pacific; McGeorge School of Law

Health and Welfare

Health and Welfare; administration of controlled substances--substance abusers

Health and Safety Code § 11216 (repealed); § 11215 (amended).
AB 535 (Clute); 1991 STAT. Ch. 176.

Under existing law, a controlled substance[1] may be administered to a patient only by a physician or a registered nurse acting with authority from a physician.[2] Chapter 176 expands the category of people who may administer a controlled substance as treatment to an addict to include a licensed physician assistant[3] acting under the specific direction of a surgeon and physician.[4]

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1. CAL. HEALTH & SAFETY CODE § 11054(b)-(e); § 11055; § 11056; § 11057, § 11058 (West Supp. 1991) (defining controlled substances).

2. *Id.* § 11215(a) (amended by Chapter 176). *See* People v. Patterson, 49 Cal. 3d 615, 619, 778 P.2d 549, 553, 262 Cal. Rptr. 195, 199 (1989) (stating that no person shall sell, furnish, administer, or give away any controlled substance without the written prescription of a physician, dentist, podiatrist, or veterinarian licensed in California); *In re* Pine, 66 Cal. App. 3d 593, 595, 136 Cal. Rptr. 718, 719 (1977) (stating that a physician's prescription is necessary to administer any controlled substance).

3. *See* CAL. BUS. & PROF. CODE § 3500 (West 1990) (stating that the intent of the legislature is to encourage the delegation of health care tasks to a physician's assistant where such delegation is consistent with the patient's health and welfare).

4. CAL. HEALTH & SAFETY CODE § 11215(a)(1)-(3) (amended by Chapter 176). *See.* CAL. WELF. & INST. CODE § 3009 (West 1984) (definition of narcotic addict).

Health and Welfare; adoptions

Civil Code §§ 221.30, 232 (amended).
SB 735 (Hill and Bergeson); 1991 STAT. Ch. 372

Existing law requires forms utilized by the State Department of Social Services[1] that authorize the release of an infant from a health care institution to the custody of persons other than the child's natural parents to contain specified information[2] in boldface type.[3] Under Chapter 372, the information on these forms must include a statement that the court has the authority to declare an abandonment[4] by a birth parent.[5]

Existing law provides, among other specified circumstances,[6] that an action to terminate parental rights is permissible where a child has been left without means for identification by others or has been left by the parents, with intent to abandon, in the care and custody of another for six months without support or

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1. *See* CAL. WELF. & INST. CODE §§ 10054, 18454 (West 1991) (definition of State Department of Social Services).

2. The specified information includes the various types of adoptions available and the natural parents' rights, including the right to revoke consent to adoption. CAL. CIV. CODE § 221.30 (amended by Chapter 372).

3. *Id.*

4. *See* County of Fresno v. Billie Walker, 115 Cal. App. 3d 814, 820, 171 Cal. Rptr. 572, 575 (1981) (discussing the development of the judicial definition of abandonment); *In Re* George G., 68 Cal. App. 3d 146, 160, 137 Cal. Rptr. 201, 209 (1977) (defining abandonment as an actual desertion with an intention to completely sever the parental relation).

5. CAL. CIV. CODE § 221.30 (amended by Chapter 372). *Cf. In Re* Baby Boy M., 221 Cal. App. 3d 475, 481, 272 Cal. Rptr. 27, 30 (1990) (stating the general rule that a natural parent has six months to refuse to consent to an adoption and reclaim a child, but the parental rights of a birth mother who signs the refusal to consent within six months are not forfeited merely because she contemplated adoption and placed a child with prospective adoptive parents).

6. CAL. CIV. CODE § 232(a)(2)-(8) (amended by Chapter 372). An action may be brought to declare a child free from parental custody where any of the following exists: (1) Cruel treatment and neglect of the child; (2) disability of the parent due to alcohol or drug abuse; (3) felony conviction of the parent; (4) judicial declaration that a parent is mentally incompetent; (5) a finding by a court that returning to parental custody would be detrimental after a child has spent over one year in out-of-home placement; or (6) the child has been found to be a dependent of the juvenile court and the juvenile court determines that the child should not be reunited with the parent. *Id. Cf. In Re* Carmaleta B., 21 Cal.3d 482, 489, 579 P.2d 514, 518, 146 Cal. Rptr. 623, 627 (1978) (declaring parenting a fundamental right to be disturbed only in extreme cases of parental indiscretion).

communication.[7] In addition, existing law states that if a natural parent in an independent adoption refuses to give consent, the court must order that the child be restored to the custody of the natural parent.[8] Chapter 372 allows the court to find a child free from parental custody, even though the parent has not consented to adoption.[9] In addition, Chapter 372 permits the court to find that a child has been abandoned when the parent has refused to consent to adoption, but has not taken reasonable action to obtain custody of the child.[10]

JEL

Health and Welfare; antipsychotic drugs--involuntary administration

Welfare and Institutions Code §§ 5325.2, 5332, 5333, 5334, 5336, 5337 (new); § 5008 (amended).
SB 665 (Petris); 1991 STAT. Ch. 681

Under existing law, persons who are dangerous to themselves or others, or are gravely disabled[1] due to a mental disorder,[2] or

7. CAL. CIV. CODE § 232(a)(1) (amended by Chapter 372). Failure to provide means of identification, failure to provide child support, and failure to communicate with a child raise a presumption of intent to abandon. *Id.*

8. *See In Re* Baby Boy M., 221 Cal. App. 3d at 487, 272 Cal. Rptr. at 34 (reversing a lower court holding that prospective adoptive parents should retain custody when the natural parent reclaimed the child before six months had lapsed).

9. CAL. CIV. CODE § 232(a)(1) (amended by Chapter 372).

10. *Id.*

1. *See* CAL. WELF. & INST. CODE §§ 5008(h)(1)(A), 5008(h)(2) (amended by Chapter 681) (defining "gravely disabled" as a condition in which a person is unable to provide for his or her basic personal needs for food, clothing, or shelter as a result of a mental disorder or impairment of chronic alcoholism). "Gravely disabled" also means a condition in which a person has been found mentally incompetent under section 1370 of the Penal Code and certain facts exist. *Id.* § 5008(h)(1)(B)(i)-(iii) (amended by Chapter 681).

inebriation, may be detained for evaluation and treatment.[3] Chapter 681 provides that antipsychotic medication[4] may be administered to persons so detained following disclosure of the right to refuse medication and other information,[5] and provided that they do not refuse treatment.[6] If a person refuses treatment, Chapter 681 permits administration of antipsychotic medication only if: (1) The treatment staff determines that treatment alternatives to involuntary medication are unlikely to meet the needs of the person; and (2) a determination of the person's incapacity to refuse treatment is made in a judicial hearing[7] held for that purpose.[8] In an emergency,[9] the detained person may be treated despite refusal and before a capacity hearing, but only with such antipsychotic medication required to treat the emergency condition provided in the manner least restrictive to the person's personal liberty.[10]

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2. Although there is no present definition of mental disorder, under prior law, mental disorder was defined as "any of the mental disorders as set forth in the Diagnostic and Statistical Manual of Mental Disorders (Current Edition) of the American Psychiatric Association." Cal. Admin. Notice Reg. 71, No. 27. Since the American Psychiatric Association frequently changes what constitutes a mental disorder, this definition was unclear and confusing. Estate of Roulet, 23 Cal. 3d 219, 234 & n.14, 590 P.2d 1, 10 & n.14, 152 Cal. Rptr. 425, 434 & n.14 (1979). *See* Ennis & Litwack, *Psychiatry and the Presumption of Expertise: Flipping Coins in the Courtroom*, 62 CAL. L. REV. 693, 699-708 (1974) (arguing that psychiatric diagnoses are unreliable and inconsistent).

3. CAL. WELF. & INST. CODE § 5150 (West 1984) (providing for detainment of persons with mental disorder); § 5250 (West Supp. 1991) (providing for certification for up to 14 days of treatment related to the mental disorder or chronic alcoholism); § 5260 (West 1984) (providing for additional confinement of up to 14 days for any person at risk of suicide); § 5270.15 (West Supp. 1991) (providing for additional confinement of up to 30 days for gravely disabled persons or persons who are unwilling or unable to accept treatment voluntarily).

4. *See id.* § 5008(l) (amended by Chapter 681) (definition of antipsychotic medication).

5. *See id.* §§ 5152(c), 5213(b) (West Supp. 1991) (specifying information about the probable effects and possible side effects of the medication).

6. *Id.* §§ 5325.2, 5332(b) (amended by Chapter 681).

7. *See id.* § 5334(c) (enacted by Chapter 681) (providing that capacity hearings shall be conducted by a superior court judge or a court-appointed commissioner, referee, or hearing officer selected from a list of approved attorneys).

8. *Id.* § 5332(b) (enacted by Chapter 681). *Cf.* OKLA. STAT. tit. 43A, § 5-204 (1990) (requiring only the written order of a physician based upon various criteria).

9. *See* CAL. WELF. & INST. CODE § 5008(m) (amended by Chapter 681) (providing that an emergency requires immediate action to impose treatment for the preservation of life, or the prevention of serious bodily harm to the patient or others, and under which it is impracticable to first gain consent). It is not necessary for harm to take place or become unavoidable prior to treatment. *Id.*

10. *Id.* § 5332(d) (enacted by Chapter 681).

COMMENT

Chapter 681 confers a statutory right to refuse treatment with antipsychotic drugs which previously existed only in California case law.[11] However, since the medication may be administered involuntarily when a hearing determines that the person lacks the capacity to refuse treatment, or in an emergency, questions of adequate procedural due process protections arise.[12]

The United States Supreme Court in *Washington v. Harper*[13] held that it did not violate the federal Constitution for prison inmates to be involuntarily treated with antipsychotic drugs, provided there was an administrative review of the decision to medicate held by independent medical professionals.[14] However, in *Mills v. Rogers*,[15] the Court held that a state may provide

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11. *Id.* § 5325.2 (enacted by Chapter 681). *See* Riese v. Saint Mary's Hospital & Medical Center, 209 Cal. App. 3d 1303, 1320, 271 Cal. Rptr. 199, 210 (1988) (conferring a right to refuse treatment with antipsychotic drugs).

12. *See* CAL. WELF. & INST. CODE § 5332(b) (enacted by Chapter 681) (providing for administration of drugs subsequent to incapacity hearing); § 5332(d) (enacted by Chapter 681) (providing for administration of drugs in an emergency). *See generally* Blackburn, *The "Therapeutic Orgy" and the "Right to Rot" Collide: The Right to Refuse Antipsychotic Drugs Under State Law*, 27 HOUS. L. REV. 447 (1990) (reviewing the substantive right to refuse antipsychotic drugs and various procedures used to limit that right under state laws); Note, *The Mentally Ill's Right to Refuse Drug Treatment: A Panacea or a Bitter Pill to Swallow?*, 29 WASHBURN L.J. 62 (1989) (reviewing the legal and psychiatric perspectives of the right to refuse antipsychotic drugs and the judicial and legislative responses to the controversy); Comment, *A Bright Thread for California's Legal Crazy-Quilt: A Proposed Right to Refuse Antipsychotic Drugs*, 22 U.S.F. L. REV. 341 (1988) (surveying the right to refuse antipsychotic medication and analogues to antipsychotic treatment in the Lanterman-Petris-Short Act); Fentiman, *Whose Right Is it Anyway?: Rethinking Competency to Stand Trial in Light of the Synthetically Sane Insanity Defendant*, 40 U. MIAMI L. REV. 1109, 1142-50 (1986) (reviewing case law on the constitutional right to privacy in the context of the right to refuse medical treatment with antipsychotic drugs); Roth, *The Right to Refuse Psychiatric Treatment: Law and Medicine at the Interface*, 35 EMORY L.J. 139 (1986) (focusing on the right of legitimately committed and hospitalized patients to refuse treatment with psychotropic medication).

13. 110 S. Ct. 1028 (1990).

14. *Id.* at 1042-44. The Court held that the forcible injection of medication into the body of a nonconsenting individual substantially interferes with that person's liberty interest under the fourteenth amendment. *Id.* at 1041. However, the Constitution does not prohibit the state from permitting medical personnel to make the decision to medicate if there are fair procedural mechanisms. *Id.* at 1042. The Court found that the procedural safeguards of an independent decisionmaker, notice, the right to be present at an adversarial hearing, the right to cross-examine witnesses, and the opportunity to be heard were adequate. *Id.* at 1043-44.

15. 457 U.S. 291 (1982).

greater substantive and procedural rights than federal constitutional law provides,[16] and if it does so, such rights are controlling.[17]

A California appellate court in *Riese v. St. Mary's Hospital & Medical Center*[18] set forth various criteria for procedural due process protections when administration of antipsychotic medication over a person's refusal is contemplated.[19] The court held that a judicial determination of incapacity to refuse[20] is required before antipsychotic medication can be administered to mental patients in non-emergency situations without their informed consent.[21] Chapter 681 satisfies this requirement because it expressly provides that persons who refuse treatment with antipsychotic medication must be determined incompetent to make such a refusal in a judicial hearing.[22] However, Chapter 681 does not specify exactly how the capacity hearing will be carried out.[23] It states only that a person has the right to representation by an advocate or legal counsel, and the right to meet with that representative to prepare for the hearing and answer any questions or concerns.[24]

Chapter 681 specifically defines capacity in terms of other applicable statutes and case law, but it is silent on the standard of

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16. The Court decided the issue of whether involuntarily committed mental patients have a constitutional right to refuse treatment with antipsychotic drugs, but refused to identify the liberty interests that might be derived directly from the Constitution independently of state law. *Id.* at 293, 305-06.

17. *Id.* at 299-300.

18. 209 Cal. App. 3d 1303, 271 Cal. Rptr. 199 (1988), *review granted*, 751 P.2d 893, 245 Cal. Rptr. 627 (1988), *review dismissed, remanded, and ordered published*, 774 P.2d 698, 259 Cal. Rptr. 669 (1988).

19. *Id.* at 1320-24, 271 Cal. Rptr. at 210-13.

20. The court emphasized that the determination of capacity is for the courts, not the medical profession. *Id.* at 1321-22, 271 Cal. Rptr. at 210-11.

21. *Id.* at 1320, 271 Cal. Rptr. at 210.

22. *See* CAL. WELF. & INST. CODE § 5334(c)-(b) (enacted by Chapter 681). A capacity hearing shall be conducted by a superior court judge or a court-appointed commissioner, referee, or hearing officer selected from a list of approved attorneys. *Id.*

23. *See* 1991 Cal. Stat. ch. 681, at __.

24. *Id.* § 5333(a) (enacted by Chapter 681) (conferring the right to an advocate or legal counsel); § 5333(c)-(d) (enacted by Chapter 681) (requiring notice to the person of right to meet with representative and requiring the person to meet with that representative).

evidence required to prove incapacity.[25] *Riese* provides guidance on both of these issues in requiring a determination of incapacity by clear and convincing evidence based on specified factors.[26]

Chapter 681 further provides that detained persons may be treated over their objection and before a capacity hearing in an emergency.[27] This provision is consistent with prior case law.[28]

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25. *Id.* § 5334(d) (enacted by Chapter 681). Possible standards of evidence are proof by a preponderance of the evidence, clear and convincing proof, and proof beyond a reasonable doubt. CAL. EVID. CODE § 115 (West Supp. 1991). The burden of proof requires proof by a preponderance of the evidence unless otherwise provided by law. *Id.*

26. *Riese*, 209 Cal. App. 3d at 1322-23, 271 Cal. Rptr. at 211-12. *See* People v. Medina, 705 P.2d 961, 973 (Colo. 1985) (en banc) (holding that the treating professional(s) must prove by clear and convincing evidence that the person is "incompetent to effectively participate in the treatment decision," that the prescription is necessary "to prevent a significant and likely long-term deterioration in the patient's mental condition or to prevent the likelihood of . . . serious harm," and that no less intrusive treatment is available); Rivers v. Katz, 67 N.Y.2d 485, 497, 495 N.E.2d 337, 344, 504 N.Y.S.2d 74, 81 (1986) (holding that the court must find by clear and convincing evidence that the person lacks "the capacity to make a reasoned decision with respect to proposed treatment"). *But see* Guardianship of Roe, 383 Mass. 415, 451-53, 421 N.E.2d 40, 60-61 (1981) (stating that for involuntary patients, the standard should be beyond a reasonable doubt to reflect the loss of liberty involved). *Cf.* Washington v. Harper, 110 S. Ct. 1028, 1044 (1990) (rejecting the contention that the hearing must be conducted according to the rules of evidence or that a "clear, cogent and convincing" standard of proof is necessary).

27. CAL. WELF. & INST. CODE § 5332(d) (enacted by Chapter 681). *See id.* § 5008(m) (amended by Chapter 681) (definition of emergency). This definition, unlike that in the California Code of Regulations, title 9, section 853 referred to in *Riese*, authorizes treatment over the person's objection and specifically does not require harm to take place or become unavoidable prior to treatment. *See Riese*, 209 Cal. App. 3d at 1308 n.2, 271 Cal. Rptr. at 201 n.2.

28. *See Riese*, 209 Cal. App. 3d at 1308, 271 Cal. Rptr. at 201; People v. Thomas, 217 Cal. App. 3d 1034, 1037, 266 Cal. Rptr. 295, 296 (1990) (stating that "unless there is an emergency, involuntary medication cannot continue absent a court order"); Keyhea v. Rushen, 178 Cal. App. 3d 526, 535, 223 Cal. Rptr. 746, 750 (1986) (stating that a conservator can require a conservatee to receive medical treatment if such treatment is authorized in the court order of the conservatorship or in a subsequent court order, except in medical emergencies).

Health and Welfare; Child Support Security Act

Civil Code § 4710 (new).
SB 1068 (Bergeson); 1991 STAT. Ch. 1141

Existing law authorizes a court to make an order for child support.[1] If the obligor of such an order goes into arrears on the payments in an amount equal to sixty days worth of payments, existing law requires the court to order the obligor to establish a security deposit account[2] as security against future payments.[3] Chapter 1141 requires a court to create a security account at the time the order for child support is made.[4] Chapter 1141 also authorizes the court to disburse to the child support funds from the account which the obligor must replenish if the obligor is more than ten days late in his child support payments.[5]

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1. CAL. CIV. CODE § 4700(a)(1) (West Supp. 1991). *See* Taylor v. Superior Court, 218 Cal. App. 3d 1185, 1186, 267 Cal. Rptr. 519, 520-21 (1990) (affirming the court's ability to award child support pursuant to Civil Code section 4700).

2. *See* CAL. CIV. PROC. CODE § 680.345 (West 1987) (providing that security against the enforcement of a judgment refers to security as defined in section 8102 of the Commercial Code). *See also* CAL. CIV. CODE § 4701.1 (West Supp. 1991) (providing that the account may be made up of cash or liquefiable assets to be sold under proper circumstances). *But see* Petersen v. Petersen, 24 Cal. App. 3d 201, 207, 100 Cal. Rptr. 822, 825-26 (1972) (holding that the court could not order the obligor to sell securities held in escrow).

3. CAL. CIV. CODE § 4701.1 (West Supp. 1991). *See* Baylis v. Baylis, 48 Cal. App. 2d 674, 679-80 (1942) (holding that the court could order a lien against the obligor's share of the community property to satisfy the security required).

4. CAL. CIV. CODE § 4710(a) (enacted by Chapter 1141). *See id.* (providing that the amount of the security shall be an amount equal to one year's support or equal to the entire support period, whichever is less). *But see id.* § 4710(d) (enacted by Chapter 1141) (providing that an account need not be ordered if a sufficient trust account for the child already exists); § 4710(e) (enacted by Chapter 1141) (providing that the obligor may contest the order of a security if doing so would create undue financial hardship). *See also id.* § 4710(g)(3) (enacted by Chapter 1141) (requiring the creation of a security account when an application for modification of an existing child support award is made). *See also id.* § 4710(g)(4) (providing that a security account is also mandatory any time a judgment is entered ordering a child support obligor to pay an existing award which is in arrears). *See also id.* § 4710(g)(1)(stating that Chapter 1141 does not apply to temporary child support orders.

5. *Id.* § 4710(b) (enacted by Chapter 1141).

Health and Welfare; controlled substances--ketamine

Health and Safety Code § 11379.2 (new); §§ 11056, 11377, 11378, 11379 (amended).
AB 444 (Ferguson); 1991 STAT. Ch. 294

Under existing law, controlled substances are set forth in five schedules.[1] Chapter 294 adds Ketamine[2] to the list of schedule III drugs.[3] Chapter 294 also describes the penalty for individuals convicted of either possession for sale, or sale of Ketamine.[4]

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1. *See* CAL. HEALTH & SAFETY CODE §§ 11054-11058 (West Supp. 1991) (providing exhaustive list of controlled substances). *See also* People v. Davis, 92 Cal. App. 3d 250, 257, 154 Cal. Rptr. 817, 820 (1979) (stating that the federal classification system for controlled substances was adopted in Health and Safety Code §§ 11054-11058); 21 U.S.C.A. § 812 (West 1981) (federal system for classification of controlled substances). Schedule I drugs have a high potential for abuse, and no currently accepted medical use in the United States. 21 U.S.C.A. § 812 (West 1981). Schedule II drugs have a high potential for abuse, but have a currently accepted medical use in the United States. *Id.* Schedule III drugs have a potential for abuse less than those in schedules I and II, and have a currently accepted medical use in the United States. *Id.* Schedule IV drugs have a relatively low potential for abuse, and a currently accepted medical use in the United States. *Id.* Schedule V drugs have the lowest potential for abuse, and have a currently accepted medical use in the United States. *Id.* The drugs listed in schedules I through V also create progressively less psychological or physical dependence in their users. *Id.*

2. *See* THE PHYSICIAN'S DESK REFERENCE (45th Edition, 1991) (providing a general description of Ketamine). Ketamine was originally designed as a veterinary tranquilizer, but recently narcotics officers have arrested people suffering from the drug's effects. Telephone interview with Dean McEwen, Legislative Assistant to Assemblyman Ferguson (June 6, 1991) (notes on file at *Pacific Law Journal*).

3. *See* CAL. HEALTH & SAFETY CODE § 11056 (amended by Chapter 294) (listing Schedule III drugs).

4. *Id.* § 11379.2 (enacted by Chapter 294). Punishment for both possession for sale and the sale of Ketamine is imprisonment in a state or county jail for not more than one year. *Id. See id.* §§ 11377-11379 (amended by Chapter 294) (providing that mere possession of Ketamine is not punishable).

Health and Welfare; controlled substances--maintaining a place for unlawful sales

Health and Safety Code § 11366 (amended).
SB 32 (Leonard); 1991 STAT. Ch. 492

Existing law provides that every person who opens or maintains any place[1] for the purpose of unlawfully selling, giving away, or using specified controlled substances[2] shall be punished by imprisonment in the county jail or in the state prison.[3] Chapter 492 adds methamphetamines,[4] amphetamines,[5] and phencyclidines[6] to the list of specified controlled substances.[7]

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1. *See* People v. Green, 200 Cal. App. 3d 538, 544, 246 Cal. Rptr. 164, 167 (1988) (stating that "place," as used in Health and Safety Code section 11366, means providing a place for drug users to gather and share their experience). Other states also prohibit maintaining a place for the sale or transfer of controlled substances. *See, e.g.*, MASS. GEN. LAWS ANN. ch. 139, § 16 (West 1991); MICH. COMP. LAWS ANN. § 600.3801 (West Supp. 1991); N.Y. PENAL LAW § 240.46 (McKinney 1989).

2. *See* CAL. HEALTH & SAFETY CODE § 11054(b)-(d)(13)-(15), (d)(20), (e), (f)(1) (West Supp. 1991); § 11055(b)-(c) (West Supp. 1991) (specifying that controlled substances include opiates, opium derivatives, marijuana, mescaline, peyote, tetrahydrocannabinols, depressants, and cocaine). Other states also specify methamphetamines, amphetamines, and phencyclidines as controlled substances. *See, e.g.*, ILL. ANN. STAT. ch. 56 1/2, para. 1206, § 206(d)(1)-(2), (e)(5) (Smith-Hurd Supp. 1991); N.Y. PUB. HEALTH LAW § 3306, Sched. I(e)(5), Sched. II(d)(1),(2) (McKinney 1991).

3. CAL. HEALTH & SAFETY CODE § 11366 (amended by Chapter 492).

4. *See id.* § 11055(d)(2) (West Supp. 1991) (definition of methamphetamine).

5. *See id.* § 11055(d)(1) (West Supp. 1991) (definition of amphetamine).

6. *See id.* § 11055(e)(3) (West Supp. 1991) (definition of phencyclidines).

7. *Id.* § 11366 (amended by Chapter 492).

Health and Welfare; detention of minors

Welfare and Institutions Code § 1732.4 (repealed); §§ 207.1, 1752.15 (amended).
AB 1656 (Jones); 1991 STAT. Ch. 721

Under existing law, a minor taken into custody on the belief that the minor may have committed a misdemeanor may be held up to seventy-two hours if extreme conditions exist,[1] and the officer must file a report stating the reasons for the need to detain the minor.[2] Under Chapter 721, the maximum time an officer may detain a youth before delivery to the county probation officer is twenty-four hours, but if extreme conditions exist the detention may exceed twenty-four hours.[3]

Under existing law, the Director of the Department of Youth Authority may contract with any county to provide temporary facilities if the county juvenile facilities become inadequate due to a natural disaster.[4] Under Chapter 721, the Director may also provide the temporary facilities if the chief probation officer of the county and the Director believe there is a significant risk of violence or escape.[5]

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1. *See* WELF. & INST. CODE § 207.1(g)(1) (amended by Chapter 721) (citing conditions such as inclement weather, acts of God, and natural disasters which result in temporary unavailability of transportation).

2. *Id.*

3. *Id.* The Department of Youth Authority shall verify the information contained in the reports filed by officers. *Id.*

4. *Id.* § 1752.15 (amended by Chapter 721). The Department of Youth Authority must provide adequate consultation between the minor and the minor's attorney, as well as visitation arrangements made by the state if the minor will be held for more than 10 days in a facility located in a county other than the county which has contracted for services. *Id.*

5. *Id.* § 1752.15 (amended by Chapter 721). However, these facilities may not be used to detain minors who are alleged to be, or have been, adjudged to be in substantial risk of physical harm due to lack of parental supervision, or a habitually disobedient or truant minor under Welfare and Institutions Code sections 300 or 601. *Id.*

Health and Welfare; direct Medi-Cal compensation to nurse practitioners

Welfare and Institutions Code § 14132.41 (new).
AB 1224 (Hunter); 1991 STAT. Ch. 702

Existing law allows Medi-Cal[1] to compensate certified nurse practitioners[2] only for services rendered under the supervision of a physician.[3] Chapter 702 requires Medi-Cal to compensate certified family nurse practitioners and certified pediatric nurse practitioners for services rendered to eligible patients in the absence of a supervising physician, as required by federal law.[4]

JPJ

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1. *See* CAL. WELF. & INST. CODE § 14063 (West 1991) (identifying Medi-Cal as the California Medical Assistance Program). *See also id.* § 14000 (West 1991) (declaring that the intent of the Medi-Cal program is to provide health care for those who cannot afford to provide it for themselves).

2. *See* 42 U.S.C.A. 1396d(a)(20) (West Supp. 1991) (authorizing the Secretary of Health and Human Services to define certified nurse practitioner). *See also* 42 C.F.R. § 491.2(b) (West 1991) (defining a nurse practitioner as a registered professional nurse who is licensed to practice and meets one of the criteria designated); CAL. BUS. & PROF. CODE § 2835 (West 1989) (giving power to the Board of Registered Nursing to define nurse practitioner); CAL. CODE REGS. tit. 16, § 1482 (1991) (setting forth the requirements for holding oneself out as a nurse practitioner); *id.* § 1484 (detailing the criteria that must be met by an educational program seeking to satisfy the requirements of section 1482(b)(1)).

3. CAL. WELF. & INST. CODE § 14115(a) (West 1991). *See id.* § 14115.1 (West 1991) (confirming that a physician has a right to bill independently). *But see id.* § 14115.6 (West 1991) (authorizing a pilot program allowing independent billing by nurse practitioners). *See also id.* § 14038(b)(1) (West 1991) (definition of primary care provider); *id.* § 14088.17(a) (West 1991) (authorizing the administering department to contract with primary care providers for medical services).

4. *Id.* § 14132.41 (enacted by Chapter 702). *Cf.* 42 U.S.C.A. 1396d(a)(21) (West Supp. 1991) (including certified family nurse practitioners and certified pediatric nurse practitioners in the definition of those authorized to provide medical assistance). Chapter 702 conforms with the requirements of federal law by allowing certified pediatric or family nurse practitioners to bill directly. CAL. WELF. & INST. CODE § 14132.41 (enacted by Chapter 702).

Health and Welfare; dogs--registries for pedigree dogs

Health and Safety Code §§ 25996.950, 25996.951, 25996.952, 25996.953 (new).
SB 1020 (Rosenthal and Watson); 1991 STAT. Ch. 530

Under existing law, persons engaged in the business of retail sale of dogs are required to perform examinations for sickness,[1] separate sick animals,[2] deliver information to buyers,[3] and post prescribed notices.[4] Chapter 530 requires dog dealers[5] who claim to sell dogs that are registered or registerable with a dog pedigree registry[6] to conspicuously post a sign explaining that pedigree registration does not assure proper breeding conditions, health, quality, or claims to lineage.[7] Chapter 530 also requires dog dealers and dog breeders[8] who sell dogs represented as being registered or registerable with a dog pedigree registry to disclose to the buyer orally and in writing that dog pedigree registration does not guarantee a healthy dog, the quality of the lineage, the accuracy of the recorded lineage, or that the dog is purebred.[9] This disclosure must be signed and dated by the buyer to acknowledge

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1. CAL. HEALTH & SAFETY CODE § 25995.2 (West 1984).
2. *Id.*
3. *Id.* § 25995.3 (West Supp. 1991). The specified information includes: (1) The dealer's name, address, and federal identification number, if the dog was obtained through a dealer licensed by the Department of Agriculture; (2) the date of the dog's birth, unless unknown due to the source of the animal; (3) a record of the immunizations given to the dog; and (4) a record of the veterinarian treatment given to the dog while in the possession of a dealer to treat any disease or condition, and either a statement that the dog is healthy or a record of the disease or condition accompanied by a statement signed by a veterinarian which authorizes the sale of the dog, recommends treatment, and verifies that the condition does not require surgery or hospitalization. *Id.*
4. *Id.* § 25996.90 (West Supp. 1991).
5. *See id.* § 25996.950(a) (enacted by Chapter 530) (definition of dog dealer).
6. *See id.* § 25996.950(c) (enacted by Chapter 530) (definition of dog pedigree registry).
7. *Id.* § 25996.951 (enacted by Chapter 530). Chapter 530 specifies that the sign must be posted in close proximity to the dogs and the print be in at least 100-point type. *Id. Cf.* VA. CODE ANN. § 3.1-796.81 (Michie Supp. 1991) (requiring pet dealers to give written notice that dogs claimed to be registered or capable of being registered may be returned for a full refund or exchange of equal value if a veterinarian certifies that the dog is unfit for purchase within 10 days of receipt of the dog).
8. *See* CAL. HEALTH & SAFETY CODE § 25996.950(b) (enacted by Chapter 350) (definition of dog breeder).
9. *Id.* § 25996.952(a) (enacted by Chapter 530).

receipt of a copy, and the dog dealer or breeder must retain a copy.[10] Chapter 530 makes any dog dealer or dog breeder liable for civil damages in an amount equal to three times the cost of the dog for failure to comply with these disclosure requirements.[11]

JEL

Health and Welfare; durable power of attorney

Civil Code §§ 2433, 2436.5, 2444, 2500, 2503.5 (amended).
AB 793 (Polanco); 1991 STAT. Ch. 896

Under existing law, a durable power of attorney for health care (DPAHC)[1] terminates seven years after its creation unless the

10. *Id.* § 25996.952(b) (enacted by Chapter 530).
11. *Id.* § 25996.953(a) (enacted by Chapter 530).

1. *See* CAL. CIV. CODE § 2430(a) (West Supp. 1991) (definition of DPAHC). *See also id.* § 2430(b)-(d) (West Supp. 1991) (definitions of health care, health care decisions, and health care providers). *See generally* BORDIN, GOULD *ET AL.*, CALIFORNIA DURABLE POWER OF ATTORNEY HANDBOOK 1-20, 135-214 (CEB 1988 & Supp. 1991) (discussing the requirements and procedures for creating a DPAHC as well as relevant case and statutory law); CLIFFORD, THE POWER OF ATTORNEY BOOK (1985) (introductory advice on creating one's own DPAHC); Collin, *Planning and Drafting Durable Powers of Attorney For Health Care*, 22 INST. ON EST. PLAN. 5.1-5.145 (1988) (discussing DPAHC nature, uses, and forms and advising on drafting and DPAHC alternatives); NEVINS, DRAFTING FOR INCAPACITY UNDER THE DURABLE POWER OF ATTORNEY FOR HEALTH CARE (1988) (L.L.M. thesis available through the Boalt Hall School of Law Library) (analyzing the deficiencies of DPAHC forms and giving suggestions for proper drafting); Peters, *Advance Medical Directives: The Case for Durable Power of Attorney for Health Care*, 8 J. LEGAL MED. 437 (1987) (comparing DPAHC to living wills and concluding that DPAHC enables patients to control treatment better in the event of incapacity); Smith, *All Is Well That Ends Well: Toward a Policy of Assisted Suicide or Merely Enlightened Self-Determination?*, 22 U.C. DAVIS L. REV. 275, 331-33 (1989) (discussing DPAHC, suicide, euthanasia, and orders not to resuscitate). California DPAHC law is derived, in part, from the Uniform Durable Powers of Attorney Act, which was approved by the National Conference of Commissioners on Uniform Laws in 1975. *See* 8A UNIFORM LAWS ANNOTATED 275 (Master Ed. 1983 & Supp. 1991) (enumerating the Act's language and each state's variations). Twenty-seven states have adopted a variation of the Uniform Durable Power of Attorney Act. *Id. See also* Comment, *Uniform Durable Power of Attorney Act*, 13 PAC. L.J. 561 (1982) (reviewing prior law and the substantive changes to the Act under California Law); *Recommendation Relating to Durable Power of Attorney for Health Care Decisions*, 17 CAL. L. REV. COMM. REP. 101 (1983) (including recommendations of proposed statutes with comments).

individual is incapacitated at the conclusion of the seven-year term.[2] Chapter 896 permits a DPAHC to be effective for an indefinite period of time, unless otherwise limited within the document.[3]

AF

Health and Welfare; foster care

Health and Safety Code §§ 1506.6, 1522.05, 1522.07, 1525.25 (new); §§ 1502, 1506, 1534 (amended); Welfare and Institutions Code §§ 11463.5, 18358.10 (amended).
SB 90 (Royce); 1991 STAT. Ch. 1200

Existing law requires licensure of foster family agencies[1] by the State Department of Social Services (Department)[2] and certification of foster family homes[3] by the Department, a county, or a foster family agency.[4] Chapter 1200 allows a foster family agency to require additional standards beyond that required by the Department.[5] Chapter 1200 also establishes a required minimum of training and continuing education before a foster family home

2. CAL CIV. CODE § 2436.5(b) (amended by Chapter 896). *See id.* § 2500 (amended by Chapter 896) (listing state authorized form for DPAHC contract).

3. *Id.* § 2436.5 (amended by Chapter 896). *See id.* §§ 2433, 2500 (amended by Chapter 896) (providing appropriate form and language for DPAHC and including clause permitting indefinite duration). DPAHC contracts signed before January 1, 1992, but after January 1, 1984, continue to be subject to the seven-year maximum. *Id.* § 2436.5(a) (amended by Chapter 896).

1. *See* CAL. HEALTH & SAFETY CODE § 1502(a)(4) (amended by Chapter 1200) (definition of foster family agency). Under Chapter 1200, the definition of a foster family agency includes only an organization, and no longer includes an individual. *Id.*

2. *See* CAL. WELF. & INST. CODE § 10550 (West 1991) (creating the State Department of Social Services).

3. *See* CAL HEALTH & SAFETY CODE § 1502(a)(5) (amended by Chapter 1200) (definition of foster family home).

4. *Id.* § 1508 (West 1990). *See id.* §§ 1503.5, 1504, 1505, 1506, 1506.5, 1509 (West 1990 & amended by Chapter 1200) (specifying licensing and permit provisions).

5. *Id.* § 1506(b)(1) (amended by Chapter 1200). The agency may require a family home to be compatible with its treatment approach. *Id.*

may be certified or have its certification renewed.[6] Chapter 1200 requires a foster family home to relinquish its Department license concurrent with certification by a foster family agency.[7]

Existing law provides that the criminal record of anyone applying to provide services in a community care facility[8] be reviewed prior to issuance of a license or permit.[9] Chapter 1200 requires a foster family agency to obtain a criminal record clearance on the members of the foster family home prior to placement of a child in that foster family home.[10]

Existing law provides for periodic inspection of every licensed community care facility for evaluation of quality of care.[11] Chapter 1200 states that this section does not limit the authority of the Department to inspect and, should non-conformity be found, either revoke the certification or take other appropriate action consistent with due process.[12]

PLB

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6. *Id.* § 1506(b)(2) (amended by Chapter 1200). A certification is valid for one year, and recertification requires completion of at least 12 hours of training. *Id. See* CAL. WELF. & INST. CODE § 18358.10 (a)(2) (amended by Chapter 1200) (requiring foster parents to be trained in working with abused and neglected children, progressive crisis, and cardiopulmonary resuscitation).

7. CAL. HEALTH & SAFETY CODE §§ 1506.6, 1525.25 (enacted by Chapter 1200).

8. *See id.* § 1502(a) (amended by Chapter 1200) (definition of community care facility).

9. *Id.* § 1522(a) (West Supp. 1991).

10. *Id.* § 1522.05(a) (enacted by Chapter 1200). *See id.* § 1522.07(a) (enacted by Chapter 1200) (authorizing a criminal record clearance to be obtained pursuant to Penal Code section 11105.3). *See also* CAL. PENAL CODE § 11105.3(a) (West Supp. 1991) (authorizing any human resource agency to request criminal records concerning sex, drug or violent crimes of a person applying for a license, employment or volunteer position which involves disciplinary power over any person under their care).

11. CAL. HEALTH & SAFETY CODE § 1534(a) (amended by Chapter 1200). *See generally* Comment, *Unsafe Havens: The Case for Constitutional Protection of Foster Children From Abuse and Neglect*, 23 HARV. C.R.-C.L. L. REV. 199, 199-202 (1988) (declaring a need for greater judicial safeguards to protect foster children); Comment, *Protecting Children in Licensed Family Day-Care Homes: Can the State Enter A Home Without A Warrant?*, 25 SANTA CLARA L. REV. 411, 411-13 (1985) (balancing conflict between Fourth Amendment protections and concern for health and safety of children).

12. CAL. HEALTH & SAFETY CODE § 1534(b) (amended by Chapter 1200). *See* Smith v. Org. of Foster Families for Equality & Reform, 431 U.S. 816, 847 (1976) (declining to resolve the question of whether a foster parent has a constitutionally protected liberty interest). *See also* Comment, *The Due Process Rights of Foster Parents*, 50 BROOKLYN L. REV. 483, 483-85 (1984) (calling for needed protections of foster parents' due process rights and potential tort liability); Comment, *Promoting the Integrity of Foster Family Relationships; Needed Statutory Protections for Foster Parents*, 62 NOTRE DAME L. REV. 221, 234 (1987) (calling for needed statutory protection from capricious termination of foster family relationships).

Health and Welfare; foster care licensure, parental training classes, restitution for child crime victims

Government Code § 13964 (amended); Health and Safety Code § 1521.5 (new); Welfare and Institutions Code § 16216 (repealed); § 16507.7 (new).
SB 787 (Presley); 1991 STAT. Ch. 1112

Existing law provides that an application listing specified information[1] must be submitted in order to obtain a license or special permit for a community care facility[2] from the Department of Social Services.[3] Chapter 1112 provides that prior to granting a license, the County Welfare Director must conduct one or more home interviews[4] to establish that the prospective foster parents are able to meet the needs of the foster child.[5]

Existing law provides for specified family reunification and maintenance services, including parent training.[6] Chapter 1112 sets forth requirements and a curriculum for parent training under these programs.[7]

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1. *See* CAL. HEALTH & SAFETY CODE § 1520 (West 1990) (requiring for issuance of a license evidence that the applicant: (1) Can comply with rules and regulations; (2) is of reputable and responsible character; (3) has sufficient financial resources to maintain standards of service; (4) discloses prior involvement in a community care facility, including any revocation or disciplinary action taken against the license; and (5) signs a statement that the applicant understands the licensure statute and regulations).

2. *See id.* § 1502(a) (West 1990) (definition of community care facility).

3. *Id.* § 1520 (West 1990).

4. *See id.* § 1521.5(b) (enacted by Chapter 1112) (requiring home interviews to be conducted in person).

5. *Id.* § 1521.5(a) (enacted by Chapter 1112).

6. CAL. WELF. & INST. CODE §§ 16506, 16507 (West 1991). *See id.* §§ 16506.1, 16507.1 (West 1991) (delineating scope of family maintenance and reunification services).

7. *Id.* § 16507.7 (enacted by Chapter 1112). The parenting course is required to include the components of building self-esteem, handling stress and anger, growth and development of children, development of communication skills, positive disciplinary mechanisms, boundaries of permissible sexual conduct by adults with regard to children, and respect for and sensitivity to cultural differences. *Id.* § 16507.7(b) (enacted by Chapter 1112).

Under existing law, a victim[8] can recover restitution for pecuniary loss[9] suffered as a direct result of criminal[10] acts.[11] Chapter 1112 permits restitution for minors who are victims of child abuse or other specified criminal acts.[12]

PLB

Health and Welfare; hazardous waste and air pollution--permit requirements

Health and Safety Code §§ 25186.3, 42330, 42331, 42332, 42333, 42334, 42335, 42336, 42337, 42338, 42339 (new); § 25200.4 (amended).
AB 158 (Roybal-Allard); 1991 STAT. Ch. 1209

Existing law requires the Department of Toxic Substances Control to issue permits regulating the use of hazardous waste facilities.[1] Existing law also requires applications for an operating permit for a hazardous waste facility to include a disclosure statement.[2] Chapter 1209 requires the Department to utilize

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8. *See* CAL. GOV'T CODE § 13960(a) (West Supp. 1991) (definition of victim).

9. *See id.* § 13960(d) (West Supp. 1991) (definition of pecuniary loss). *See also* Webster v. State Board of Control, 197 Cal. App. 3d 29, 33-34, 242 Cal. Rptr. 685, 687-88 (1987) (holding the Act does not provide for indemnification for nonmonetary losses).

10. *See* CAL. GOV'T. CODE § 13960(c) (West Supp. 1991) (definition of crime).

11. *Id.* § 13959 (amended by Chapter 1112). *See generally* Comment, *California's Approach to Third Party Liability for Criminal Violence*, 13 LOY. L. REV. 535, 535 (1980) (explaining the treatment of third party liability for criminal violence).

12. CAL. GOV'T. CODE § 13964 (amended by Chapter 1112). A child under 18 years is eligible for assistance if the child is a victim of any sexual criminal act described in Penal Code sections 261-269, or criminal abandonment or neglect described in Penal Code sections 270-273.6. *Id.*

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1. CAL. HEALTH & SAFETY CODE § 25200 (West Supp. 1991).

2. *Id.* § 25200.4(a) (amended by Chapter 1209). A disclosure statement is not required for applications submitted by a federal, state or local agency. *Id.* Prior to Chapter 1209, this section was to remain in effect only until January 1, 1996. 1989 Cal. Stat. ch. 1257, sec. 6, at 4311 (amending CAL. HEALTH & SAFETY CODE § 25200.4) (amended by Chapter 1209). Chapter 1209 provides that this section shall remain in effect one additional year unless deleted or extended. CAL. HEALTH &

information from the disclosure statement as well as other information[3] in determining whether to issue or deny a permit.[4] Chapter 1209 also requires the Department to provide public notice of a permit application.[5]

Existing law authorizes air quality management districts to develop a permit system for the use of any article, machine, or equipment which may cause air pollution.[6] Chapter 1209 authorizes pollution control officers to review the compliance record of an applicant prior to the issuing or renewal of a permit.[7] Additionally, Chapter 1209 allows a pollution control officer, under specified circumstances, to deny a permit, refuse to renew a permit,

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SAFETY CODE § 25200.4(f) (amended by Chapter 1209).

3. *See id.* § 25200.4(b) (amended by Chapter 1209) (specifying that the Department shall use information which is made available to the Department pursuant to California Health & Safety Code sections 25186.5 and 25186.3).

4. *Id.*

5. *Id.* § 25200.4(c) (amended by Chapter 1209). The notice must be published in a newspaper of general circulation within the area affected by the proposed facility. *Id.* If the Department has information that a proposed applicant or any officer, director or partner of a business applicant has violated any environmental regulation specified under California Health and Safety Code section 25186 within the preceding three-year period, the Department must prepare a written report listing all convictions, judgments, and settlements relating to such violations, excluding civil and administrative penalties of one thousand ($1000.00) or less. *Id.* The Department must include in the required public notice, a statement that the applicant's compliance history is available in the administrative record *Id.* This required public notice does not, however, supplant the notice required by section 25199.7(a) of the California Health and Safety Code. *Id.* § 25200.4(d) (amended by Chapter 1209).

6. *Id.* § 42300 (West 1986).

7. *Id.* §§ 42331, 42332 (enacted by Chapter 1209). The review of an applicant's compliance history prior to the issuance of a new permit is limited to the history of the facility in question, and those facilities owned and operated by the applicant within the district. *Id.* § 42331(c) (enacted by Chapter 1209). The review of an applicant's compliance history prior to the renewal of an existing permit is limited to the facility in question. *Id.* § 42332(a) (enacted by Chapter 1209). The intent of these sections is to provide districts with an effective enforcement tool that can be used to bring into compliance permit applicants who demonstrate a recurring pattern of emission violations. *Id.* § 42330 (enacted by Chapter 1209). *See Smog Problems Not About to Disappear*, United Press International News Wire, Aug. 6, 1989, Sunday, BC cycle (NEXIS, UPI file) (stating that a Washington University study identifies lack of enforcement and ineffective control measures as two of the primary factors for slow progress in clearing the air of pollution). *Cf.* The Financial Times Limited, Oct. 9, 1989 (stating that industries continue to violate pollution control laws under current enforcement methods, and describing an Environmental Protection Administration suggestion that one way to deter repeat pollution violators would be to have utilities cut power to such facilities until they come into compliance).

or require additional permit conditions.[8] Under Chapter 1209, the Department must include a statement in any public notice regarding a proposed facility, that the facility owner's compliance record is available for review.[9]

SH

Health and Welfare; labor camps

Health and Safety Code § 17061.7 (new); § 17031.5 (amended).
AB 923 (Polanco); 1991 STAT. Ch. 786

Under existing law, a labor camp[1] must contain permanent housing[2] in order for the restrictions on a landlord's behavior to apply.[3] Under Chapter 786, these restrictions apply to all labor camps, including those which contain non-permanent housing.[4]

Under existing law, if a labor camp landlord terminates or modifies a tenancy within six months after the tenant has complained in good faith about living conditions, there exists a rebuttable presumption affecting the burden of proof that the

8. *Id.* § 42333(a) (enacted by Chapter 1209). The required circumstances are: (1) A violation of air pollution laws within the preceding three years; (2) prior notices of the violation; (3) no variance in effect for the violation; (4) violations that demonstrate a recurring pattern; and (5) a notice and opportunity for an office conference given. *Id.* § 42333(a)(1)-(5).

9. *Id.* § 42337 (enacted by Chapter 1209). Information about an applicant's compliance record, including emission violations at any facility owned and operated by the applicant within the state, is required to be submitted by the applicant as part of the application process. *Id.* § 42336 (enacted by Chapter 1209).

1. *See* CAL. HEALTH & SAFETY CODE § 17008(a)-(c) (West Supp. 1991) (definition of labor camp).

2. *See id.* § 17010(d) (West Supp. 1991) (definition of permanent housing).

3. *Id.* § 17031.5(a) (amended by Chapter 786). Under section 17031.5(a), the landlord may not modify a tenancy by increasing rent, decreasing services, threatening to bring or bringing an action to evict, refusing to renew a tenancy, or in any other way intimidating, threatening, restraining, coercing, blacklisting, or discharging an employee or tenant. *Id.*

4. *Id.*

landlord's action was retaliatory.[5] Chapter 786 expands this presumption to any employer who discharges an employee within six months after the employee has complained in good faith about living conditions.[6]

Under existing law, the court may issue any order it feels necessary to clean up the living conditions in labor camps.[7] Under Chapter 786, any person found in contempt of a court order for a second time may be placed in house confinement within the labor camp.[8]

ALG

Health and Welfare; occupational lead poisoning

Health and Safety Code §§ 429.13, 429.14, 429.15 (new); Revenue and Taxation Code §§ 43056, 43152.13, 43553 (new); § 43101 (amended).
SB 240 (Torres); 1991 STAT. Ch. 798
Support: Department of Health Services
Opposition: Department of Finance; California Manufacturers Association

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5. *Id.* § 17031.5(b) (amended by Chapter 786). *See* Vargas v. Municipal Court For Riverside Judicial Dist. of Riverside County, 22 Cal. 3d 902, 917, 587 P.2d 714, 722, 150 Cal. Rptr. 918, 926 (1978) (holding that the trial court should have allowed the employee of a labor camp to introduce evidence that the landlord's eviction was based upon a retaliation for the exercise of the employee's rights guaranteed by the provisions in the Agricultural Labor Relations Act). *See also* S. P. Growers Ass'n v. Rodriguez, 54 Cal. App. 3d 852, 854, 126 Cal. Rptr. 842, 844 (1976) (holding that no presumption of retaliation exists if the motives of the landlord for the eviction of an employee of a labor camp are not related to the employee's exercise of his or her constitutional or statutory rights).

6. CAL. HEALTH & SAFETY CODE § 17031.5(a) (amended by Chapter 786).

7. *Id.* § 17060(c) (West 1984). The court may issue an order if the labor camps do not meet the State Building Standards Code. *Id.*

8. *Id.* § 17061.7 (enacted by Chapter 786). Defendant may be ordered to pay for a guard or police officer placed outside the area to ensure confinement, if the defendant is able to pay these costs. *Id.*

Existing law requires the Department of Health Services (Department)[1] to maintain a program on occupational health and occupational disease prevention.[2] Chapter 798 specifically requires the Department to establish and maintain an occupational lead poisoning prevention program.[3]

Existing law requires each person who disposes of hazardous waste,[4] who annually submits more than 500 pounds of hazardous waste for disposal, or who submits hazardous waste for treatment at a location outside of the state, to pay a fee to the State Board of Equalization (Board).[5] Chapter 798 additionally imposes an annual fee on employers[6] in industries[7] for which there is documented

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1. *See* CAL. HEALTH & SAFETY CODE §§ 100-117 (West 1990 & Supp. 1991) (specifying the powers and duties of the Department of Health Services).

2. *Id.* § 429.11(a) (West 1990). The program includes investigating the causes of mortality from work-induced diseases, developing recommendations for improved control of such diseases, and maintaining knowledge of the effects of industrial chemicals and work practices on the health of California workers; however, it does not contain any lead poisoning provisions. *Id.*

3. *Id.* § 429.13 (enacted by Chapter 798). Under Chapter 798, the lead poisoning prevention program requires the Department to create an occupational lead poisoning registry by developing a system for monitoring lab reports of cases of adult lead toxicity, investigate reported cases of occupational lead exposure to determine the source, and investigate cases where take-home exposure may be occurring, where additional cases might be identified, or where a previously unidentified risk factor may be present. *Id.* § 429.13 (a)(1)-(3) (enacted by Chapter 798). The program also includes training employers, employees, and health professionals regarding prevention of lead poisoning and making recommendations for the prevention of lead poisoning. *Id.* § 429.13(a)(4)-(5) (enacted by Chapter 798). *Cf.* 1990 Mass. Adv. Legis. Serv. 200 (Law. Co-op.) (establishing an occupational lead poisoning registry); 29 C.F.R. § 1910.1025 (1990) (requiring employers to assure that no employee is exposed to lead in excess of specified concentrations and outlining standards for monitoring lead exposure levels).

4. *See* CAL. HEALTH & SAFETY CODE § 25117 (West Supp. 1991) (definition of hazardous waste).

5. *Id.* § 25174.1(a) (West Supp. 1991). Operators of facilities that accept hazardous waste must pay a fee to the Board for disposal. *Id.* § 25174(b) (West Supp. 1991). However, if the person submitting the waste provides the operator with a properly completed manifest for the waste which includes that person's Hazardous Waste Tax Account number, and the operator submits a copy to the Board, then the operator need not pay the fee. *Id. See* CAL. GOV'T CODE § 15606 (West Supp. 1991) (specifying the powers and duties of the State Board of Equalization).

6. *See* CAL. HEALTH & SAFETY CODE § 429.14(b) (enacted by Chapter 798) (definition of employer). *See also id.* § 25811 (West 1984) (definition of employer).

7. *See id.* § 429.14(a) (enacted by Chapter 798) (indicating that industries are classified based on the four-digit Standard Industrial Classification established by the United States Department of Commerce).

evidence of potential occupational lead poisoning.[8] Chapter 798 specifically sets forth a list of industries that are presently affected.[9]

BAM

Health and Welfare; radon measurement and certification

Health and Safety Code §§ 19010, 19011, 19012, 19013, 19014, 19015, 19016, 19017, 19018, 19019, 19020, 19021, 19022, 19023, 19024, 19025, 19026, 19027, 19028, 19029, 19030, 19031, 19032, 19033, 19034, 19035, 19036 (new). AB 765 (Polanco); 1991 STAT. Ch. 619

Under existing law, any radon assessment and mitigation plan must include measures designed to detect, avoid, or dissipate dangerous levels of radon gas[1] at construction sites of new residential buildings in areas affected by radon.[2] Chapter 619

8. *Id.* § 429.14(b) (enacted by Chapter 798). The base rate of the annual fee for employers having from 10 to 99 employees is $175. *Id.* The fee is twice the base rate for employers with 100 to 499 employees, and five times the base rate for employers with 500 or more employees. *Id.* Employers with fewer than 10 employees are exempt from the fee. *Id.* The annual fee must be adjusted annually by the Board to reflect changes in the cost of living as measured by the United States Department of Labor's Consumer Price Index. *Id.* § 429.14(c) (enacted by Chapter 798). The fee must not exceed the cost of the program. *Id.* § 429.14(d) (enacted by Chapter 798).

9. *See id.* § 429.15 (enacted by Chapter 798) (listing industries by their Standard Industrial Classification). The Department is authorized to add other industry code numbers to the list if new evidence, particularly multiple case reports of occupational lead poisoning, demonstrates that the potential for such poisoning exists in those industries. *Id.* The Department may also delete Standard Industrial Classification code numbers or industries within a code when evidence shows that lead exposure, lead use, or the potential for lead poisoning no longer exists. *Id.* The Department may also waive the fee of an employer who demonstrates that lead use or exposure is no longer occurring in its operations. *Id.*

1. *See* 15 U.S.C.A. § 2662(3) (West Supp. 1991) (definition of radon gas).

2. CAL. HEALTH & SAFETY CODE § 426.9 (West 1990). *See* 15 U.S.C.A. § 2661 (West Supp. 1991) (setting a national goal that air within buildings should be as radon-free as the air outside the buildings).

provides that, except in specified situations,[3] a person must apply for and obtain certification[4] from the State Department of Health Services[5] prior to analyzing, testing for, or mitigating against the presence of radon, and applications for certification must be accompanied by specified non-refundable fees.[6]

Chapter 619 establishes requirements for the certification of radon measurement laboratories,[7] radon testing and consultant specialists,[8] and radon mitigation contractors[9] by adopting

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3. *See* CAL. HEALTH & SAFETY CODE § 19031(a)-(d) (enacted by Chapter 619) (describing circumstances in which persons are exempt from certification to perform any analysis, test, or mitigation of radon in California); § 19032 (enacted by Chapter 619) (stating that persons who are certified in another state that has a reciprocal agreement with California pursuant to Health and Safety Code section 19022 do not require certification from the State Department of Health Services).

4. *See id.* § 19016 (enacted by Chapter 619) (stating that certification expires on December 31 of the second calendar year after it is issued); § 19017 (enacted by Chapter 619) (requiring that an application for renewal of a radon certificate be filed not later than 90 days before the existing certificate expires).

5. *See id.* § 100 (West 1990) (creating the State Department of Health Services).

6. *Id.* §§ 19015, 19019(a) (enacted by Chapter 619). *See id.* § 19021 (enacted by Chapter 619) (specifying the amounts of the application fees).

7. *See id.* § 19011 (enacted by Chapter 619) (definition of radon measurement laboratory). *See also id.* § 19027(c) (enacted by Chapter 619) (setting forth the requirements for the certification of a radon measurement laboratory). Certification requires the applicants to show that: (1) The operating supervisor has successfully completed a course of study in radon measurement meeting the standards set by the National Radon Measurement Proficiency Program (NRMPP) of the federal Environmental Protection Agency (EPA); (2) the laboratory provides a quality assurance and quality control program meeting NRMPP standards; and (3) for renewal of certification, the operating supervisor of the laboratory has successfully participated in each radon proficiency program offered by the federal EPA since the date of prior certification, or must show good cause for not participating in the programs which the applicant's operating supervisor did not attend. *Id.*

8. *See id.* § 19012 (enacted by Chapter 619) (definition of radon testing and consulting specialists); § 19026 (a)-(d) (enacted by Chapter 619) (setting forth the requirements for the certification of a radon testing and consulting specialists). The applicants must: (1) Show that they have successfully completed at least 16 hours of a radon measurement course meeting NRMPP standards; (2) provide a quality assurance and quality control program meeting NRMPP standards; (3) for renewal of certification, show that they have successfully participated in each radon proficiency program applicable to them offered by the federal EPA since the date of the prior application for certification, or show good cause for not participating in the programs that they did not attend; and (4) submit evidence of having at least a bachelor's degree in physical, biological, or engineering science from a recognized college or university. *Id.*

9. *Id.* § 19010 (enacted by Chapter 619). *See id.* § 19013 (enacted by Chapter 619) (definition of radon mitigation contractor); § 19028(b) (enacted by Chapter 619) (setting forth the requirements for certification of a radon mitigation contractor). The applicants must show that they have successfully completed a radon contractors proficiency program which meets National Radon Contractors Proficiency Program standards, and they must show that they have participated in each radon proficiency program applicable to them offered by the federal EPA, or must show good cause for not participating in the programs that they did not attend to renew their certification. *Id* 19028(b)

specified federal standards.[10] Under Chapter 619, however, if any person adversely affected by the federal standards objects to them in writing and requests a hearing with the Department of Health Services within thirty days prior to the federal standards becoming effective,[11] adoption of the federal standards will be stayed until the department conducts a hearing and decides the issue.[12] Chapter 619 also provides for the revocation or suspension of the certification[13] and makes non-compliance a misdemeanor offense.[14]

JEL

Health and Welfare; tissue banks

Health and Safety Code §§ 1635, 1635.2, 1639, 1639.1, 1639.2, 1639.3, 1639.4, 1639.5, 1639.55, 1639.6, 1641, 1641.1, 1643, 1643.1, 1643.2, 1644 (new); §§ 113, 1644.5 (amended).
AB 2209 (Speier); 1991 STAT. Ch. 801

(enacted by Chapter 619).

10. *Id.* § 19033(a) (enacted by Chapter 619). The federal standards must promote the intent and purposes of the state law. *Id. See id.* §§ 19026(b), 19027(c)(1)-(2), 19028(b)(1) (enacted by Chapter 619) (making the NRMPP and the National Radon Contractors Proficiency Program the accepted standards for the state). *Cf.* N.J. STAT. ANN. § 13:1K-14(a),(b) (West Supp. 1991) (adopting federal standards for measuring radon as the acceptable state standards in New Jersey).

11. *See* CAL. HEALTH & SAFETY CODE § 19033(a) (enacted by Chapter 619) (providing that a federal guideline which becomes a state standard is to take effect 30 days after it becomes effective as a federal guideline).

12. *Id.* § 19033(b) (enacted by Chapter 619).

13. *Id.* § 19035(a)-(d) (enacted by Chapter 619) (setting forth the circumstances that call for the revocation or suspension of certification). Any misstatement in applying for certification, any condition which would justify the department in refusing to grant registration on an original application, a violation of any law relating to radon certification, or being removed from the federal EPA's Radon Measurement Proficiency Program or its Radon Contractors Program during the term of certification would justify the State Department of Health Services in revoking or suspending certification. *Id.*

14. *Id.* § 19036 (enacted by Chapter 619) (imposing a fine of up to $1,000 as punishment for non-compliance).

Under existing law, hospitals, specific procurement organizations,[1] and accredited medical or dental schools, are permitted to receive anatomical gifts.[2] Also, under existing law, it is a crime for any person to knowingly acquire, receive, sell, or promote the transfer of, or otherwise transfer any human organ or tissue,[3] for purposes of transplantation,[4] for financial profit.[5] Chapter 801 requires every tissue bank,[6] with specified exceptions,[7] operating in California on or after July 1, 1992, to have a current and valid tissue bank license issued by the State Department of Health Services.[8] Chapter 801 also authorizes the State Department of Health Services to adopt rules and regulations governing the administration and enforcement of the rules and regulations of tissue banks.[9]

Furthermore, Chapter 801 makes any person who violates the provisions enacted by Chapter 801, or who willfully and repeatedly violates any rule or regulation adopted under these provisions guilty of a misdemeanor.[10] Finally, Chapter 801 states that the collection, processing, storage, or distribution of tissue for the purpose of transplantation is a service, and thus exempt from the

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1. *See id.* HEALTH & SAFETY CODE § 7150.1(j) (West Supp. 1991) (definition of procurement organization).

2. *Id.* § 7153 (West Supp. 1991). *See id.* § 7150-7156.5 (West Supp. 1991) (codifying the Uniform Anatomical Gift Act).

3. *See id.* § 1635(c) (enacted by Chapter 801) (definition of "tissue").

4. *See id.* § 1635(e) (enacted by Chapter 801) (definition of "transplantation").

5. *Id.* § 7155 (West Supp. 1991).

6. *See id.* § 1635(d) (enacted by Chapter 801) (definition of tissue bank).

7. *See id.* § 1635.1(b)(1)-(6) (enacted by Chapter 801) (listing the following exceptions to licensing: (1) The collection, processing, storage, or distribution of blood by blood banks; (2) the collection, processing, storage, or distribution of tissue for autopsy, biopsy, training, education or other research or investigation, where the transplantation of tissue is not intended; (3) the collection or implantation of tissue by a physician and surgeon from his patient; (4) the collection, processing, storage, or distribution of fetal tissue or tissue from a human embryo; (5) the collection, processing, storage, or distribution by an organ procurement organization; and (6) the storage of freeze-dried bone by a general acute care hospital).

8. *Id.* § 1635.1 (enacted by Chapter 801).

9. *Id.* § 1639 (enacted by Chapter 801). *Cf.* D.C. CODE ANN. § 2-1603 (1990) (governing licensing of tissue banks); GA. CODE ANN. § 21--22-2 (1991) (governing licensing of tissue banks).

10. CAL. HEALTH & SAFETY CODE § 1641 (enacted by Chapter 801).

requirements of Division 2 of the Commercial Code regulating the sale of goods.[11]

WY

Health and Welfare; reclaimed water

Water Code §§ 13552, 13553, 13554, 13554.2, 13554.3 (new); §§ 13550, 13551 (amended).
AB 174 (Kelley); 1991 STAT. Ch. 553
AB 1698 (Filante); 1991 STAT. Ch. 723

Under existing law, the waste or unreasonable use of water is prohibited.[1] Existing law also prohibits the use of potable[2] domestic water for the irrigation of greenbelt areas[3] as an unreasonable use of water.[4]

Chapter 553 declares that the use of potable domestic water for any nonpotable use is a waste or an unreasonable use of water

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11. *Id.* § 1635.2 (enacted by Chapter 801). *Cf. id.* § 1606 (West 1990) (declaring the procurement, processing, distribution, or use of whole blood, plasma, blood products, and blood derivatives for the purpose of injecting or transfusing to be a service and not a sale. *Cf.* McDonald v. Sacramento Medical Foundation Blood Bank, 62 Cal. App. 3d 866, 869-71, 133 Cal. Rptr. 444, 446 (1976) holding that the courts are not free to impose strict liability on the service of supplying blood under section 1606 of the Health and Safety Code which provides that the procurement of whole blood, plasma, and blood derivatives is declared to be the rendition of a service and is not to be construed to be a sale. The court went on to hold that physicians, hospitals, and blood suppliers could not be held strictly liable for the wrongful death of plaintiff's wife, who died of serum hepatitis contracted from a blood transfusion. *Id. cf. also* Shepard v. Alexian Brothers Hospital, Inc., 33 Cal. App. 3d 606, 614, 109 Cal. Rptr. 132, 142 (1973) (reaffirming the rule that the furnishing of a blood transfusion is a service, not a sale, hence a hospital furnishing a blood transfusion could not be liable for an implied warranty).

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1. CAL. CONST. art. X, § 2.
2. *See* BLACK'S LAW DICTIONARY 1051 (5th ed. 1979) (definition of potable). *See also* CAL. WATER CODE § 14002 (West Supp. 1991) (specifying findings and declarations regarding water for domestic purposes).
3. *See* CAL. WATER CODE § 13550(a) (amended by Chapter 553) (defining greenbelt areas as including, but not limited to, cemeteries, golf courses, parks, and landscaped highway areas).
4. *Id.*

when reclaimed water is available.[5] Chapter 553 also specifically prohibits the use of potable domestic water for nonpotable uses if suitable reclaimed water is available.[6]

Chapter 723 declares that the use of potable domestic water for toilet or urinal flushing in nonresidential structures is a waste or an unreasonable use of water if reclaimed water is available.[7] Chapter 723 also allows any public agency[8] to require the use of reclaimed water for toilet and urinal flushing if reclaimed water is available.[9]

SH

5. *See id.* § 13550(a) (amended by Chapter 553). The section declares such uses "unreasonable" within the meaning of Section two of Article X of the California Constitution. *Id.* The availability of reclaimed water under the section is determined by the quantity and quality of the reclaimed water available, the reasonableness of the cost of reclaimed water, an evaluation of the threat to public health, and the potential detriment to downstream water rights or fish and wildlife. *Id.* § 13550(a)(1)-(4) (amended by Chapter 553).

6. *Id.* § 13551 (amended by Chapter 553).

7. *Id.* § 13553(a) (enacted by Chapter 723). Non-residential structures are defined, with exceptions, as those structures included in Group I-3 in Table 5-A of the Uniform Building Code. *Id.* The section declares the use in such structures to be "unreasonable" within the meaning of Section 2 of Article X of the California Constitution. *Id.* The availability of reclaimed water under the section is determined by the factors listed in note 5 supra. *Id.* § 13554(1) (enacted by Chapter 723).

8. *See id.* § 13554 (enacted by Chapter 723) (defining a public agency as a state agency, a city, a county, a city and county, a district, or any other political subdivision of the state).

9. *Id.* The section applies either to new structures the permit for which is issued on or after March 15, 1992, or if a permit is not required, to new structures for which construction begins on or after March 15, 1992. *Id.* § 13554(b)(1) (enacted by Chapter 723). The section also applies to structures that prior to January 1, 1992 the Department of Health Services had approved to use reclaimed water. *Id.* § 13554(b)(2) (enacted by Chapter 723).

Health and Welfare; release of medical records

Civil Code § 56.10 (amended).
AB 1179 (Hannigan); 1991 STAT. Ch. 591

Existing law authorizes health care providers to release medical information without a patient's consent in specified circumstances,[1] including the release of information to a governmental authority responsible for paying for services rendered to the patient.[2] Chapter 591 authorizes disclosure of medical records to a governmental authority without the patient's consent when the patient is unable to consent to the disclosure of medical information due to a coma or other disabling medical condition, and no other arrangements have been made to pay for the health care services rendered to the patient.[3] The information may be disclosed only to a governmental authority to the extent necessary to determine the patient's eligibility for payment under a governmental program, and to obtain such payment.[4]

JEL

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1. *See* CAL. CIV. CODE § 56.10(b)-(c) (amended by Chapter 591) (listing the various circumstances under which a health care provider may disclose medical information regarding a patient).

2. *Id.* § 56.10(c)(2) (amended by Chapter 591). The release of information is authorized to the extent necessary to allow responsibility for payment to be determined and payment to be made. *Id. Cf.* United Steel Workers v. Marshall, 647 F.2d 1189, 1241 (D.C. Cir. 1981) (holding that workers' privacy was not invaded by a rule of the Occupational Safety and Health Act (OSHA) granting OSHA access to employee records where the required disclosure was a reasonable exercise of governmental responsibility over public welfare).

3. CAL. CIV. CODE § 56.10(c)(2) (amended by Chapter 591). *Cf.* MASS. ANN. LAWS ch. 111, § 70E (Michie Supp. 1991) (permitting disclosure of medical information without patient consent when authorized by insurance contract).

4. CAL. CIV. CODE § 56.10(c)(2) (amended by Chapter 591). *See* Comment, *Right to Medical Records*, 30 UCLA L. REV. 1349, 1358-60 (1983) (discussing disclosure of medical information authorized by statute).

Health and Welfare; replacement health insurance--congenital craniofacial anomalies

Health and Safety Code § 1399.63 (amended); Insurance Code § 10128.3 (amended).
SB 761 (Johnston); 1991 STAT. Ch. 685

Existing law requires group disability insurers[1] and health care service plans[2] who provide replacement health coverage to provide coverage to all employees[3] and dependents[4] who were covered by the prior policy, within sixty days from the date of discontinuance of the prior policy.[5] Existing law additionally requires the new group disability insurers and health care service plans to continue to provide benefits for preexisting conditions[6] that were covered by the previous insurer's contract.[7]

Chapter 685 prohibits the new group disability insurers and health care service plans from limiting coverage for congenital

1. *See* CAL. INS. CODE § 106 (definition of disability insurance) (1972); § 10270.5 (West Supp. 1991) (definition of group disability insurance). *See also id.* § 11627 (West 1988) (definition of insurer).

2. *See* CAL. HEALTH & SAFETY CODE § 1345(f) (West Supp. 1991) (definition of health care service plan).

3. *See* CAL. INS. CODE § 10128.1(d) (West Supp. 1991) (definition of employee).

4. *See id.* § 10128.1(b) (West Supp. 1991) (definition of dependent).

5. CAL. HEALTH & SAFETY CODE § 1399.63(a) (amended by Chapter 685); CAL INS. CODE § 10128.3(a) (amended by Chapter 685).

6. *See* CAL. INS. CODE § 10232.4(b) (West Supp. 1991) (definition of a preexisting condition).

7. CAL. HEALTH & SAFETY CODE § 1399.63(c) (amended by Chapter 685); CAL. INS. CODE § 10218.3(c) (amended by Chapter 685).

craniofacial anomalies[8] on the basis that the condition giving rise to benefits preexisted the effective date of the contract.[9]

CWE

Health and Welfare; separate bids on contracts for asbestos removal

Health and Safety Code §§ 25914, 25914.1, 25914.2 (new).
AB 1639 (Katz): 1991 STAT. Ch. 789

Under existing law, a contractor[1] must be certified for hazardous substance removal[2] before working on asbestos-related work.[3] Chapter 789 states that all asbestos-related work not disclosed in the bid or contract documents shall be

8. *See* CAL. HEALTH & SAFETY CODE § 1399.63(f) (amended by Chapter 685); CAL. INS. CODE § 10128.3(g) (amended by Chapter 685) (defining congenital craniofacial anomalies as including cleft lip and palate, acrocephalosyndactyly and other congenital musculoskeletal anomalies).

9. CAL. HEALTH & SAFETY CODE § 1399.63(f) (amended by Chapter 685); CAL. INS. CODE § 10128.3(g) (amended by Chapter 685). *See generally* McKenzie, Johnson, *Insurance Law*, 50 LA. L. REV. 247, 261 (1989) (discussing the recent trend of statutorily-required types of coverage under health and accident policies to include primary and secondary care for cleft lip and cleft palate). *Cf.* MD. CODE ANN., INS., §§ 470R, 354X (1988) (requiring that every hospital and major medical insurance policy include coverage for treatment and management of cleft lip and palate).

1. *See* CAL. BUS. & PROF. CODE § 7026.2 (West Supp. 1991) (definition of contractor).

2. *See id.* § 7058.7 (West Supp. 1991) (definition of hazardous substance removal). *See generally* Franklin v. Nat C. Goldstone Agency, 33 Cal. App. 2d 628, 632, 188 P.2d 60, 63-64 (1949) (holding that the licensing requirements of the code address the safety and protection of the public and that such public policy may not be circumvented).

3. CAL. BUS. & PROF. CODE § 7058.5(a) (West Supp. 1991). When the work involves 100 square feet or more of surface area of asbestos-containing material, a contractor must pass an asbestos certification examination. *Id. See* CAL. LAB. CODE § 6501.8 (West Supp. 1991) (definition of asbestos-related work).

performed in accordance with a contract separate from any other work to be performed.[4]

JEK

Health and Welfare; smokeless tobacco or cigarette distribution

Health and Safety Code § 25967 (new).
SB 1100 (Bergeson); 1991 STAT. Ch. 829

Existing law prohibits any person[1] from offering, as part of an advertising plan or program, certain promotional offers[2] of smokeless tobacco products unless such offers designate that they are not available to minors.[3] Existing law also prohibits any person, as part of an advertising plan or program, from distributing free samples of smokeless tobacco within a two-block radius of premises whose primary activity is directed toward persons under the age of eighteen.[4] Existing law further makes it a crime for any person, firm, or corporation to knowingly sell, give, or in any way

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4. CAL. HEALTH & SAFETY CODE § 25914.2(a) (enacted by Chapter 789). If the asbestos or hazardous substance is encountered by a contractor, the contractor shall immediately cease work in the affected area and report the condition to the owner. *Id.* § 25914.2(c) (enacted by Chapter 789). If the asbestos or hazardous substance is disclosed in the bid or contract document, a separate contract is not required. *Id.* § 25914.2(b) (enacted by Chapter 789). *Cf.* FLA. STAT. § 455.302 (West 1991) (stating no separate contract requirement for asbestos removal).

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1. *See* CAL. BUS. & PROF. CODE § 17506 (West 1987) (definition of person).

2. *See id.* § 17537.3(a) (West 1987) (specifying offers of smokeless tobacco products which require proof of purchase of a smokeless tobacco product).

3. *Id. See id.* § 17537.3(b)-(d) (West 1987) (specifying other prohibitions regarding smokeless tobacco products). *See generally* Polin, *Argument for the Ban of Tobacco Advertising: A First Amendment Analysis*, 17 HOFSTRA L. REV. 99 (1988) (arguing that tobacco advertising is not commercial speech protected by the First Amendment and that the government has a substantial interest in controlling tobacco advertising); Comment, *First Amendment Values and the Constitutional Protection of Tobacco Advertising*, 82 NW. U.L. REV. 145, 178-80 (1987) (arguing that a ban on tobacco advertising is an unconstitutional and paternalistic means of promoting public health).

4. CAL. BUS. & PROF. CODE § 17537.3(c). *See id.* § 17537.3(d) (West 1987) (prohibiting any person from distributing as part of any advertising plan or program unsolicited samples of smokeless tobacco products through a mail campaign).

furnish to another person under the age of eighteen a tobacco product.[5]

Chapter 829 makes it unlawful for any person, agent, or employee of a person in the business of selling or distributing smokeless tobacco[6] or cigarettes from engaging in the nonsale distribution[7] of any smokeless tobacco or cigarettes to any person in specified public places.[8]

RDN

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5. CAL. PENAL CODE § 308(a) (West Supp. 1991). The provision prohibits any preparation of tobacco, any instrument or paraphernalia that is designed for the smoking or ingestion of tobacco, and any products prepared from tobacco. *Id. Cf.* ME. REV. STAT. ANN. tit. 22, § 1579(1) (West Supp. 1990), CONN. GEN. STAT. ANN. § 53-344 (West Supp. 1991), ILL. ANN. STAT. ch. 23, para. 2357 (West 1988) (prohibiting sale or distribution of tobacco or tobacco products to minors).

6. *See* CAL. HEALTH & SAFETY CODE § 25967(c)(2)(A)-(B) (enacted by Chapter 829) (definition of smokeless tobacco).

7. *See id.* § 25967(c)(1) (enacted by Chapter 829) (definition of nonsale distribution).

8. *Id.* § 25967(b) (enacted by Chapter 829). Specified public places include any public building, park, playground, sidewalk, street, or other public grounds. *Id.* However, Chapter 829 does not apply to places where minors are prohibited by law or places leased for private functions where minors are denied access by a peace officer or a licensed security guard on the premises. *Id.* § 25967(f). *See id.* § 25967(c)(3) (enacted by Chapter 829) (definition of public building, park, playground, sidewalk, street, or other public grounds). *See also* Garner, *Tobacco Sampling, Public Policy and the Law*, 11 J. OF HEALTH POL., POL'Y AND L. 423, 426-38 (1986) (arguing that state laws banning sampling of tobacco products are constitutional and not preempted or invalidated by federal law); Austin v. Tennessee, 179 U.S. 343, 361-62 (1900) (affirming state's right under its police power to ban outright any means of sale or distribution of cigarettes to the public). *Cf.* MINN. STAT. ANN. § 325F.77, subds. 3-4 (West Supp. 1991) (prohibiting promotional distribution of tobacco products in all places except tobacco stores). *See generally* O'Reilly, *A Consistent Ethic of Safety Regulation: The Case for Improving Regulation of Tobacco Products*, 3 ADMIN. L.J. 215 (1989) (suggesting various regulatory controls of tobacco products to benefit consumers).

Health and Welfare; Sudden Infant Death Syndrome

Health and Safety Code § 10253(a) (repealed); §§ 462, 10253 (amended).
SB 362 (Boatwright); 1991 STAT. Ch. 268

Under existing law, whenever the death of an infant is caused by Sudden Infant Death Syndrome (SIDS),[1] the county health officer or agent[2] must immediately contact[3] the person or persons who had custody and control of the infant and explain the nature and causes of SIDS.[4] Chapter 268 requires the local health officer[5] or agent to immediately[6] contact and provide information and counseling to day-care providers and foster parents in the aftermath of a presumed SIDS death.[7]

CWE

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1. *See* CAL. GOV'T CODE § 27491.41 (West Supp. 1991) (defining SIDS to be the sudden, unexpected death of any infant where an autopsy cannot determine the cause of death).

2. *See* CAL. HEALTH & SAFETY CODE § 462(b) (amended by Chapter 268) (promulgating that the agent be an appropriately trained public health official). *See also id.* § 462(a)(1) (amended by Chapter 268) (definition of appropriately trained public health official).

3. *See id.* § 462(a)(2) (amended by Chapter 268) (definition of contact as a face-to-face visit, group visit, or telephone call which provides one of the following: (1) An assessment of the family, child care provider or both; (2) crisis intervention counseling; (3) a referral to a community service; or (4) a follow up assessment of families, the child care provider or both).

4. *Id.* § 462(b) (amended by Chapter 268). Existing law also requires the Coroner to notify the county health officer within 24 hours of the death of an infant who is less then one year old. *Id.* § 10253 (amended by Chapter 268). *See id.* § 217(b) (West 1990) (establishing the SIDS Advisory Council). *See also id.* § 218 (West 1990) (providing that the California State Department shall keep each county health officer advised of current knowledge about SIDS); *id.* § 219(b) (West 1990) (requiring the State Department to provide training and education on SIDS to those who interact with parents and caregivers following a death from SIDS); *id.* § 1797.193(a) (West Supp. 1991) (discussing firefighting training on SIDS). *Cf.* MO. ANN. STAT. § 194.117 (Vernon 1983) (promulgating the Health Department to promptly advise and supply information to the parents or guardian of the infant who died from SIDS).

5. CAL. HEALTH & SAFETY CODE § 462(a)(4) (amended by Chapter 268) (definition of local health officer).

6. *See id.* § 462(a)(3) (amended by Chapter 268) (defining immediately as three working days from notice by Coroner).

7. *Id.* § 462(b) (amended by Chapter 268).

Health and Welfare; support enforcement--role of district attorney and Attorney General

Code of Civil Procedure §§ 1674, 1680, 1698.2 (amended);
Welfare and Institutions Code § 11478.2 (new).
SB 106 (Lockyer); 1991 STAT. Ch. 495

Under existing law, every individual must support that individual's spouse and child.[1] Existing law also provides that the district attorney shall establish, modify, and enforce child and spousal support orders.[2] Recent case and statutory law have created uncertainty as to whether an attorney-client relationship is formed between the district attorney or the Attorney General and the obligee in a support enforcement action.[3] Chapter 495 specifies that the district attorney and Attorney General represent the public interest in enforcing support obligations, and that no attorney-client relationship is created with the obligee.[4] Chapter 495 requires the district attorney to give notice to an obligee that no attorney-client relationship will be formed, and that the district attorney does not

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1. CAL. CIV. CODE § 242 (West Supp. 1991).

2. CAL. WELF. & INST. CODE § 11475.1(a) (West 1991). The support enforcement services provided by the district attorney are available to individuals who are not receiving public assistance as well as to those who are. *Id.* § 11475.1(d) (West 1991). Once an individual receives welfare, all child support rights are automatically assigned to the county. *Id.* § 11477(a) (West 1991). *See* Smith v. Superior Ct., 118 Cal. App. 3d 512, 516-17, 173 Cal. Rptr. 437, 439 (1981) (stating that support services do not extend to covering attorneys' fees and costs for the respondent in a support enforcement action). *See generally,* Lee, *District Attorney Collection of Child Support: The Need For Reform,* 55 CAL. ST. B.J. 156 (1980) (discussing problems with the current enforcement system utilized by the district attorney, and possibilities for reform).

3. *See, eg.,* Monterey County v. Cornejo, 227 Cal. App. 3d 1027, 1033, 266 Cal. Rptr. 68, 71 (1990), *aff'd,* 53 Cal. 3d 1271, 812 P.2d 586, 283 Cal. Rptr. 405 (1991) (implying that an attorney-client relationship exists between the district attorney and custodial parent in a child support modification action by permitting an award of the right to claim a tax dependency deduction in the same action for child support enforcement). In affirming, the California Supreme Court stated that characterizing the relationship between the district attorney and the custodial parent as that of attorney-client did not present a problem, and that the inclusion of a tax dependency deduction claim in the child support enforcement action was justified to prevent the unnecessary expenditure of additional public funds. Monterey County v. Cornejo, 53 Cal.3d 1271, 1284, 812 P.2d 586, 283 Cal. Rptr. 405 (1991). *See also* CAL. CIV. PROC. CODE § 1698.2 (amended by Chapter 495) (providing that the prosecuting attorney shall "represent" the obligee in an enforcement action).

4. CAL. WELF. & INST. CODE § 11478.2(a) (enacted by Chapter 495). Chapter 495 provides that this is declarative of existing law. *Id.* § 11478.2(b) (enacted by Chapter 495).

represent the obligee.[5] Chapter 495 also requires the district attorney to give notice to an obligee of various other items regarding support enforcement.[6]

ACS

Health and Welfare; trustline

Education Code §§ 8170, 8171, 8172, 8173, 8174, 8175, 8176, 8177, 8178, 8179, 8180 (new).
AB 1379 (Baker); 1991 STAT. Ch. 660

Under prior law, any child care provider[1] who was not required to be licensed[2] could initiate a background check for the purpose of putting the provider's name on a child care registry (trustline) administered by the State Department of Social Services (SDSS) in specified counties.[3] In order to have the provider's name put on the registry under prior law, the provider was required to submit

5. *Id.* §11478.2(c) (enacted by Chapter 495). The notice must indicate that a lack of an attorney-client relationship means that communications are not privileged and that the district attorney can represent the other parent in the future. *Id.*

6. *Id.* § 11478.2(f)-(g) (enacted by Chapter 495). The district attorney must give reasonable notice to an obligee of the date, time, and purpose of every hearing in a civil action for support. *Id.* The district attorney must also notify an obligee of all orders obtained regarding support obligations. *Id.* § 11478.2(g) (enacted by Chapter 495).

1. *See* CAL. HEALTH & SAFETY CODE § 1596.791 (West 1990) (definition of child care provider).

2. *See id.* § 1596.80 (West 1990) (licensing requirement for child care providers); § 1596.792 (West Supp. 1991) (providing exemptions from the licensing requirement). *See also* North Valley Baptist Church v. McMahon, 696 F. Supp. 518, 524-28 (E.D. Cal. 1988) (holding that the licensing requirement was within the authority of the SDSS, and specifically that such a requirement on a church-affiliated child care center was constitutional).

3. 1988 Stat. ch. 1540, sec. 2, at 4282 (enacting CAL. HEALTH & SAFETY CODE § 1597.80-1597.90). The trustline registry applied only to San Francisco, Alameda, Contra Costa, Santa Clara and San Diego counties. *Id.* § 1597.86 (West 1990). The sections creating the registry in the specified counties became inoperative as of June 30, 1991. *Id.* § 1597.88 (West 1990).

two sets of fingerprints and one form of identification[4] to the Department of Justice, which would be responsible for checking the provider's background for any prior convictions.[5] Chapter 660 re-establishes the trustline on a statewide basis.[6] Chapter 660 requires, however, that the applicant submit only one set of fingerprints.[7] In addition, Chapter 660 provides for different classifications for the provider during and after the application process.[8] Chapter 660 also provides that the California Child Care Resource and Referral Network will be responsible for establishing, maintaining and promoting a toll-free telephone line to allow parents to determine if a specific provider is in the trustline registry.[9]

BMW

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4. *See* 1988 Stat. ch. 1540, sec. 2, at 4282 (enacting CAL. HEALTH & SAFETY CODE § 1597.80(a)) (providing that either a valid California driver's license or identification card could be used to initiate the search).

5. 1988 Stat. ch. 1540, sec. 2, at 4282 (enacting CAL. HEALTH & SAFETY CODE §§ 1597.82-1597.83) (requiring the Department of Justice to submit for screening one set of fingerprints to the Federal Bureau of Investigation (FBI), and to retain the other set to search the Criminal History System and the Child Abuse Central Index). *See* CAL. PENAL CODE § 11105 (West Supp. 1991) (requiring the Department of Justice to maintain the Criminal History System); § 11170(a) (West Supp. 1991) (requiring the Department of Justice to maintain the Child Abuse Central Index). *See also* 65 Ops. Cal. Atty. Gen. 335, 345 (1982) (providing that the information in the Child Abuse Index must be provided to child protection agencies, and such disclosure does not violate the provider's right to privacy).

6. CAL. EDUC. CODE §§ 8170-8180 (enacted by Chapter 660).

7. *Id.*

8. *Id.* § 8172 (enacted by Chapter 660). The provider is termed a "trustline applicant" by submitting a trustline application and fingerprints to the Department of Justice. *Id.* § 8172(a). The provider is classified as a "registered trustline child care provider" if the searches of the Child Abuse Index and the Criminal History System do not turn up any prior convictions other than minor traffic violations. *Id.* § 8172(b). If the applicant's record prevents the Department of Justice from approving the application, the provider shall have 15 days to appeal the decision. *Id.* § 8172(d)(2).

9. *Id.* § 8174(a)(1) (enacted by Chapter 660).

Health and Welfare; underground storage tanks--tank testers

Health and Safety Code § 25284.4 (amended).
AB 1359 (Cortese); 1991 STAT. Ch. 708

Under existing law, a tank tester[1] must be licensed by the State Water Resources Control Board (Board)[2] to perform any tank integrity tests[3] on underground storage tanks.[4] Prior law required that an applicant for licensing either demonstrate one year of experience or pass a course and test administered by the Board.[5] Chapter 708 requires all applicants for a tank tester license to pass a specified examination[6] and to have either one year of experience testing storage tanks or six months experience and the completion of a course of study.[7]

Prior law required that the board adopt regulations necessary to implement tank tester licensing.[8] Chapter 708 eliminates this requirement.[9]

JEL

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1. *See* CAL. HEALTH & SAFETY CODE § 25281(v) (West Supp. 1991) (definition of tank tester).

2. *See* CAL. WATER CODE § 175 (West Supp. 1991) (creating the Water Resources Control Board).

3. *See* CAL. HEALTH & SAFETY CODE § 25281(u) (West Supp. 1991) (definition of tank integrity test).

4. *Id.* § 25284.4(a) (amended by Chapter 708). *See id.* § 25281(x) (West Supp. 1991) (definition of underground storage tank).

5. 1987 Cal. Stat. ch. 1372, sec. 3, at 8 (amending CAL. HEALTH & SAFETY CODE § 25284.4) (amended by Chapter 708).

6. *See* CAL. HEALTH & SAFETY CODE § 25284.4(c)(2) (amended by Chapter 708) (requiring the examination to test the applicant's knowledge of the following: (1) General tank and pipeline testing principles; (2) basic mathematics involved in tank testing; (3) specific test procedures, principles, and operation of equipment; (4) regulations and laws regarding underground storage tanks; and (5) proper safety procedures).

7. *Id.* § 25284.4(c)(1)(A)-(B) (amended by Chapter 708). *Cf.* R.I. GEN. LAWS § 46-12-38 (1991) (requiring only payment of a licensing fee).

8. 1987 Cal. Stat. ch. 1372, sec. 3, at 8 (amending CAL. HEALTH & SAFETY CODE § 25284.4) (amended by Chapter 708).

9. CAL. HEALTH & SAFETY CODE § 25284.4 (amended by Chapter 708).