

## Senate Bill No. 1849

### CHAPTER 760

An act to amend Sections 6731.1, 7581.2, 7588, 8726, 8771, 9882, 9884.7, 10232, 10232.4, 22351.5, and 22355 of, to amend, repeal, and add Section 19161 of, to add Section 7574.4 to, and to repeal Sections 7612 and 9610 of, the Business and Professions Code, and to amend Sections 44024.5 and 44062.1 of the Health and Safety Code, relating to professions and vocations.

[Approved by Governor September 29, 2006. Filed with  
Secretary of State September 29, 2006.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 1849, Committee on Business, Professions and Economic Development. Professions and vocations.

(1) Existing law requires the Cemetery and Funeral Bureau to conduct a comprehensive study on the need to regulate third-party casket retailers and on the need for the regulation of proprietary employees of religious corporations, churches, religious societies, and religious denominations, and to report to the Department of Consumer Affairs and to the Joint Committee on Boards, Commissions and Consumer Protection by September 1, 2004.

This bill would repeal these provisions.

(2) Existing law, the Proprietary Security Services Act, requires a person who meets the definition of a proprietary private security officer to register with the Department of Consumer Affairs.

This bill would authorize a person registered with the department as a proprietary private security officer to request a review by the private security disciplinary review committee, which is established in the Private Security Services Act, to contest the assessment of an administrative fine or to appeal a denial, revocation, or suspension of registration.

(3) Existing law, the Private Security Services Act, provides for the licensing and regulation of private security services and establishes two private disciplinary review committees to perform specified functions relative to various private security services.

This bill would require those private disciplinary review committees to expand their functions to include reviews of registered proprietary private security officers.

(4) Existing law provides for the licensing and regulation of professional engineers and land surveyors by the Board of Professional Engineers and Land Surveyors in the Department of Consumer Affairs. Existing law specifies that a person practices land surveying when he or she does or offers to do, among other things, certain acts regarding the

earth's surface or relative fixed objects and geodetic or cadastral surveying. Existing law makes practicing or offering to practice engineering or land surveying without legal authorization a crime.

This bill would revise the acts that constitute the practice of civil engineering to include determining the configuration of the earth's surface or the position of fixed objects above, on, or below the surface of earth by applying the principles of trigonometry or photogrammetry. The bill would revise the acts that constitute the practice of civil engineering or the practice of land surveying to include rendering a statement regarding the accuracy of maps or measured survey data. The bill would also revise the definition of geodetic or cadastral surveying.

Because this bill would expand the definitions of civil engineering and land surveying, the unauthorized practice or offer to practice of which is a crime, it would impose a state-mandated local program.

(5) Existing law, the Automotive Repair Act, establishes in the Department of Consumer Affairs a Bureau of Automotive Repair under the supervision and control of the Director of Consumer Affairs. Existing law authorizes the director to refuse to validate, or to temporarily or permanently invalidate, the registration of an automotive repair dealer for specified acts or omissions related to the conduct of the business of the automotive repair dealer.

This bill would make technical changes to those provisions.

(6) Existing law, the Real Estate Law, exempts personal property brokers, commercial finance lenders, and consumer finance lenders from certain reporting and disclosure requirements relative to loans secured by real property.

This bill would delete personal property brokers, commercial finance lenders, and consumer finance lenders from these exemptions and instead provide that finance lenders are exempt from the reporting and disclosure requirements.

(7) Existing law, the Home Furnishings and Thermal Insulation Act, requires all mattresses and box springs manufactured for sale in this state to be fire retardant. Existing law requires the Bureau of Home Furnishings and Thermal Insulation to adopt regulations by January 1, 2004, requiring that fire retardant mattresses and box springs meet a specified resistance to open flame test.

This bill would, effective July 1, 2007, change the criteria for fire retardant mattresses and mattress sets to the standards for resistance to open-flame test adopted by the United States Consumer Product Safety Commission. The bill would require that other bedding products that the bureau determines contribute to mattress fires comply with regulations adopted by it.

(8) Existing law requires process servers to be registered with the county clerk of the county in which he or she resides or has a principal place of business. Existing law requires a process server, at the time of filing an initial certificate of registration, to also submit 2 completed fingerprint cards for submission to the Department of Justice and the

Federal Bureau of Investigation in order to verify that the process server has not been convicted of a felony.

This bill would require a process server, at the time of filing an initial certificate of registration, to submit a completed Request for Live Scan form instead of the fingerprint cards, and would make related changes.

(9) Existing law requires the Department of Consumer Affairs to compile and maintain statistical and emission profiles of motor vehicles that are subject to the motor vehicle inspection program. Existing law authorizes the department to conduct a pilot program to except specified vehicles from certain biennial certification requirements. Existing law requires the department as part of the pilot program to, by June 30, 2000, evaluate standards for the operation of remote sensing equipment.

Existing law requires the department to offer a repair assistance program for certain individuals who have failed a smog check inspection. Existing law requires the department to collect data, develop information, and report to the Legislature by April 1, 1999, on the repair assistance program.

This bill would delete these provisions that were required to be completed by June 30, 2000, and April 1, 1999.

(10) This bill would incorporate additional changes in Section 44062.1 of the Health and Safety Code proposed by AB 1870, that would become operative only if AB 1870 and this bill are both chaptered and become effective on or before January 1, 2007, and this bill is chaptered last.

(11) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

SECTION 1. Section 6731.1 of the Business and Professions Code is amended to read:

6731.1. Civil engineering also includes the practice or offer to practice, either in a public or private capacity, all of the following:

(a) Locates, relocates, establishes, reestablishes, or retraces the alignment or elevation for any of the fixed works embraced within the practice of civil engineering, as described in Section 6731.

(b) Determines the configuration or contour of the earth's surface or the position of fixed objects above, on, or below the surface of earth by applying the principles of trigonometry or photogrammetry.

(c) Creates, prepares, or modifies electronic or computerized data in the performance of the activities described in subdivisions (a) and (b).

(d) Renders a statement regarding the accuracy of maps or measured survey data pursuant to subdivisions (a), (b), and (c).

SEC. 2. Section 7574.4 is added to the Business and Professions Code, to read:

7574.4. (a) A person registered with the department under this chapter may request a review by the private security disciplinary review committee, as established in Section 7581.1, to contest the assessment of an administrative fine or to appeal a denial, revocation, or suspension of a registration unless the denial, revocation, or suspension is ordered by the director in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

A request for a review shall be by written notice to the department within 30 days of the issuance of the citation and assessment, denial, revocation, or suspension.

Following a review by a disciplinary review committee, the appellant shall be notified within 30 days, in writing, by regular mail, of the committee's decision.

If the appellant disagrees with the decision made by a disciplinary review committee, he or she may request a hearing in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. A request for a hearing following a decision by a disciplinary review committee shall be by written notice to the department within 30 days following notice of the committee's decision.

If the appellant does not request a hearing within 30 days, the review committee's decision shall become final.

(b) Notwithstanding subdivision (a), where a hearing is held under this chapter to determine whether an application for registration should be granted, the proceedings shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the director shall have all of the powers granted therein.

SEC. 3. Section 7581.2 of the Business and Professions Code is amended to read:

7581.2. Each disciplinary review committee shall perform the following functions as they pertain to private patrol operators, security guards, firearm qualification cardholders, firearm training facilities, firearm training instructors, baton training facilities, and baton training instructors, as licensed, certified, or registered by the bureau under this chapter, and proprietary security officers, as registered by the bureau under Chapter 11.4 (commencing with Section 7574):

(a) Affirm, rescind, or modify all appealed decisions which concern administrative fines assessed by the director.

(b) Affirm, rescind, or modify all appealed decisions which concern denials, revocations, or suspensions of a license, certificate, or registration except denials, revocations, or suspensions ordered by the director in accordance with Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code.

SEC. 4. Section 7588 of the Business and Professions Code is amended to read:

7588. The fees prescribed by this chapter are as follows:

(a) The application and examination fee for an original license for a private patrol operator may not exceed five hundred dollars (\$500).

(b) The application fee for an original branch office certificate for a private patrol operator may not exceed two hundred fifty dollars (\$250).

(c) The fee for an original license for a private patrol operator may not exceed seven hundred dollars (\$700).

(d) The renewal fee is as follows:

(1) For a license as a private patrol operator, the fee may not exceed seven hundred dollars (\$700).

(2) For a combination license as a private investigator under Chapter 11.3 (commencing with Section 7512) and private patrol operator, AC or DC prefix, the fee may not exceed six hundred dollars (\$600).

(3) For a branch office certificate for a combination private investigator under Chapter 11.3 (commencing with Section 7512) and private patrol operator, the fee may not exceed forty dollars (\$40), and for a private patrol operator, the fee may not exceed seventy-five dollars (\$75).

(e) The delinquency fee is 50 percent of the renewal fee in effect on the date of expiration.

(f) A reinstatement fee is equal to the amount of the renewal fee plus the regular delinquency fee.

(g) The fee for reexamination of an applicant or his or her manager shall be the actual cost to the bureau for developing, purchasing, grading, and administering each examination.

(h) Registration fees pursuant to this chapter are as follows:

(1) A registration fee for a security guard shall not exceed fifty dollars (\$50).

(2) A security guard registration renewal fee shall not exceed thirty-five dollars (\$35).

(i) Fees to carry out other provisions of this chapter are as follows:

(1) A firearms qualification fee may not exceed eighty dollars (\$80).

(2) A firearms requalification fee may not exceed sixty dollars (\$60).

(3) An initial baton certification fee may not exceed fifty dollars (\$50).

(4) An application fee and renewal fee for certification as a firearms training facility or a baton training facility may not exceed five hundred dollars (\$500).

(5) An application fee and renewal fee for certification as a firearms training instructor or a baton training instructor may not exceed two hundred fifty dollars (\$250).

SEC. 5. Section 7612 of the Business and Professions Code is repealed.

SEC. 6. Section 8726 of the Business and Professions Code is amended to read:

8726. A person, including any person employed by the state or by a city, county, or city and county within the state, practices land surveying

within the meaning of this chapter who, either in a public or private capacity, does or offers to do any one or more of the following:

(a) Locates, relocates, establishes, reestablishes, or retraces the alignment or elevation for any of the fixed works embraced within the practice of civil engineering, as described in Section 6731.

(b) Determines the configuration or contour of the earth's surface, or the position of fixed objects above, on, or below the surface of the earth by applying the principles of mathematics or photogrammetry.

(c) Locates, relocates, establishes, reestablishes, or retraces any property line or boundary of any parcel of land, right-of-way, easement, or alignment of those lines or boundaries.

(d) Makes any survey for the subdivision or resubdivision of any tract of land. For the purposes of this subdivision, the term "subdivision" or "resubdivision" shall be defined to include, but not be limited to, the definition in the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the Government Code) or the Subdivided Lands Law (Chapter 1 (commencing with Section 11000) of Part 2 of Division 4 of this code).

(e) By the use of the principles of land surveying determines the position for any monument or reference point which marks a property line, boundary, or corner, or sets, resets, or replaces any monument or reference point.

(f) Geodetic or cadastral surveying. As used in this chapter, geodetic surveying means performing surveys, in which account is taken of the figure and size of the earth to determine or predetermine the horizontal or vertical positions of fixed objects thereon or related thereto, geodetic control points, monuments, or stations for use in the practice of land surveying or for stating the position of fixed objects, geodetic control points, monuments, or stations by California Coordinate System coordinates.

(g) Determines the information shown or to be shown on any map or document prepared or furnished in connection with any one or more of the functions described in subdivisions (a), (b), (c), (d), (e), and (f).

(h) Indicates, in any capacity or in any manner, by the use of the title "land surveyor" or by any other title or by any other representation that he or she practices or offers to practice land surveying in any of its branches.

(i) Procures or offers to procure land surveying work for himself, herself, or others.

(j) Manages, or conducts as manager, proprietor, or agent, any place of business from which land surveying work is solicited, performed, or practiced.

(k) Coordinates the work of professional, technical, or special consultants in connection with the activities authorized by this chapter.

(l) Determines the information shown or to be shown within the description of any deed, trust deed, or other title document prepared for the purpose of describing the limit of real property in connection with any one or more of the functions described in subdivisions (a) to (f), inclusive.

(m) Creates, prepares, or modifies electronic or computerized data in the performance of the activities described in subdivisions (a), (b), (c), (d), (e), (f), (k), and (l).

(n) Renders a statement regarding the accuracy of maps or measured survey data.

Any department or agency of the state or any city, county, or city and county that has an unregistered person in responsible charge of land surveying work on January 1, 1986, shall be exempt from the requirement that the person be licensed as a land surveyor until the person currently in responsible charge is replaced.

The review, approval, or examination by a governmental entity of documents prepared or performed pursuant to this section shall be done by, or under the direct supervision of, a person authorized to practice land surveying.

SEC. 7. Section 8771 of the Business and Professions Code is amended to read:

8771. (a) Monuments set shall be sufficient in number and durability and efficiently placed so as not to be readily disturbed, to assure, together with monuments already existing, the perpetuation or facile reestablishment of any point or line of the survey.

(b) When monuments exist that control the location of subdivisions, tracts, boundaries, roads, streets, or highways, or provide horizontal or vertical survey control, the monuments shall be located and referenced by or under the direction of a licensed land surveyor or registered civil engineer prior to the time when any streets, highways, other rights-of-way, or easements are improved, constructed, reconstructed, maintained, resurfaced, or relocated, and a corner record or record of survey of the references shall be filed with the county surveyor. They shall be reset in the surface of the new construction, a suitable monument box placed thereon, or permanent witness monuments set to perpetuate their location if any monument could be destroyed, damaged, covered, or otherwise obliterated, and a corner record or record of survey filed with the county surveyor prior to the recording of a certificate of completion for the project. Sufficient controlling monuments shall be retained or replaced in their original positions to enable property, right-of-way and easement lines, property corners, and subdivision and tract boundaries to be reestablished without devious surveys necessarily originating on monuments differing from those that currently control the area. It shall be the responsibility of the governmental agency or others performing construction work to provide for the monumentation required by this section. It shall be the duty of every land surveyor or civil engineer to cooperate with the governmental agency in matters of maps, field notes, and other pertinent records. Monuments set to mark the limiting lines of highways, roads, streets or right-of-way or easement lines shall not be deemed adequate for this purpose unless specifically noted on the corner record or record of survey of the improvement works with direct ties in

bearing or azimuth and distance between these and other monuments of record.

(c) The decision to file either the required corner record or a record of survey pursuant to subdivision (b) shall be at the election of the licensed land surveyor or registered civil engineer submitting the document.

SEC. 8. Section 9610 of the Business and Professions Code is repealed.

SEC. 9. Section 9882 of the Business and Professions Code is amended to read:

9882. (a) There is in the Department of Consumer Affairs a Bureau of Automotive Repair under the supervision and control of the director. The duty of enforcing and administering this chapter is vested in the chief who is responsible to the director. The director may adopt and enforce those rules and regulations that he or she determines are reasonably necessary to carry out the purposes of this chapter and declaring the policy of the bureau, including a system for the issuance of citations for violations of this chapter as specified in Section 125.9. These rules and regulations shall be adopted pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) In 2003 and every four years thereafter, the Joint Committee on Boards, Commissions, and Consumer Protection shall hold a public hearing to receive testimony from the Director of Consumer Affairs and the bureau. In those hearings, the bureau shall have the burden of demonstrating a compelling public need for the continued existence of the bureau and its regulatory program, and that its function is the least restrictive regulation consistent with the public health, safety, and welfare. The committee shall evaluate and review the effectiveness and efficiency of the bureau based on factors and minimum standards of performance that are specified in Section 473.4. The committee shall report its findings and recommendations as specified in Section 473.5. The bureau shall prepare an analysis and submit a report to the committee as specified in Section 473.2.

SEC. 10. Section 9884.7 of the Business and Professions Code is amended to read:

9884.7. (a) The director, where the automotive repair dealer cannot show there was a bona fide error, may refuse to validate, or may invalidate temporarily or permanently, the registration of an automotive repair dealer for any of the following acts or omissions related to the conduct of the business of the automotive repair dealer, which are done by the automotive repair dealer or any automotive technician, employee, partner, officer, or member of the automotive repair dealer.

(1) Making or authorizing in any manner or by any means whatever any statement written or oral which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.

(2) Causing or allowing a customer to sign any work order that does not state the repairs requested by the customer or the automobile's odometer reading at the time of repair.

(3) Failing or refusing to give to a customer a copy of any document requiring his or her signature, as soon as the customer signs the document.

(4) Any other conduct which constitutes fraud.

(5) Conduct constituting gross negligence.

(6) Failure in any material respect to comply with the provisions of this chapter or regulations adopted pursuant to it.

(7) Any willful departure from or disregard of accepted trade standards for good and workmanlike repair in any material respect, which is prejudicial to another without consent of the owner or his or her duly authorized representative.

(8) Making false promises of a character likely to influence, persuade, or induce a customer to authorize the repair, service, or maintenance of automobiles.

(9) Having repair work done by someone other than the dealer or his or her employees without the knowledge or consent of the customer unless the dealer can demonstrate that the customer could not reasonably have been notified.

(10) Conviction of a violation of Section 551 of the Penal Code.

Upon refusal to validate a registration, the director shall notify the applicant thereof, in writing, by personal service or mail addressed to the address of the applicant set forth in the application, and the applicant shall be given a hearing under Section 9884.12 if, within 30 days thereafter, he or she files with the bureau a written request for hearing, otherwise the refusal is deemed affirmed.

(b) Except as provided for in subdivision (c), if an automotive repair dealer operates more than one place of business in this state, the director pursuant to subdivision (a) shall only invalidate temporarily or permanently the registration of the specific place of business which has violated any of the provisions of this chapter. This violation, or action by the director, shall not affect in any manner the right of the automotive repair dealer to operate his or her other places of business.

(c) Notwithstanding subdivision (b), the director may invalidate temporarily or permanently, the registration for all places of business operated in this state by an automotive repair dealer upon a finding that the automotive repair dealer has, or is, engaged in a course of repeated and willful violations of this chapter, or regulations adopted pursuant to it.

SEC. 11. Section 10232 of the Business and Professions Code is amended to read:

10232. (a) Except as otherwise expressly provided, Sections 10232.2, 10232.25, 10233, and 10236.6 are applicable to every real estate broker who intends or reasonably expects in a successive 12 months to do any of the following:

(1) Negotiate a combination of 10 or more of the following transactions pursuant to subdivision (d) or (e) of Section 10131 or Section 10131.1 in an aggregate amount of more than one million dollars (\$1,000,000):

(A) Loans secured directly or collaterally by liens on real property or on business opportunities as agent for another or others.

(B) Sales or exchanges of real property sales contracts or promissory notes secured directly or collaterally by liens on real property or on business opportunities as agent for another or others.

(C) Sales or exchanges of real property sales contracts or promissory notes secured directly or collaterally by liens on real property as the owner of those notes or contracts.

(2) Make collections of payments in an aggregate amount of two hundred fifty thousand dollars (\$250,000) or more on behalf of owners of promissory notes secured directly or collaterally by liens on real property, owners of real property sales contracts, or both.

(3) Make collections of payments in an aggregate amount of two hundred fifty thousand dollars (\$250,000) or more on behalf of obligors of promissory notes secured directly or collaterally by liens on real property, lenders of real property sales contracts, or both.

Persons under common management, direction, or control in conducting the activities enumerated above shall be considered as one person for the purpose of applying the above criteria.

(b) The negotiation of a combination of two or more new loans and sales or exchanges of existing promissory notes and real property sales contracts of an aggregate amount of more than two hundred fifty thousand dollars (\$250,000) in any three successive months or a combination of five or more new loans and sales or exchanges of existing promissory notes and real property sales contracts of an aggregate amount of more than five hundred thousand dollars (\$500,000) in any successive six months shall create a rebuttable presumption that the broker intends to negotiate new loans and sales and exchanges of an aggregate amount that will meet the criteria of subdivision (a).

(c) In determining the applicability of Sections 10232.2, 10232.25, 10233, and 10236.6, loans or sales negotiated by a broker, or for which a broker collects payments or provides other servicing for the owner of the note or contract, shall not be counted in determining whether the broker meets the criteria of subdivisions (a) and (b) if any of the following apply:

(1) The lender or purchaser is any of the following:

(A) The Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, and the United States Department of Veterans Affairs.

(B) A bank or subsidiary thereof, bank holding company or subsidiary thereof, trust company, savings bank or savings and loan association or subsidiary thereof, savings bank or savings association holding company or subsidiary thereof, credit union, industrial bank or industrial loan company, finance lender, or insurer doing business under the authority of,

and in accordance with, the laws of this state, any other state, or the United States relating to banks, trust companies, savings banks or savings associations, credit unions, industrial banks or industrial loan companies, commercial finance lenders, or insurers, as evidenced by a license, certificate, or charter issued by the United States or a state, district, territory, or commonwealth of the United States.

(C) Trustees of a pension, profit-sharing, or welfare fund, if the pension, profit-sharing, or welfare fund has a net worth of not less than fifteen million dollars (\$15,000,000).

(D) A corporation with outstanding securities registered under Section 12 of the Securities Exchange Act of 1934 or a wholly owned subsidiary of that corporation.

(E) A syndication or other combination of any of the entities specified in subparagraph (A), (B), (C), or (D) that is organized to purchase the promissory note.

(F) The California Housing Finance Agency or a local housing finance agency organized under the Health and Safety Code.

(G) A licensed residential mortgage lender or servicer acting under the authority of that license.

(H) An institutional investor that issues mortgage-backed securities, as specified in paragraph (11) of subdivision (i) of Section 50003 of the Financial Code.

(I) A licensed real estate broker selling all or part of the loan, the note, or the contract to a lender or purchaser specified in subparagraphs (A) to (H), inclusive.

(2) The loan or sale is negotiated, or the loan or contract is being serviced for the owner, under authority of a permit issued pursuant to applicable provisions of the Corporate Securities Law of 1968 (Division 1 (commencing with Section 25000) of Title 4 of the Corporations Code).

(3) The transaction is subject to the requirements of Article 3 (commencing with Section 2956) of Chapter 2 of Title 14 of Part 4 of Division 3 of the Civil Code.

(d) If two or more real estate brokers who are not under common management, direction, or control cooperate in the negotiation of a loan or the sale or exchange of a promissory note or real property sales contract and share in the compensation for their services, the dollar amount of the transaction shall be allocated according to the ratio that the compensation received by each broker bears to the total compensation received by all brokers for their services in negotiating the loan or sale or exchange.

(e) A real estate broker who meets any of the criteria of subdivision (a) or (b) shall notify the department in writing within 30 days after that determination is made.

SEC. 12. Section 10232.4 of the Business and Professions Code is amended to read:

10232.4. (a) In making a solicitation to a particular person and in negotiating with that person to make a loan secured by real property or to purchase a real property sales contract or a note secured by a deed of trust,

a real estate broker shall deliver to the person solicited the applicable completed statement described in Section 10232.5 as early as practicable before he or she becomes obligated to make the loan or purchase and, except as provided in subdivision (c), before the receipt by or on behalf of the broker of any funds from that person. The statement shall be signed by the prospective lender or purchaser and by the real estate broker, or by a real estate salesperson licensed to the broker, on the broker's behalf. When so executed, an exact copy shall be given to the prospective lender or purchaser, and the broker shall retain a true copy of the executed statement for a period of three years.

(b) The requirement of delivery of a disclosure statement pursuant to subdivision (a) shall not apply with respect to the following persons:

(1) The prospective purchaser of a security offered under authority of a permit issued pursuant to applicable provisions of the Corporate Securities Law of 1968 (Division 1 (commencing with Section 25000) of Title 4 of the Corporations Code) that require that each prospective purchaser of a security be given a prospectus or other form of disclosure statement approved by the department issuing the permit.

(2) The seller of real property who agrees to take back a promissory note of the purchaser as a method of financing all or a part of the purchase of the property.

(3) The prospective purchaser of a security offered pursuant to and in accordance with a regulation duly adopted by the Commissioner of Corporations granting an exemption from qualification under the Corporate Securities Law of 1968 for the offering if one of the conditions of the exemption is that each prospective purchaser of the security be given a disclosure statement prescribed by the regulation before the prospective purchaser becomes obligated to purchase the security.

(4) A prospective lender or purchaser, if that lender or purchaser is any of the following:

(A) The United States or any state, district, territory, or commonwealth thereof, or any city, county, city and county, public district, public authority, public corporation, public entity, or political subdivision of a state, district, territory, or commonwealth of the United States, or any agency or corporate or other instrumentality of any one or more of the foregoing, including the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, and the Veteran's Administration.

(B) Any bank or subsidiary thereof, bank holding company or subsidiary thereof, trust company, savings bank or savings and loan association or subsidiary thereof, savings bank or savings association holding company or subsidiary thereof, credit union, industrial bank or industrial loan company, finance lender, or insurance company doing business under the authority of, and in accordance with, the laws of this state, any other state, or of the United States relating to banks, trust companies, savings banks or savings associations, credit unions, industrial

banks or industrial loan companies, commercial finance lenders, or insurance companies, as evidenced by a license, certificate, or charter issued by the United States or any state, district, territory, or commonwealth of the United States.

(C) Trustees of pension, profitsharing, or welfare fund, if the pension, profitsharing, or welfare fund has a net worth of not less than fifteen million dollars (\$15,000,000).

(D) Any corporation with outstanding securities registered under Section 12 of the Securities Exchange Act of 1934 or any wholly owned subsidiary of that corporation.

(E) Any syndication or other combination of any of the entities specified in subparagraph (A), (B), (C), or (D) which is organized to purchase the promissory note.

(F) A licensed real estate broker engaging in the business of selling all or part of the loan, note, or contract to a lender or purchaser to whom no disclosure is required pursuant to this subdivision.

(G) A licensed residential mortgage lender or servicer when acting under the authority of that license.

(c) When the broker has custody of funds of a prospective lender or purchaser which were received and are being maintained with the express permission of the owner and in accordance with law, and the broker retains the funds in an escrow depository or a trust fund account pending receipt of the owner's express written instructions to disburse the funds for a loan or purchase, the broker shall cause the disclosure statement to be delivered to the owner and shall obtain the owner's written consent to the proposed disbursement before making the disbursement. Unless the broker has a written agreement with the owner as provided in Section 10231.1, the broker shall transmit to the owner not later than 25 days after receipt, all funds then in the broker's custody for which the owner has not given written instructions authorizing disbursement.

SEC. 13. Section 19161 of the Business and Professions Code is amended to read:

19161. (a) All mattresses and mattress sets manufactured for sale in this state shall be fire retardant. The bureau shall adopt regulations no later than January 1, 2004, requiring that fire retardant mattresses and mattress sets meet a resistance to open-flame test that uses a pass or fail performance criteria based on a test method developed by the bureau or that is based on ASTM E 1590. If the bureau concludes that other bedding contributes to mattress fires, the regulations shall require the other bedding to be flame retardant under the resistance to open-flame test. If feasible, the bureau's regulations shall permit a manufacturer to comply with the resistance to open-flame test by testing a small scale version of its product. In developing these regulations, the bureau may contract, cooperate, or otherwise share resources with other government agencies, private organizations, or independent contractors that it considers appropriate for purposes of reviewing test criteria and methods, equipment specifications, and other relevant subjects. These regulations shall become inoperative

upon the effective date of any federal law or regulation establishing an open-flame resistance standard for these products. The bureau shall submit a report to the Legislature on or before January 1, 2004, summarizing its regulatory findings.

(b) Requirements for flame resistant mattresses, mattress sets, or other bedding products shall not apply to any hotel, motel, bed and breakfast, inn, or similar transient lodging establishment that has an automatic fire extinguishing system that conforms to the specifications established in Section 904.1 of Title 24 of the California Code of Regulations.

(c) All seating furniture sold or offered for sale by an importer, manufacturer, or wholesaler for use in this state, including any seating furniture sold to or offered for sale for use in a hotel, motel, or other place of public accommodation in this state, and reupholstered furniture to which filling materials are added, shall be fire retardant and shall be labeled in a manner specified by the bureau.

(d) "Fire retardant," as used in this section, means a product that meets the regulations adopted by the bureau. This does not include furniture used exclusively for the purpose of physical fitness and exercise.

(e) This section shall become inoperative on July 1, 2007, and, as of January 1, 2008, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2008, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 14. Section 19161 is added to the Business and Professions Code, to read:

19161. (a) All mattresses and mattress sets manufactured for sale in this state shall be fire retardant. "Fire retardant," as used in this section, means a product that meets the standards for resistance to open-flame test adopted by the United States Consumer Product Safety Commission and set forth in Section 1633 and following of Title 16 of the Code of Federal Regulations. The bureau may adopt regulations it deems necessary to implement those standards.

(b) All other bedding products that the bureau determines contribute to mattress bedding fires shall comply with regulations adopted by the bureau specifying that those products be resistant to open-flame ignition.

(c) All seating furniture sold or offered for sale by an importer, manufacturer, or wholesaler for use in this state, including any seating furniture sold to or offered for sale for use in a hotel, motel, or other place of public accommodation in this state, and reupholstered furniture to which filling materials are added, shall be fire retardant and shall be labeled in a manner specified by the bureau. This does not include furniture used exclusively for the purpose of physical fitness and exercise.

(d) Regulations adopted by the bureau for other bedding products shall not apply to any hotel, motel, bed and breakfast, inn, or similar transient lodging establishment that has an automatic fire extinguishing system that conforms to the specifications established in Section 904.1 of Title 24 of the California Code of Regulations.

(e) This section shall become operative on July 1, 2007.

SEC. 15. Section 22351.5 of the Business and Professions Code is amended to read:

22351.5. (a) At the time of filing the initial certificate of registration, the registrant shall also submit a completed Request for Live Scan form confirming fingerprint submission to the Department of Justice and the Federal Bureau of Investigation, in order to verify that the registrant has not been convicted of a felony. The clerk shall utilize the Subsequent Arrest Notification Contract provided by the Department of Justice for notifications subsequent to the initial certificate of registration.

(b) If, after receiving the results of the Request for Live Scan, the clerk is advised that the registrant has been convicted of a felony, the presiding judge of the superior court of the county in which the certificate of registration is maintained is authorized to review the criminal record and, unless the registrant is able to produce a copy of a certificate of rehabilitation, expungement, or pardon, as specified in paragraph (2) of subdivision (a) of Section 22351, notify the registrant that the registration is revoked. An order to show cause for contempt may be issued and served upon any person who fails to surrender a registered process server identification card after a notice of revocation.

SEC. 16. Section 22355 of the Business and Professions Code is amended to read:

22355. (a) The county clerk shall maintain a register of process servers and assign a number and issue an identification card to each process server. The county clerk shall issue a temporary identification card, for no additional fee, to applicants who are required to submit Request for Live Scan forms for background checks to the Federal Bureau of Investigation and the Department of Justice. This card shall be valid for 120 days. If clearance is received from the Federal Bureau of Investigation and the Department of Justice within 120 days, the county clerk shall immediately issue a permanent identification card to the applicant. Upon request of the applicant, the permanent identification card shall be mailed to the applicant at his or her address of record. Upon renewal of a certificate of registration, the same number shall be assigned, provided there is no lapse in the period of registration.

(b) The temporary and permanent identification cards shall be  $3\frac{3}{8}$  inches by  $2\frac{1}{4}$  inches and shall contain at the top the title, "Registered Process Server," followed by the registrant's name, address, registration number, date of expiration, and county of registration. In the case of a natural person, it shall also contain a photograph of the registrant in the lower left corner.

SEC. 17. Section 44024.5 of the Health and Safety Code is amended to read:

44024.5. (a) The department shall compile and maintain statistical and emissions profiles of motor vehicles that are subject to the motor vehicle inspection program. The department may use data from any source, including remote sensing data and other motor vehicle inspection program data, to develop and confirm the validity of the profiles.

(b) The department, in cooperation with the state board, shall perform periodic analyses of the statistical and emissions profiles created pursuant to subdivision (a). The department and the state board, in consultation with the Inspection and Maintenance Review Committee, may determine that, in addition to the vehicles excepted pursuant to Section 44011, certain other motor vehicles may be excepted from the biennial certification requirements of this chapter without significantly compromising the emission reduction objectives set forth in the State Implementation Plan (SIP).

(c) The department may conduct a pilot program to except from the biennial certification requirement those vehicles that may be jointly determined by the department and the state board, after consultation with the Inspection and Maintenance Review Committee, to warrant exception. The department shall provide written notification to the Legislature specifying the number of vehicles to be exempted as well as the geographic location and duration of the pilot program not less than 30 days prior to the implementation of the pilot program. The department shall submit the results of the pilot program to the state board and the Inspection and Maintenance Review Committee for review. Subject to the approval of the United States Environmental Protection Agency as an amendment to the SIP, the department may establish the exception program as a permanent program.

(d) For vehicles four model years old or less, the department shall use test data generated pursuant to Section 44014.7 to develop statistical and emissions profiles. The department may use data from any source, including remote sensing data, warranty repair and recall data, and other motor vehicle inspection program data, to develop and confirm the validity of the data. If the department and state board jointly determine that the emissions from a class of motor vehicles would potentially compromise the emission reduction objectives set forth in the SIP, the state board shall consider appropriate corrective action, including, but not limited to, recall pursuant to Section 43105.

SEC. 18. Section 44062.1 of the Health and Safety Code is amended to read:

44062.1. (a) The department shall offer a repair assistance program through entities authorized to perform referee functions.

(b) (1) The repair assistance program shall be available to the following eligible individuals:

(A) An individual who has a maximum income level of 200 percent of the federal poverty level, as published quarterly in the Federal Register by the Department of Health and Human Services, and who is either or both of the following:

(i) The owner of a motor vehicle that has failed a smog check inspection.

(ii) The owner of a motor vehicle who was issued a notice to correct for an alleged violation of Section 27153 or 27153.5 of the Vehicle Code

involving that vehicle, if the vehicle subject to that notice has failed a smog check inspection subsequent to receiving the notice.

On and after January 1, 2009, the maximum income level prescribed for this subparagraph shall be set at 185 percent of the federal poverty level, as published quarterly in the Federal Register by the United States Department of Health and Human Services.

(B) An individual who is the owner of a motor vehicle that has failed a smog check inspection and is directed to a test-only facility pursuant to Section 44010.5 or 44014.7. If the department determines that applications for repair assistance exceed the amount of funds available, to the maximum extent possible, applications from low-income motor vehicle owners shall be given priority over other applications.

(2) The department shall offer repair cost assistance, funded by the High Polluter Repair or Removal Account in the Vehicle Inspection and Repair Fund created pursuant to subdivision (a) of Section 44091, to individuals based on the cost-effectiveness and air quality benefit of the needed repair. Repair assistance may include retesting costs and the costs of repairs to remedy the violation of Section 27153 or 27153.5 of the Vehicle Code.

(3) An applicant for repair assistance shall file an application on a form prescribed by the department and shall certify under penalty of perjury that the applicant meets the applicable eligibility standards.

(4) Verification of income eligibility shall be based on at least one form of documentation, as determined by the department, including, but not limited to, (A) an income tax return, (B) an employment warrant, or (C) a form of public assistance verification.

(c) The repair assistance program shall be funded by the High Polluter Repair or Removal Account.

(d) Repairs to motor vehicles that fail smog check inspections and are subsidized by the state through the program shall be performed at a repair station licensed and certified pursuant to Sections 44014 and 44014.2. Repair shall be based upon a preapproved list of repairs for cost-effective emission reductions or repairs to remedy a violation of Section 27153 or 27153.5 of the Vehicle Code.

(e) The qualified low-income motor vehicle owner receiving repair assistance pursuant to this section shall contribute a copayment, as determined by the department as specified in Section 44017.1, either in cash, or in emissions-related partial repairs as verified by a test-only station pursuant to paragraph (2) of subdivision (c) of Section 44015, or a combination thereof. For an owner of a motor vehicle described in subparagraph (B) of paragraph (1) of subdivision (b), the department shall impose a copayment at least equivalent to the amount imposed on a low-income individual receiving assistance under this section. If the repair cost exceeds the applicable repair cost limit, the department shall inform a motor vehicle owner of all options for compliance at the time of testing and repair.

(f) The department may increase its contribution toward the repair of a motor vehicle under this program in excess of the amount authorized for the repair of a high-polluter pursuant to paragraph (1) of subdivision (b) of Section 44094, if the department determines that the expenditure is cost effective.

(g) Notwithstanding subparagraph (A) of subdivision (b), the department may increase the maximum income level of a low-income motor vehicle owner under this program from the amount specified in this section, not to exceed 225 percent of the federal poverty level, if the department determines that the increase is capable of being supported within existing budget allocations.

(h) The department shall collect data from the program to provide information on how to improve the program. Data collection shall include all of the following:

(1) The number of motor vehicle owners that are eligible for repair assistance.

(2) The number of eligible motor vehicle owners that use repair assistance funds.

(3) The potential for fraud.

(4) The average repair bills.

(5) The types of repairs being done.

(6) The amount of partial repairs done prior to receipt of repair assistance.

(7) The emissions benefits of providing repair assistance.

(i) For purposes of this section, “low-income motor vehicle owner” means a person whose income does not exceed 200 percent of the federal poverty level.

SEC. 18.5. Section 44062.1 of the Health and Safety Code is amended to read:

44062.1. (a) The department shall offer a repair assistance program through entities authorized to perform referee functions.

(b) (1) The repair assistance program shall be available to an individual who has a maximum income level of 200 percent of the federal poverty level, as published quarterly in the Federal Register by the Department of Health and Human Services, and who is either or both of the following:

(A) The owner of a motor vehicle that has failed a smog check inspection.

(B) The owner of a motor vehicle who was issued a notice to correct for an alleged violation of Section 27153 or 27153.5 of the Vehicle Code involving that vehicle, if the vehicle subject to that notice has failed a smog check inspection subsequent to receiving the notice.

On and after January 1, 2009, the maximum income level prescribed for this paragraph shall be set at 185 percent of the federal poverty level, as published quarterly in the Federal Register by the United States Department of Health and Human Services.

(2) The department shall offer repair cost assistance, funded by the High Polluter Repair or Removal Account in the Vehicle Inspection and Repair Fund created pursuant to subdivision (a) of Section 44091, to individuals based on the cost-effectiveness and air quality benefit of the needed repair. Repair assistance may include retesting costs and the costs of repairs to remedy the violation of Section 27153 or 27153.5 of the Vehicle Code.

(3) An applicant for repair assistance shall file an application on a form prescribed by the department and shall certify under penalty of perjury that the applicant meets the applicable eligibility standards.

(4) Verification of income eligibility shall be based on at least one form of documentation, as determined by the department, including, but not limited to, (A) an income tax return, (B) an employment warrant, or (C) a form of public assistance verification.

(c) The repair assistance program shall be funded by the High Polluter Repair or Removal Account.

(d) Repairs to motor vehicles that fail smog check inspections and are subsidized by the state through the program shall be performed at a repair station licensed and certified pursuant to Sections 44014 and 44014.2. Repair shall be based upon a preapproved list of repairs for cost-effective emission reductions or repairs to remedy a violation of Section 27153 or 27153.5 of the Vehicle Code.

(e) The qualified low-income motor vehicle owner receiving repair assistance pursuant to this section shall contribute a copayment, as determined by the department as specified in Section 44017.1, either in cash, or in emissions-related partial repairs as verified by a test-only station pursuant to paragraph (2) of subdivision (c) of Section 44015, or a combination thereof. If the repair cost exceeds the applicable repair cost limit, the department shall inform a motor vehicle owner of all options for compliance at the time of testing and repair.

(f) The department may increase its contribution toward the repair of a motor vehicle under this program in excess of the amount authorized for the repair of a high-polluter pursuant to paragraph (1) of subdivision (b) of Section 44094, if the department determines that the expenditure is cost effective.

(g) (1) For the repair of a motor vehicle that has failed the visible smoke test component of a smog check inspection, the department may pay up to 90 percent of the total cost of repair, as determined by the department, but the payment shall not exceed one thousand five hundred dollars (\$1,500).

(2) If the total estimated cost of repair of a motor vehicle that has failed the visible smoke test component of a smog check inspection is greater than its fair market value, as determined by the department, the department shall pay at least 50 percent, but not more than 90 percent, of the total cost of repair, but in no case more than one thousand five hundred dollars (\$1,500).

(h) Notwithstanding paragraph (1) of subdivision (b), the department may increase the maximum income level of a low-income motor vehicle owner under this program from the amount specified in this section, not to exceed 225 percent of the federal poverty level, if the department determines that the increase is capable of being supported within existing budget allocations.

(i) The department shall collect data from the program to provide information on how to improve the program. Data collection shall include all of the following:

(1) The number of motor vehicle owners that are eligible for repair assistance.

(2) The number of eligible motor vehicle owners that use repair assistance funds.

(3) The potential for fraud.

(4) The average repair bills.

(5) The types of repairs being done.

(6) The amount of partial repairs done prior to receipt of repair assistance.

(7) The emissions benefits of providing repair assistance.

(j) For purposes of this section, “low-income motor vehicle owner” means a person whose income does not exceed 200 percent of the federal poverty level.

SEC. 19. Section 18.5 of this bill incorporates amendments to Section 44062.1 of the Health and Safety Code proposed by both this bill and AB 1870. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2007, (2) each bill amends Section 44062.1 of the Health and Safety Code, and (3) this bill is enacted after AB 1870, in which case Section 18 of this bill shall not become operative.

SEC. 20. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.