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# Health and Welfare

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# Health and Welfare

## Health and Welfare; acquired immune deficiency syndrome

Health and Safety Code §§199.20, 199.22, 199.23, 199.30, 199.31, 199.32, 199.33, 199.34, 199.35, 199.36, 199.37, 199.38, 199.39, 199.40, 1603.3, 1603.4, 1630, 1631, 1632 (new); §199.21 (new and amended); §1603.1 (amended).

AB 403 (Agnos); 1985 STAT. Ch 22

*(Effective April 3, 1985)*

Support: Department of Health Services; Department of Finance; Citizen's Advisory Council (Department of Mental Health); Mayor Diane Feinstein

Opposition: American Association of Women Voters

AB 488 (Roos); 1985 STAT. Ch 23

*(Effective April 3, 1985)*

Support: California Blood Bank Systems; Department of Health Services; Department of Finance; Citizen's Advisory Council (Department of Mental Health); Mayor Diane Feinstein

Opposition: American Association of Women Voters

SB 292 (Marks); 1985 STAT. Ch 1519

Support: Department of Finance; Department of Health Services

With the enactment of Chapter 22, no person can be compelled, with certain exceptions,<sup>1</sup> in any proceeding<sup>2</sup> to identify the subject of a blood test to detect Acquired Immune Deficiency Syndrome (hereinafter referred to as AIDS).<sup>3</sup> Further, under Chapter 23, any person who negligently or willfully discloses<sup>4</sup> results of a blood test to detect AIDS, without written authorization,<sup>5</sup> is liable<sup>6</sup> to the sub-

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1. See CAL. HEALTH & SAFETY CODE §199.20. (exceptions to the prohibitions against disclosures are provided in Health and Safety Code §§1603.1, 1603.3).

2. Specified proceedings include any state, county, city, or other local civil, criminal, administrative, legislative, or other proceedings that identify or provide identifying characteristics of any person who is the subject of a test to detect AIDS. *Id.*

3. *Id.*

4. *Id.* §199.21(k) (definition of disclosed).

5. The written authorization requirement applies only to the disclosure of test results by a person responsible for the care and treatment of the subject. A written authorization is required for each disclosure and must include to whom the disclosure is being made. *Id.* §199.21(g).

6. Chapter 23 specifies certain exceptions to liability. *Id.* §199.21(a), (b). The exceptions

ject of the test for specified civil penalties.<sup>7</sup> If either a negligent or willful disclosure results in economic, bodily or psychological harm to the subject of the test, the responsible person is guilty of a misdemeanor,<sup>8</sup> and is liable to the person for all actual damages proximately caused by the disclosure.<sup>9</sup> Furthermore, Chapter 23 provides that each disclosure is a separate and actionable offense,<sup>10</sup> and that an injured person may recover damages under any other applicable law.<sup>11</sup>

Under Chapter 1519, confidential records<sup>12</sup> developed or acquired by any person conducting research relating to AIDS may not be disclosed, discovered or compelled under any circumstances by any person in possession of the research record unless: (1) written consent of the research subject is obtained;<sup>13</sup> (2) the information is disclosed to medical personnel to meet a bona fide medical emergency of the research subject;<sup>14</sup> or (3) the information is released to the Department of Health Services to conduct a special investigation.<sup>15</sup> Chapter 1519, however, provides that information may be disclosed in order to further research efforts provided that all confidential information concerning the research subject is deleted.<sup>16</sup>

Any person who violates Chapter 1519 by willfully or maliciously disclosing any confidential research record without a written authoriza-

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include: (1) doctors who must report to the State Department of Health Services and the county health officer the name, date of birth, address and social security number of all transfusion-associated AIDS cases for investigation; (2) a hospital which must report the name, date of birth, address and social security number of all confirmed cases of AIDS carriers; and (3) the State Department of Health Services, which must compile a confidential list including the name, date of birth, address and social security number of persons who have probable or confirmed cases of AIDS. This list must include the names of individuals who are indefinitely deferred from blood donations without identifying the reasons for the deferral. *Id.* §§1603.1(c), (d), (e), (f), 1603.3(d).

7. *Id.* §199.21(a). Penalties for negligent disclosure include an amount not to exceed \$1,000 and court costs which are to be paid to the subject of the test. *Id.* Penalties for willful disclosure include an amount not less than \$1,000, but not more than \$5,000, and court costs which are to be paid to the subject of the test. *Id.* §199.21(b).

8. *Id.* §199.21(c) (punishable by imprisonment up to one year in the county jail or a fine up to \$10,000, or both).

9. *Id.* §199.21(d).

10. *Id.* §199.21(e).

11. *Id.* §199.21(h).

12. A confidential record is any record developed or acquired by any person in the course of conducting research or a research study relating to AIDS which contains information that could directly or indirectly lead to the identification of the individual. *Id.* §199.40(c).

13. The written consent must be obtained prior to disclosure. The disclosure is limited to the extent authorized, and must contain a warning of the civil and criminal liabilities for violating the confidential guarantees. *Id.* §199.31.

14. *Id.* §199.33(a).

15. *Id.* §199.33(b).

16. *Id.* §199.39.

tion is liable to the subject of the test for penalties.<sup>17</sup> Any person who maliciously discloses any confidential research record resulting in economic, bodily or psychological harm to the research subject is guilty of a misdemeanor punishable by imprisonment of up to one year in a county jail, a fine not exceeding \$10,000, or both.<sup>18</sup> Chapter 1519 further provides that each disclosure is a separate and actionable offense<sup>19</sup> and that an injured person may recover damages under any other applicable law.<sup>20</sup>

Under Chapter 1519, before a person can participate in a research study relating to AIDS, the informed consent of the person must be obtained in compliance with federal regulations,<sup>21</sup> and each research subject must be provided with an explanation, in writing,<sup>22</sup> of the rights and responsibilities of researchers and research subjects.<sup>23</sup> Any person who negligently or willfully violates these requirements is guilty of an infraction punishable by a fine of \$25.<sup>24</sup> Under Chapter 1519, production of a confidential research record may not be compelled to be produced in order to initiate or substantiate criminal charges against a research subject unless a reasonable likelihood exists that the records in question will disclose material of substantial value in connection with the criminal charge and no other practicable way of obtaining the information exists.<sup>25</sup>

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17. *Id.* §199.37(a) (penalties include fines of at least \$1,000 and not more than \$5,000 and court costs).

18. *Id.* §199.37(b).

19. *Id.* §199.37(e).

20. *Id.* §199.37(f).

21. Specified federal regulations include 45 C.F.R. §§46.116(a),(b), 46.117. *Id.* §199.36(a).

22. The language of the writing must be understandable to the research subject. *Id.* §199.36(b).

23. *Id.*

24. *Id.* §199.37(d).

25. *Id.* §199.35.

## Health and Welfare; victims of crime

Government Code §§13902, 13960 (repealed and new and amended).  
AB 695 (Johnson); 1985 STAT. Ch 1130  
Support: Department of Finance; Board of Control; Office of  
Criminal Justice Planning  
SB 1331 (Beverly); 1985 STAT. Ch 1527

Existing law authorizes indemnification by the State Board of Con-

trol to victims<sup>1</sup> of crimes<sup>2</sup> for emotional injury resulting from a crime, if the victim was personally injured<sup>3</sup> or threatened with personal injury.<sup>4</sup> In addition, existing law authorizes indemnification by the State Board of Control to a family member of the victim if the family member sustained an emotional injury and was present during the actual commission of the crime.<sup>5</sup> With the enactment of Chapter 1527, family members that were not present at the crime may be indemnified if they suffered an emotional injury upon learning of the death or injury of the victim resulting from the crime.<sup>6</sup>

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1. CAL. GOV. CODE §13960(a) (definition of victim). Pecuniary loss to these victims will be limited to a maximum of ten thousand dollars (\$10,000) in medical expenses. *Id.* §13960(a)(4). See *id.* §13960(d) (definition of pecuniary loss).

2. *Id.* §13960(c) (definition of crime).

3. *Id.* §13960(b) (definition of injury).

4. *Id.* §13960.

5. *Id.*

6. *Id.* §13960(a)(4). Chapter 1527 authorizes indemnification of up to \$10,000. *Id.*

## **Health and Welfare; victims of hazardous substances—compensation**

Health and Safety Code §25379 (repealed); §§25354, 25372, 25373, 25375.5, 25378, 25379, 25381 (amended).

SB 19 (Torres); 1985 STAT. Ch 104

(Effective June 26, 1985)

Support: Department of Finance; Department of Health Services; State Board of Control

Existing law authorizes the State Board of Control to reimburse any individual harmed by exposure to a hazardous substance for related medical expenses, lost wages, and business income.<sup>1</sup> An application for reimbursement of these losses may be made if (1) the party responsible for exposing the individual to a hazardous substance is unknown<sup>2</sup> or (2) no liable party exists, or the liable party is unable to satisfy a judgment.<sup>3</sup> Chapter 104 expands existing law by providing that

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1. CAL. HEALTH & SAFETY CODE §25375. See generally *id.* §25354 (establishment of hazardous waste fund).

2. *Id.* §25372(a).

3. *Id.* §25372(b).

application for reimbursement of medical expenses may be made if the individual harmed first presents a written demand for compensation to a party reasonably believed to be liable for the exposure and resulting medical expenses.<sup>4</sup> The individual harmed will receive no compensation from the Board unless the allegedly responsible party has either rejected, in whole or in part, or not responded to the demand within sixty days of presentation of the demand.<sup>5</sup>

Chapter 104 establishes that a loss is compensable if the Board of Health finds (1) that a release of a hazardous substance occurred; (2) the claimant's property was exposed to the hazardous substance; (3) and the exposure of the claimant to the hazardous substance was of such a duration and quantity that the exposure caused the damages, injury, or disease that resulted in the claimant's loss.<sup>6</sup> In addition, Chapter 104 prohibits recovery of the same loss from both the state and the responsible party.<sup>7</sup> Prior law forbade the use of any compensation, decision or settlement rendered by the Board as evidence in any legal proceeding.<sup>8</sup> Chapter 104, however, narrows the scope of this limitation by setting forth specific decisions and findings of the Board that are not admissible as evidence in subsequent legal proceedings.<sup>9</sup>

Existing law also authorizes the Department of Health Services to remedy or prevent human exposure to a hazardous substance<sup>10</sup> by immediately taking any corrective action necessary to prevent an emergency resulting from a hazardous substance.<sup>11</sup> Chapter 104 further empowers the Department to reimburse persons exposed to a hazar-

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4. *Id.* §25372(c).

5. *Id.*

6. *Id.* §25375(b).

7. *Id.* §25378.

8. 1981 Cal. Stat. c. 756, §2, at 2935 (enacting CAL. HEALTH & SAFETY CODE §25379).

9. *Id.* §25379. Evidence considered not admissible in any civil or criminal proceeding to establish the liability of any person for any damages alleged to have been caused by a release of a hazardous substance is the following: (1) A final decision made by the board pursuant to Health and Safety Code §25379; (2) a decision made by the board to admit or not admit any evidence; (3) any finding of fact or conclusion of law entered by the board in a proceeding for a claim pursuant to Health and Safety Code §§25370- 25382 (Article 7); and (4) the fact that any person has either chosen to participate or appear, chosen not to participate or appear, failed to appear, or settled or offered to settle the claim. *Id.*

10. CAL. HEALTH AND SAFETY CODE §25316 (definition of hazardous substance).

11. *Id.* §25354. One million dollars is continuously appropriated to the Department of Health Services as a reserve for emergencies. The Department is empowered to enter into written contracts and oral contracts up to \$2,000 to take such corrective action. *Id.*

dous substance up to \$1,000 for necessary out-of-pocket moving expenses.<sup>12</sup>

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12. *Id.* §25354(b).

## Health and Welfare; illegal use of pesticides—penalties

Food and Agricultural Code §12648 (new); §§12996, 12998 (amended).

AB 1026 (Herger); 1985 STAT. Ch 1404  
(Effective October 1, 1985)

Support: Rural Caucus; California Farm Bureau; Department of Food and Agriculture; Department of Finance; California State Grange

Existing law prohibits the use of any pesticide in a manner that conflicts with the registered<sup>1</sup> label.<sup>2</sup> Existing law also authorizes the seizure and holding of any lot of produce<sup>3</sup> suspected of carrying pesticide residue<sup>4</sup> or deleterious ingredients.<sup>5</sup> Further, existing law provides for the release of any lot seized if a chemical analysis<sup>6</sup> shows the levels of pesticides do not exceed a permissible tolerance.<sup>7</sup> Any produce found to carry pesticide residue in excess of any maximum set or permissible tolerance levels may be deemed a public nuisance and is subject to disposal.<sup>8</sup>

Chapter 1404 extends authorization to declare any crop,<sup>9</sup> commodity,<sup>10</sup> or site<sup>11</sup> a public nuisance if the Director of Agriculture<sup>12</sup>

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1. CAL. FOOD & AGRIC. CODE §12815 (registration); CAL. ADMIN. CODE tit. 3, §§6151-6301 (registration procedures); *see* 40 C.F.R. §162.17 (registration requirements for intrastate products).

2. CAL. FOOD & AGRIC. CODE §12973.

3. *Id.* §12504 (definition of produce).

4. *Id.* §12505 (definition of pesticide residue).

5. *Id.* §12601.

6. *Id.* §12604. Unless previously tested the produce must be sampled and analyzed within twenty-four hours of the seizure for determination of the level of pesticide residue. *Id.*

7. *Id.* §12606. No residue of a pesticide chemical in or on produce is justified or permitted unless a permissible tolerance has been established by the Director of Agriculture, or unless the Director has authorized an exemption from a tolerance. CAL. ADMIN. CODE tit. 3, §2490.1.

8. CAL. FOOD & AGRIC. CODE §12642.

9. Crop has been defined as the product of cultivated plants while growing, or the product after it has been harvested or severed from the stock or root to which it is attached. *Corey v. Struve*, 16 Cal. App. 310, 314, 116 P. 975, 977 (1911).

10. CAL. FOOD & AGRIC. CODE §58605 (definition of commodity).

11. The application for a permit for the agricultural use of a pesticide must include the location of each property to be treated. CAL. ADMIN. CODE tit. 3 §2452(j)(5)(B).

12. CAL. FOOD & AGRIC. CODE §35 (definition of Director).

finds evidence that it has been treated with an economic poison<sup>13</sup> not registered for use on that crop, commodity, or site;<sup>14</sup> and that such treatment has resulted in, or could reasonably result in, the creation of a hazard to public health or an unfair business advantage.<sup>15</sup> Further, under Chapter 1404 the crop must be held for thirty days, and if no action has been filed to contest the seizure within that time,<sup>16</sup> the crop or commodity may be destroyed.<sup>17</sup>

Prior law provided criminal penalties for violations of any provision or regulation relating to pesticides, by declaring such violations a misdemeanor punishable by a fine of not less than \$100, nor more than \$1,000, or by imprisonment for a period of ten days to six months, or both.<sup>18</sup> Chapter 1404 has increased these penalties by providing fines for the first offense of \$500 to \$5,000, and for a second or subsequent conviction for violation of the same provision of \$1,000 to \$10,000.<sup>19</sup> Chapter 1404 has retained the option of alternative or simultaneous imprisonment, but has eliminated the minimum sentence requirement while retaining the maximum six-month sentence for a first, second, or subsequent conviction for the same or different violations.<sup>20</sup>

Existing law authorizes civil prosecution as an alternative<sup>21</sup> to criminal proceedings.<sup>22</sup> Prior law limited such liability to \$500 per violation.<sup>23</sup> Chapter 1404 has increased civil liability to \$10,000 for

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13. *Id.* §12753 (definition of economic poison).

14. *Id.* §12648.

15. *Id.*

16. Existing provisions for appeal from a seizure relate to produce seized after a chemical analysis indicating an excess level of pesticide residue, or to produce which was chemically analyzed within twenty-four hours of the seizure. *Id.* §12607 (release for reconditioning or disposal for byproducts purposes); *id.* §12610 (appeal from result of an examination). These sections, however, may have been rendered ineffectual by Chapter 1404, which has determined that "when a crop or commodity has received an illegal pesticide application, laboratory analysis cannot always guarantee that every individual fruit or vegetable within the crop or commodity is free of illegal pesticide residues, and to require the Department of Food and Agriculture to sample and test the crop or commodity presents burdensome and costly procedures and severely impacts the department's ability to conduct its pesticide residue monitoring and enforcement program." 1985 Stat. Ch. 1404, §1(c), at \_\_\_\_\_. Despite elimination of the requirement of chemical analysis the legislature has maintained that an adequate remedy at law exists for contesting the declaration of a crop or commodity as a public nuisance under Chapter 1404, 1985 Stat. Ch. 1404, §1(f), at \_\_\_\_\_.

17. *Id.* §12648.

18. 1983 Stat. Ch. 1092 §109, at 5880 (amending CAL. FOOD & AGRIC. CODE §12996).

19. CAL. FOOD & AGRIC. CODE §12996.

20. *Id.*

21. *Id.* §12997 (in lieu of seeking prosecution as a misdemeanor).

22. *Id.*

23. 1980 Stat. Ch. 676, §95, at 1916 (amending CAL. FOOD & AGRIC. CODE §12998).

each violation, and up to \$25,000 for a second or subsequent violation of the same or a similar provision or regulation, or for those persons whose intentional violation resulted in or reasonably could have resulted in the creation of a hazard to human health or the environment, or the disruption of the market for the crop or commodity involved.<sup>24</sup>

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24. CAL. FOOD & AGRIC. CODE §12998.

## **Health & Welfare; adult adoptees and siblings**

Civil Code §230.8 (new).

AB 2312 (Mojonnier) 1985 STAT. Ch 559

Support: Department of Social Services

Existing law permits the Department of Social Services to arrange for contact between adult<sup>1</sup> adoptees and their natural parents, provided that the adult adoptee, natural parents, and adoptive parents have filed a waiver of their rights concerning the confidentiality of the adoption records.<sup>2</sup> With the enactment of Chapter 559, the State Department of Social Services or the adoption agency that joined in the adoptee's petition for adoption may facilitate contact between an adult adoptee and a known biological adult sibling by releasing to each party the name and address of the other.<sup>3</sup> In order to obtain the release of this information under Chapter 559, both the adoptee and sibling must file a written request for contact containing a current address and a waiver of rights.<sup>4</sup> Chapter 559 additionally permits the department or agency to disclose the fact that an adoptee has filed a waiver, to a sibling who has made an inquiry and proven that he or she is the sibling of the adoptee.<sup>5</sup> Chapter 559 allows any person using this procedure to revoke the waiver.<sup>6</sup> Finally, Chapter 559 allows the depart-

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1. CAL. CIVIL CODE §230.8(a) (persons 21 years of age or older).

2. *Id.* §230.6.

3. *Id.* §230.8(a) The consent of the natural parents of the adoptee and sibling is required in cases in which the sibling remained in the custody and control of the natural parents until the age of 18. *Id.* §230.8(c).

4. *Id.* §230.8(a) (written waiver of rights concerning nondisclosure of names and addresses to sibling).

5. *Id.*

6. *Id.* §230.8(b) (Department of Social Services must give notice of right to revoke waiver).

ment to adopt regulations requiring additional means of identification for persons utilizing this procedure<sup>7</sup> and may charge such persons a reasonable fee.<sup>8</sup>

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7. *Id.* §230.8(a).

8. *Id.* (not in excess of \$50).

## Health and Welfare; disclosure of medical records

Civil Code §43.92 (new); Welfare and Institutions Code §§5328, 8100, 8101, 8102, 8103 (amended).

SB 1034 (B. Greene); 1985 STAT. Ch 1324

Support: Los Angeles County School Shooting Task Force; Department of Mental Health

AB 1133 (McAlister); 1985 STAT. Ch 737

Support: California Psychiatric Association; California Medical Association; California State Psychological Association; California Union of Safety Employees

Opposition: Citizen's Commission on Human Rights

Under existing law, the records of patients who have obtained or are obtaining specified mental health services<sup>1</sup> may be released only for specified reasons.<sup>2</sup> Existing case law holds that if a psychotherapist<sup>3</sup> determines, or should have determined, that a patient of the psychotherapist presents a danger to reasonably foreseeable victims, the psychotherapist has a duty to warn the potential victims.<sup>4</sup> Chapter

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1. The specified mental health services are those provided for in Divisions 4 (Mental Health), 4.1 (Developmental Services), 4.5 (Services for the Developmentally Disabled), 5 (Community Mental Health Services), 6 (Admissions and Judicial Commitments), and 7 (Mental Institutions) of the Welfare and Institutions Code. CAL. WELF. & INST. CODE §5328.

2. CAL. WELF. & INST. CODE §5328 (providing that records and information are confidential and enumerating the allowable disclosures).

3. CAL. EVID. CODE §1010 (defining psychotherapist).

4. *Tarasoff v. Regents of the University of California*, 17 Cal. 3d 425, 431, 131 Cal. Rptr. 14, 20, 551 P.2d 334, 340 (1976). See *Mavroudis v. Superior Court*, 102 Cal. App. 3d 594, 601, 162 Cal. Rptr. 724, 730 (1980) (a duty to warn arises when a therapist determines, or reasonably should have determined, that the patient presents a serious and imminent danger of violence to a readily identifiable victim); *Hedlund v. Superior Court*, 34 Cal. 3d 695, 704, 194 Cal. Rptr. 805, 809, 669 P.2d 41, 45 (1983) (concluding that a therapist is professionally negligent for failing to warn an identifiable victim that a patient poses a serious threat of danger to that potential victim). See also Note, *Untangling Tarasoff: Duty of Psychotherapist to Warn Potential Victim of Mentally Ill Patient*, 29 HASTINGS L.J. 179 (1977); Note, *Duty of Psychotherapists to Warn*, 14 CAL. W.L. REV. 153 (1978).

1324 extends existing law by allowing a psychotherapist to release any information or records of a patient if, in the opinion of the psychotherapist, the patient poses a serious danger of violence to a reasonably foreseeable victim.<sup>5</sup>

Chapter 737 narrows existing case law<sup>6</sup> by confining liability of a psychotherapist to instances involving a patient that has communicated, to the psychotherapist, a serious threat of physical violence against a reasonably *identifiable* victim.<sup>7</sup> Furthermore, Chapter 737 provides that the duty of the psychotherapist to warn is discharged by reasonable efforts on the part of the psychotherapist to warn the victim and a law enforcement agency of the potential danger.<sup>8</sup>

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5. CAL. WELF. & INST. CODE §5328(s). The records or information may be released to the potential victim or victims or to law enforcement agencies. *Id.*

6. *See supra* note 4 and accompanying text.

7. CAL. CIV. CODE §43.92(a).

8. *Id.* §43.92(b).

## Health and Welfare; Coroners

Code of Civil Procedure §129 (amended); Government Code §§27491, 27491.1, 27491.2, 27491.3 (amended); Health and Safety Code §10250 (amended).

AB 543 (Clute); 1985 STAT. Ch 304

Support: California State Coroners Association; Department of Finance

Existing law requires the Coroner to inquire into deaths that occur under specified circumstances.<sup>1</sup> Chapter 304 expands the Coroner's power of inquiry by providing that the Coroner may exhume the body of the deceased when necessary.<sup>2</sup> Existing law also requires any funeral director, physician or other person having charge of a body, the death of which occurred as a result of causes or circumstances which the Coroner is required to investigate,<sup>3</sup> to immediately notify the Coroner.<sup>4</sup>

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1. CAL. GOV'T CODE §27491 (circumstances in which the Coroner must inquire).

2. *Id.*

3. *Id.*

4. *Id.* Existing law also provides that a physician, funeral director, or other person who has *knowledge* of a death that occurred under specified circumstances must immediately notify the Coroner. CAL. HEALTH & SAFETY CODE §10250.

Under Chapter 304, violation of this requirement is a misdemeanor.<sup>5</sup>

Existing law provides that a body known to be dead cannot be disturbed or moved from the position or place of death, if the death is required to be investigated by the Coroner, unless permission is given by the Coroner or the Coroner's appointed deputy.<sup>6</sup> With the enactment of Chapter 304, any violation of this requirement is a misdemeanor.<sup>7</sup>

Existing law allows the Coroner to take charge of personal effects, valuables and property of the deceased at the scene of the death, when the Coroner must investigate the death.<sup>8</sup> Chapter 304 expands this power to allow the Coroner to also take charge of any personal effects, valuables and property of the deceased that are related to the inquiry of the Coroner.<sup>9</sup> Under existing law, the Coroner may lock the premises and apply a seal to prohibit entrance to the premises until a legal representative of the deceased arrives.<sup>10</sup> Chapter 304 provides that unless expressly permitted by law, any person who enters any premises or tampers with or removes any lock or seal is guilty of a misdemeanor.<sup>11</sup> Chapter 304 also provides that any person who searches for or removes articles<sup>12</sup> from the estate of the deceased before arrival of the Coroner, or without permission of the Coroner, is guilty of a misdemeanor.<sup>13</sup> Finally, Chapter 304 provides that custody and control of the body remains with the Coroner at all times, however, the Coroner must allow other law enforcement agencies reasonable time to investigate at the scene prior to removal of the deceased.<sup>14</sup>

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5. *Id.*

6. CAL. GOV'T CODE §27491.2(b).

7. *Id.*

8. *Id.* §27491.3(a).

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.* §27491.3(c) (articles include papers, moneys, valuable property or weapons).

13. *Id.*

14. *Id.*

## Health and Welfare; disposition of human remains

Health and Safety Code §7054.6 (repealed and new); §§7054, 7117, 10376 (amended).

SB 604 (Alquist); STAT. Ch 1109

Support: International Association of California; Department of Finance; Assemblyman Konnyu

Existing law prescribes procedures for obtaining a permit from the local registrar of births and records approving the disposition of human remains.<sup>1</sup> The permit must indicate either the name of the cemetery where the remains will be buried or that the remains will be disposed of at sea.<sup>2</sup> Additionally, no permit shall be issued for the disposition of the remains of any person that died from an infectious, contagious, or communicable and dangerous disease, other than as prescribed by state and local health officers.<sup>3</sup> Chapter 1109 requires the local registrar to indicate on a permit for disposition where the remains will be kept if the body has been cremated, and specifies that the place of disposition must satisfy conditions approved by the state registrar before a permit will be issued.<sup>4</sup>

Existing law specifies the procedure for the cremation and scattering of human remains.<sup>5</sup> Prior law limited disposition of human remains, within corporate city limits, to cemeteries.<sup>6</sup> Chapter 1109 prohibits disposing of human remains in any place except in a cemetery,<sup>7</sup> but does permit the disposal of cremated remains in a cemetery<sup>8</sup> or at sea.<sup>9</sup>

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1. CAL. HEALTH & SAFETY CODE §10376.8 (procedures for issuance of permit); §10376 (additional requirements for issuing permit).

2. *Id.*

3. *Id.* §10376(b) (disease classification determined by the State Department of Public Health).

4. *Id.* §10376(a)(3). Criteria to be considered by the registrar in approving conditions under which cremated remains may be kept include, but are not limited to, conditions in keeping with public sensibilities, applicable laws, and reasonable assurances that the disposition will be carried out in accordance with the prescribed conditions and will not constitute a private or public nuisance. *Id.*

5. *Id.* §§7054 (limiting place of disposition); 7054.4 (for scientific use); 7054.6 (authority for removal of cremated remains); 7117 (burial at sea).

6. 1973 Cal. Stat. c. 335, §1, at 755 (amending CAL. HEALTH AND SAFETY CODE §7054).

7. CAL. HEALTH & SAFETY CODE §7054 (violation punishable as a misdemeanor).

8. Chapter 1109 provides that cremated remains may be disposed of pursuant to Health and Safety Code §§7117 and 10376.5, or §§7054.6 and 10376.5. *Id.*

9. *Id.* §7054.6. Cremated remains may be scattered for burial at sea by boat or plane, provided a verified statement specifying the name of the deceased, time and place of death, location where the cremated remains were buried, and any other information that may be required,

Prior law permitted specified relatives<sup>10</sup> of the deceased to remove the cremated remains of the deceased from the place of cremation or interment.<sup>11</sup> Chapter 1109 still permits removal of cremated remains by relatives,<sup>12</sup> but limits the place of final disposition of cremated remains to a dwelling owned or occupied by the relative, or to a church or religious shrine,<sup>13</sup> provided the required permit for disposition of remains is filed, and the remains are removed and stored in a durable container.<sup>14</sup>

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is filed with the local registrar of births and records in the county nearest the point of burial. *Id.* §7117. A copy of the burial permit issued must be filed with the local registrar within 10 days of issuance, and a copy must be returned to the issuing office of the registrar of births and records. *Id.*

10. *Id.* §7100 (in order of right to control: surviving spouse, surviving child or children, surviving parent or parents, person or persons respectively in the next degree of kindred in the order specified by California law governing succession to the estate of the deceased, the public administrator when the deceased has sufficient assets).

11. 1972 Cal. Stat. c. 541, §8, at 931 (enacting HEALTH & SAFETY CODE §10376.5), 1972 Cal. Stat. c. 541, §5, at 930 (enacting HEALTH & SAFETY CODE §7054.6).

12. CAL. HEALTH & SAFETY CODE §7054.6.

13. *Id.* (written permission of the church or religious shrine is to be obtained and there must be no conflict with local permit requirements or zoning laws).

14. *Id.*

