Health and Welfare

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Recommended Citation

University of the Pacific; McGeorge School of Law, Health and Welfare, 18 Pac. L. J. 663 (987).
Available at: https://scholarlycommons.pacific.edu/mlr/vol18/iss2/24

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Health and Welfare

Health and Welfare; acquired immune deficiency syndrome—manufacturer liability

Health and Safety Code §§ 199.45, 199.46, 199.47, 199.48, 199.49, 199.50, 199.51 (new).
AB 4250 (Vasconcellos); 1986 STAT. Ch. 1463
Sponsor: Author
Support: Association of California Life Insurance Companies; California Hospital Association

Under existing law, the doctrine of strict products liability imposes liability on manufacturers of defective products. In *Kearl v. Lederle Laboratories*, however, the court held a manufacturer of an una-

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1. "A manufacturer is strictly liable in tort when an article he places on the market, knowing that it is to be used without inspection for defects, proves to have a defect that causes injury to a human being." *Greenman v. Yuba Power Prods., Inc.*, 59 Cal. 2d 57, 62-64, 377 P.2d 897, 900, 27 Cal. Rptr. 697, 700 (1962). See *Kearl v. Lederle Laboratories*, 172 Cal. App. 3d 812, 822, 218 Cal. Rptr. 453, 458 (1985). "Strict product liability differs from negligence in one key respect; it obviates the need for a plaintiff to show a manufacturer knew or should have known of the risk imposed by the product." *Id.; see infra* note 4 and accompanying text (discussing the *Kearl* case). See generally *Escola v. Coca Cola Bottling Co.*, 24 Cal. 2d 453, 461, 150 P.2d 436, 440 (1944) (Traynor, J., concurring) (advocating the application of strict liability to product defect cases); Schwartz, *Foreward: Understanding Products Liability*, 67 CALIF. L. REV. 435, 441 (1979) (strict products liability might be more accurately described as strict product defect liability).


3. *Id.* comments g, h. The doctrine of strict products liability applies only when the product is in an unreasonably dangerous condition not contemplated by the ultimate consumer when leaving the seller's hand. A product which is safe for normal handling and consumption is not defective. *Id. Cf. Cronin v. J.B.E. Olson Corp.*, 8 Cal. 3d 121, 131, 501 P.2d 1153, 1162, 104 Cal. Rptr. 433, 442 (1972) (rejecting the *Restatement (Second) of Torts* § 402A view that a plaintiff must prove an unreasonably dangerous defect; plaintiff need only prove that the defect in the product was the proximate cause of injury).

4. 172 Cal. App. 3d 812, 825, 218 Cal. Rptr. 453, 460 (1985) (holding the manufacturer of a polio vaccine to a negligence standard). "[S]ome special products should be exempted from the normal strict products liability design defect analysis [in order to facilitate and not frustrate availability]. They should be reviewed according to the state of the art—i.e., the manufacturer's actual or constructive knowledge—at the time of marketing." *Id. But see*
voidably dangerous products exempt from liability under the strict products liability theories of design and warning defects. With the enactment of Chapter 1463, the legislature intends to codify portions of *Kearl* and to remove all obstacles to the development of a vaccine to prevent the further spread of the acquired immune deficiency syndrome (AIDS) epidemic.

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5. "There are some products which, in the present state of human knowledge, are quite incapable of being made safe for their intended and ordinary use. These are especially common in the field of drugs." *Restatement (Second)* of Torts § 402A, comment k (1966).

6. A product may be found defective in design if either: (1) the plaintiff establishes that the product failed to perform as safely as an ordinary consumer would expect when used in an intended or reasonably foreseeable manner, or (2) if the product's design proximately caused the plaintiff's injury and defendant fails to establish, in light of the relevant factors, that the benefits of the challenged design outweigh the risk of danger inherent in such design. Barker v. Lull Eng'g Co., 20 Cal. 3d 413, 435, 573 P.2d 443, 457, 143 Cal. Rptr. 225, 239 (1978).

7. *Kearl*, 172 Cal. App. 3d at 830, 218 Cal. Rptr. at 464. See Cavers v. Cushman Motor Sales, Inc., 95 Cal. App. 3d 338, 349, 157 Cal. Rptr. 142, 149 (1979). An otherwise faultlessly made article may be deemed defective if the manufacturer fails to warn of dangerous propensities, which in the absence of an adequate warning render the article substantially dangerous to the user. The term substantially dangerous means danger which is real and not insignificant. *Id. See also Restatement (Second) of Torts* § 402A, comment j. The seller is required to give warning against a danger not generally known if the seller has, or should have, knowledge of the danger. *Id. Cf. Finn v. G.D. Searle & Co.*, 35 Cal. 3d 691, 699, 677 P.2d 1147, 1152, 200 Cal. Rptr. 870, 875 (1984). The warning required of a manufacturer may be of two kinds: (1) adequate instruction to the consumer as to how the product should be used, or (2) adequate information concerning potential risks or side effects which may follow the foreseeable use of the product. *Id. See generally Comment, *The Failure to Warn Defect: Strict Liability of the Prescription Drug Manufacturer in California*, 17 U.S.F. L. Rev. 743, 755 (1983) (discussing the standard of strict liability to be applied for defectiveness due to a failure to warn and how the standard relates to prescription drug manufacturers); Comment, *Mass Immunization Cases: Drug Manufacturers' Liability for Failure to Warn*, 29 Vand. L. Rev. 235, 240 (1976) (discussing the history of the development of the polio vaccine, the holdings of the "mass immunization" cases, and the problems currently faced by drug manufacturers).


9. *Cal. Health & Safety Code* § 199.45(u). AIDS is caused by the virus human T-cell lymphotropic virus, type III (HTLV-3), which initially cripples the body's immune system and eventually leaves the body open to an array of lethal infections. *Id.* § 199.46(a).
Chapter 1463 was enacted in response to a finding by the legislature that manufacturers are hesitant to invest in the development of an AIDS vaccine because the application of strict products liability on such a product poses a potentially disastrous and uncertain risk. Without state intervention to assure minimal profitability of an AIDS vaccine, inadequate incentives may exist for manufacturers to commit resources and expertise to the accelerated development of an AIDS vaccine. Therefore, Chapter 1463 provides that a manufacturer of an FDA-approved AIDS vaccine will not be strictly liable for any design or warning defect of the AIDS vaccine, or for breach of implied warranty, if upon motion and after a hearing, the trial judge determines that the AIDS vaccine is “unavoidably dangerous.” An AIDS vaccine is unavoidably dangerous if, at the time of distribution, (1) the vaccine was intended to confer an exceptionally important benefit on society that made its availability highly desirable, (2) the risk posed by the vaccine was both substantial and unavoidable at the time of distribution.

10. Id. § 199.45(n)(3). See Kearl, 172 Cal. App. 3d at 823, 218 Cal. Rptr. at 458. The increased exposure to liability may cause delay in the marketing of products while manufacturers conduct various safety tests. Such a result may be socially beneficial in the vast majority of products cases. Although marketing delays may be an appropriate trade-off when considering the safety of cars, handtools, and food, the trade-off might not be appropriate with regard to some special products that are extremely beneficial to society and yet pose an inherent and substantial risk that is unavoidable at the time of distribution. Id.

11. CAL. HEALTH & SAFETY CODE § 199.45(o).

12. The vaccine must be sold, delivered, administered, or dispensed in California. Id. § 199.49(a)(2). AIDS vaccine means a vaccine which has been developed by any manufacturer and is approved by the FDA as a safe and effective vaccine for the purpose of immunizing against AIDS. Id. § 199.50(b)(1).

13. Breach of expressed warranty will not be affected by a finding of “unavoidably dangerous.” Id. § 199.49(c). See generally Greenman v. Yuba Power Prods., Inc., 59 Cal. 2d 57, 60, 377 P.2d 897, 901, 27 Cal. Rptr. 697, 703 (1962). In the absence of an expressed or implied agreement of the parties, acceptance of the goods by the buyer will not discharge the seller from liability in damages or other legal remedy for breach of any promise or warranty in the contract to sell. Id.

14. CAL. HEALTH & SAFETY CODE § 199.49(a)(2). Unavoidably dangerous means unavoidably unsafe. Id. § 199.49(c). The manufacturer shall have the burden of proving by a preponderance of the evidence all of the criteria establishing an unavoidably dangerous vaccine, except where a conclusive presumption exists. Id. § 199.49(b). See id. § 199.49(a)(3); see infra note 15 and accompanying text (reference to the conclusive presumption that any approved AIDS vaccine is highly desirable). Cf. Finn, 35 Cal. 3d at 713, 677 P.2d at 1155, 200 Cal. Rptr. at 878 (Bird, C.J., dissenting) (rejecting the unavoidably dangerous product rule and advocating pure strict products liability).

15. CAL. HEALTH & SAFETY CODE § 199.49(a)(2)(A). A conclusive presumption exists that any FDA-approved AIDS vaccine is intended to confer an exceptionally important benefit on society which makes the availability of the vaccine highly desirable. Id. § 199.49(a)(3).

16. In determining whether the risk posed by the vaccine was substantial, the court must consider whether the risk posed permanent or long-term disability as opposed to temporary or insignificant inconvenience. Id. § 199.49(a)(2)(B)(f).

Selected 1986 California Legislation
unavoidable, and (3) the interest in availability of the vaccine outweighed the interest in promoting enhanced accountability through strict products liability.

Additionally, the legislature intends to compensate victims who are injured in the nonnegligent use of an AIDS vaccine. Chapter 1463 creates an AIDS Vaccine Victim Compensation Fund (the Fund), from which the State Board of Control (the Board) must pay damages for personal injuries caused by an AIDS vaccine. Upon receipt of an application for payment of damages, the Board may do one of the following: (1) allow the claim in whole or in part, (2) disallow the claim, or (3) grant an emergency award in instances of unusual hardship. In addition, the state is subrogated to any right or claim that an injured person or personal representative may have against

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17. *Id.* § 199.49(a)(2)(B). In determining whether the risk posed by the vaccine was unavoidable, the court must consider whether the vaccine was designed to minimize, to the extent scientifically knowable, the risk inherent in the vaccine, and also the availability at the time of alternate AIDS vaccines. *Id.* § 199.49(a)(2)(B)(ii).

18. *Id.* § 199.49(a)(2)(C). But see Brown v. Superior Court, 182 Cal. App. 3d 1125, 1136, 227 Cal. Rptr. 768, 774 (1986). The court criticizes the *Kearl* "mini-trial" approach as unworkable. The court's most serious objection to the mini-trial approach is the requirement that the trial judge hear and resolve mixed questions of law and fact. The question whether the interest in vaccine availability outweighs the interest in promoting enhanced accountability is an open-ended question of public policy which must be decided ad hoc by various trial judges according to standards set by those judges. This could lead to widely disparate treatment of the same drug by different courts. *Id.*


20. *Id.* § 199.50(a). The Fund will be funded in part or wholly by a surcharge on the sale of AIDS vaccine. The amount of the surcharge cannot exceed $10 per unit of vaccine. *Id.* § 199.50(o).

21. Damages for personal injuries include the direct medical cost for the care and treatment of injuries to any person, proximately caused by an AIDS vaccine; the loss of earnings caused by the injuries; and up to $550,000 to compensate for noneconomic losses, including pain and suffering. *Id.* § 199.50(b)(3). No payments shall be made, however, for the comparative negligence of the person making the claim, damages for which the manufacturer has already been found liable, or damages for injuries due to a vaccination administered during a clinical trial. *Id.* § 199.50(c)(1)-(3).

22. The application for payment of damages for personal injuries must be made on a form prescribed by the Board. The Board has the authority to require verification of the information in the application, and to request additional information if necessary. *Id.* § 199.50(d). The Board must reach a decision regarding the status of the application within 45 days of receipt. *Id.* § 199.50(e)(1).

23. If the claim is denied in whole or in part, the victim has 60 days to apply for a hearing. The hearing must be held within 60 days of the receipt of the request for a hearing. *Id.* § 199.50(e)(3).

24. An emergency award may be granted to cover the immediate needs of an injured person, provided that the victim agrees to repay the award if the claim is eventually denied. *Id.* § 199.50(e)(B)(2).

25. *Id.* § 199.50(d), (e).

26. *Id.* § 199.50(d), (e).

27. A victim's personal representatives include a legal guardian, estate, or survivor. *Id.* § 199.50(k).
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any third party, including any manufacturer, who is liable for injuries caused by the AIDS vaccine.28

Chapter 1463 also creates an AIDS Guaranteed Purchase Fund,29 from which the state must purchase, on a competitive basis, the difference between 1,000,000 units of an AIDS vaccine and the actual amount sold, delivered, administered, and dispensed in California.30

Finally, Chapter 1463 appropriates six million dollars from the General Fund for the purpose of subsidizing clinical trials for AIDS vaccines.31

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28. Id. An individual can pursue claims against the Fund and lawsuits against manufacturers concurrently, except that the State will be entitled to a lien on the judgment or settlement in the amount of any payments made to the injured party by the Fund. Id. § 199.50(m). Under Chapter 1463, an AIDS Vaccine Injury Compensation Policy Review Task Force (the Task Force) has been created to study and make recommendations on the legislative implementation of the Fund. The recommendations will address the following issues: (1) the process by which victims are to be compensated through the Fund; (2) the procedures by which the Fund will operate and the governance of the Fund; (3) the method by which manufacturers are to pay into the Fund and the amount of that payment; (4) the procedural relationship between a potential victim's claim through the Fund and a court claim made against the manufacturer; and (5) other issues deemed appropriate by the Task Force. Recommendations must be made to the legislature on or before March 31, 1987. Id. § 199.50(n).

29. The Fund is to be administered by the State Department of Health Services. This department will take into consideration the following factors when determining which AIDS vaccine to purchase: (1) the length of time each AIDS vaccine has been in the marketplace in California; (2) each AIDS vaccine's history of effectiveness since FDA approval; (3) each AIDS vaccine's history of side effects experienced by previous recipients of the vaccine; and (4) the relative cost of each competing manufacturer's AIDS vaccine. Id. § 199.51(c).

30. Id. § 199.51(b). The purchases shall be made within a 3-year period commencing at the time of final FDA approval, at a total not to exceed $20 million, provided that less than 1,000,000 units of the vaccine are sold, delivered, dispensed and administered in California during the 3-year period. Id.

31. 1986 Stat. ch. 1463, sec. 2, at _____. The sum of six million dollars is appropriated from the General Fund. Id.

Health and Welfare; certification of gravely disabled and dangerous persons

Welfare and Institutions Code §§ 5008.2, 5350.2 (new); §§ 5152, 5213, 5256.4, 5276, 5352.6, 5354.5, 5356, 5358 (amended).

SB 1670 (McCorquodale); 1986 Stat. Ch. 872

Sponsor: California Council on Mental Health

Support: Los Angeles County

Existing law provides that persons who are, due to mental illness,
gravely disabled or dangerous may be involuntarily detained and treated. Once involuntarily detained, the person must be released within seventy-two hours, referred for voluntary treatment, certified for intensive treatment, or have a conservator appointed on their behalf.

Chapter 872 modifies the certification review process by (1) allowing the patient’s case history to be admitted into evidence at the certification review hearing; (2) stipulating that the patient’s resistance to treatment does not, by itself, imply the existence of a mental disorder; and (3) requiring that reasonable efforts be made to contact the patient’s family.

Chapter 872 alters the involuntary treatment process by requiring that the patient receive information about the possible side effects of any medication the patient was given; the nature of the mental illness, or behavior, that is the reason the medication is being given or recommended; the prognosis for improvement or no improvement without the medication; and the availability of alternate treatments. Failure to give the specified information, however, is not a ground for releasing the person.

1. CAL. WELF. & INST. CODE § 5008(h) (definition of gravely disabled).
2. Peace officers, members of mobile crisis teams, staff members of designated evaluation facilities, and other professionals may take a person into custody, upon probable cause, and place the person in a facility designated by the State Department of Mental Health. Id. § 5150.
3. Id. See generally id. §§ 5000-5579 (the Lanterman-Petris-Short Act).
4. Id. § 5152(b). Certification for intensive treatment occurs when the patient is gravely disabled or dangerous, and allows involuntary treatment for 14 days past the original 72-hour period of involuntary detention. Id. § 5213.
5. Id. § 5152.
6. See id. §§ 5256 (the hearing must be within 7 days of the initial detention of the person, but may be postponed for 48 hours by the person or the person's advocate); 526.1 (who may conduct the hearing); 5256.4 (enumeration of a person’s rights during a certification hearing). See also id. § 5275 (the person may request a writ of habeas corpus); Keilitz, Study of Involuntary Civil Commitment in Los Angeles, 14 S.W. U.L. Rev. 241 (1984) (reviewing jurisdiction, venue, and due process concerns in civil commitments).
7. CAL. WELF. & INST. CODE § 5008.2 (describing case history).
8. The hearing officer, court, or jury may exclude evidence deemed irrelevant due to remoteness of time or dissimilarity of circumstances. Id.
9. See supra note 6 and accompanying text.
10. CAL. WELF. & INST. CODE § 5256.4(e) (the patient’s resistance to treatment does not constitute evidence that the patient is dangerous to any person).
11. Id. § 5276 (the patient, however, may request that family not be contacted).
12. The information must be given to the patient, in oral or written form, as soon as possible after detention. Id. § 5152(c).
13. Id. (the information must be noted on the patient’s chart).
14. Id.
Existing law provides for the preparation of an individualized treatment plan\(^5\) for the patient within ten days of the appointment of the conservator.\(^6\) Chapter 872 provides that persons who are not inpatients may be considered gravely disabled, and thus eligible for a conservatorship.\(^7\) In addition, Chapter 872 requires the person preparing the individualized treatment plan to encourage the conservatee and the conservatee’s family to participate in the development of a treatment plan.\(^8\)

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15. *Id.* § 5352.6.
16. *Id.*. *Id.* §§ 5350-5371 (conservatorships described in general).
17. *Id.* § 5358(c).
18. *Id.* § 5352.6. The conservatee’s family may participate in the development, implementation, revision, and review of the treatment program. *Id.*

**Health & Welfare; contagious disease—notification.**

Health & Safety Code § 1797.188 (new).

SB 1518 (Royce); 1986 STAT. Ch. 999

Sponsor: California State Firemans Association

Support: California Highway Patrol; Department of Corrections

Opposition: Department of Health Services; Department of Finance

Existing law requires that a health officer\(^1\) attempt to prevent the spread of contagious, infectious, or communicable disease.\(^2\) Existing law also requires specified persons\(^3\) to report known cases of contagious and communicable diseases to a health officer.\(^4\) Chapter 999

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2. *Id.* § 3110. A health officer must also attempt to prevent any disease made reportable by regulations of the State Department of Health Services. *Id.* *See also* Derrick v. Ontario Community Hosp., 47 Cal. App. 3d 145, 153, 120 Cal. Rptr. 566, 570 (1975) (once the disease is reported, the local public health officer is vested with considerable discretion as to what actions to take to control the spread of the disease).
3. *Cal. Health & Safety Code* § 3125 (persons include physicians, nurses, clergymen, attendants, owners, proprietors, managers, and employees in the same place as a sick person; persons living in the same place as a sick person; and persons visiting with a sick person).
4. *Id.*
requires the county health officer to inform an emergency medical technician of an exposure to a reportable disease, if the emergency medical technician has provided a name and phone number to the health facility which admitted the afflicted person, and the health facility has reported this information to the county health officer. Chapter 999 further provides that if a person afflicted with a reportable disease dies, a health facility or the county health officer must notify the funeral director of the disease before the decedent is removed from the health facility.

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5. Id. § 1797.188(c) (may not disclose name or other identifying characteristics of person with disease).
6. Id. § 1797.188(a)(1) (definition of emergency medical technician). See id. §§ 1797.80 (definition of E.M.T.-I), 1797.82 (definition of E.M.T.-II), 1797.84 (definition of E.M.T.-Paramedic), 1797.182 (definition of lifeguards and firefighters), 1797.183 (definition of peace officer).
7. Id. § 1797.188(a)(3) (exposure occurs when a person has been put at risk for contracting the disease).
8. CAL. ADMIN. CODE tit. 17, §§ 2500-2640 (list of reportable diseases).
9. CAL. HEALTH & SAFETY CODE § 1797.188(b). Notification is required only if the disease is reportable pursuant to the California Administrative Code, title 17, §§ 2500-2640, and can be transmitted through oral contact or secretions. Id.
10. Id. § 1797.188(c).

Health and Welfare; controlled substances—hazardous chemicals

Health and Safety Code §§ 11374.5, 25354.5 (new); §§ 11470.1, 11479, 11479.2 (amended).
AB 4198 (Condit); 1986 STAT. Ch. 1031
Sponsor: Author; Attorney General
Support: Department of Corrections

Existing law prohibits the disposal of hazardous substances in

1. CAL. HEALTH & SAFETY CODE § 25316 (definition of hazardous substances). See id. § 25317 (what does not constitute a hazardous substance). See also id. § 25116.5 (definition of hazardous).
unauthorized facilities.\textsuperscript{2} Chapter 1031 expands existing law by imposing criminal penalties\textsuperscript{3} on any manufacturer of a controlled substance who disposes\textsuperscript{4} of any hazardous substance in violation of the laws governing their disposal.\textsuperscript{5}

Under existing law, the expenses of seizing, eradicating, or destroying a controlled substance are recoverable from any person who manufactures or cultivates a controlled substance or its precursors, or who aids and abets or profits from those acts.\textsuperscript{6} The legal action may be brought by the district attorney, county counsel, or city attorney, who has the burden of proof in the criminal prosecution.\textsuperscript{7}

Chapter 1031 permits the prosecutors\textsuperscript{8} to recover the costs of bringing the action by filing a civil suit.\textsuperscript{9} In the civil suit to recover costs, Chapter 1031 creates a presumption affecting the burden of proof that a person who has been convicted of manufacturing or cultivating a controlled substance is liable for the costs of remedial actions.\textsuperscript{10} Under existing law, when law enforcement seizes certain quantities of suspected controlled substances, they must retain five random samples for evidentiary purposes.\textsuperscript{11} Chapter 1031 deletes this sampling requirement in the case where the evidence contains suspected hazardous chemicals.\textsuperscript{12}

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\textsuperscript{2} Id. § 251892(c).
\textsuperscript{3} Id. § 11374.5(a) (two, three, or four years in state prison, or not more than one year in county jail).
\textsuperscript{4} Dispose means to abandon, deposit, intern, or otherwise discard as a final action after use has been achieved or a use is no longer intended. Id. § 11374.5(b)(1).
\textsuperscript{5} Id. § 11374.5(a).
\textsuperscript{6} Id. § 11470.1(a)(1), (2).
\textsuperscript{7} Id. § 11470.1(d).
\textsuperscript{8} Id. (the State Department of Health Services and the Attorney General may also bring suit).
\textsuperscript{9} Id. § 11470.1(b).
\textsuperscript{10} Id. § 11470.1(2)(e)(2).
\textsuperscript{11} Id. § 11479(a). See also id. § 11479(b)-(e) (additional requirements for the preservation, measurement, and recordation of samples of hazardous substances).
\textsuperscript{12} Id. § 11479. The requirements of California Health and Safety Code § 11479(b)-(e) must, however, still be met. Id. See also id. § 11479(e) (definition of hazardous chemicals).
Health and Welfare: controlled substance transactions—report and permit requirements

Health and Safety Code § 11100 (amended, repealed, and new); § 11106 (new).
AB 3977 (Katz); 1986 STAT. Ch. 1028
(Effective January 1, 1987)*
Sponsor: Attorney General

Existing law requires any manufacturer, wholesaler, retailer, or other person,1 who supplies2 a controlled substance3 within the state, to submit a report of the transaction to the State Department of Justice (Department) at least twenty-one days prior to delivery of the substance.4 Existing law further provides that a transaction report may be filed monthly if specified criteria are met.5 Furthermore, an exemption from the reporting requirement may be granted if the supplier demonstrates, to the Department’s satisfaction, that the recipient requires the substance for a lawful purpose, and that special circumstances prevent the supplier from submitting a timely report.6 Failure to submit a timely report is a misdemeanor.7

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1. The following persons are exempt from this provision: (1) a pharmacist or other authorized person filling prescriptions of a physician, dentist, podiatrist, or veterinarian; (2) a physician, dentist, podiatrist, or veterinarian administering or furnishing drugs to a patient; or (3) a manufacturer or wholesaler licensed by the California State Board of Pharmacy supplying a licensed pharmacy, physician, dentist, podiatrist, or veterinarian. CAL. HEALTH & SAFETY CODE § 11100(c).
2. Id. § 11100(a) (supplies means sells, transfers, or otherwise furnishes).
3. Id. (specified controlled substances includes phenyl-2-propanone, methylamine, ethylamine, D-lysergic acid, ergotamine tartrate, diethyl malonate, malonic acid, ethyl malonate, barbituric acid, piperidine, N-acetylanthranilic acid, pyrolidine, phenylacetic acid, anthranilic acid, and morpoline). The Department may delete a substance from the list, or add a substance that is a precursor to a controlled substance, but the modification does not have any effect beyond March 1 of the year following the calendar year during which the modification was adopted. Id. § 11100(b).
4. Id. § 11100(d).
5. Id. (specified criteria means repeated, regular transactions of the same substance occur between the supplier and the recipient, and the Department determines that either: (1) a pattern of regular supply exists between the two parties; or (2) the recipient has established a record of utilization of the substance for lawful purposes).
6. Id. § 11100(e).
7. Id. § 11100(f)(1) (punishable by imprisonment in the county jail for not more than 6 months, a fine not exceeding $5,000, or both). A repeat offense is punishable by imprisonment...
Chapter 1028 will repeal existing law on April 1, 1987. On that date, Chapter 1028 will reenact the same provisions of existing law regarding the list of controlled substances, the ability of the Department to modify the list, the requirement for submitting a timely report, and the persons exempt from the reporting requirement.

Chapter 1028, however, will repeal the reporting exemption allowed to a supplier who demonstrates that a recipient requires the controlled substance for a lawful purpose, and that special circumstances prevent the furnisher from submitting a timely report. Furthermore, on April 1, 1987, Chapter 1028 will expand the provisions of existing law by requiring any manufacturer, wholesaler, retailer, or other person to obtain proper identification information from the recipient prior to supplying a specified controlled substance, and to cosign as a witness to the signature and identification of the purchaser. Chapter 1028 will also expand existing law by reenacting the same penalty provisions with an addition stating that one who knowingly submits a report with false or fictitious information will be subject to punishment under Chapter 1028.

Effective April 1, 1987, a manufacturer, wholesaler, retailer, or other person who supplies a specified controlled substance to a person in the state prison, or by imprisonment in the county jail for not more than 1 year, a fine not exceeding $100,000, or both. *Id.* § 11100(f)(2).

8. 1986 Cal. Stat. ch. 1028, sec. 1, at _______.

9. *Cal. Health & Safety Code* § 11100(a), (b), (d), (e). *See supra* notes 1-6 and accompanying text.


11. *See supra* note 1 (list of exempted persons).

12. *Cal. Health & Safety Code* § 11100(c)(2) (proper identification information includes (1) a motor vehicle operator’s license or other official state-issued identification of the purchaser which contains a photograph of the purchaser, and includes the residential or mailing address of the purchaser, other than a post office box number; (2) the motor vehicle license number of any motor vehicle owned or operated by the purchaser; and (3) a letter of authorization from the business for which any specified controlled substance is being furnished, which includes the business license number and address of the business, a full description of how the substance is to be used, and the signature of the purchaser).

13. *Id.* § 11100(c)(1). *See supra* note 3 (list of specified controlled substances).

14. *Id.* § 11100(c)(2). Identification information is included in the transaction report that is submitted to the Department. *Id.* § 11100(d). Failure to obtain the proper identification information is a misdemeanor separate from any penalty imposed for failure to file a timely and truthful report. *Id.* § 11100(c)(3). Failure to obtain the proper identification information is punishable by imprisonment in the county jail for no more than 6 months, a fine not exceeding $1,000, or both. *Cal. Penal Code* § 19. The enactment of the April 1, 1987, provisions and deletions of Chapter 1028 are effective until October 1, 1987. 1986 Cal. Stat. ch. 1028, sec. 2, at ________.


person in the State, or who receives a specified controlled substance from a source outside the State, must obtain a permit from the Department. A permit may be obtained by submitting application forms and an accompanying fee to the Department. Permits are valid for no more than one year from the date of issuance and are renewable annually.

Under Chapter 1028, engaging in a transaction of a specified controlled substance without a permit is either a misdemeanor or a felony.

On October 1, 1987, Chapter 1028 will reenact the reporting requirement provisions enacted on April 1, 1987 with two changes: (1) the list of controlled substances will be expanded to include ephedrine, pseudoephedrine, norpseudoephedrine, and phenylpropanolamine; and (2) the list of persons exempted from the reporting and recipient information requirements will include any person conducting sales consistent with federal law of any proprietary product containing ephedrine, pseudoephedrine, norpseudoephedrine, and phenylpropanolamine.

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17. Id.
18. Id. § 11106(a), (g).
19. Id. § 11106(b) (each application is to be filed in writing and signed by the applicant, and must include the name of the applicant, the business in which the applicant is engaged, the business address of the applicant, and a full description of any substance sold, transferred, or otherwise furnished or received).
20. Id. § 11106(b), (d). The application fee is determined by the Department and cannot exceed the application processing costs. Id. § 11106(d).
21. Id. § 11106(c).
22. Id. § 11106(e) (each filing for renewal must be accompanied by a Department application and a fee).
23. See supra note 15 (definition of specified controlled substance requiring a permit to transact).
24. CAL. HEALTH & SAFETY CODE § 11106(f). A misdemeanor under Chapter 1028 is punishable by imprisonment in the county jail for no more than 6 months, a fine not exceeding $1,000, or both. CAL. PENAL CODE § 19.
25. CAL. HEALTH & SAFETY CODE § 11106(f). A felony under Chapter 1028 is punishable by imprisonment in a state prison for 16 months, 2 years, or 3 years. CAL. PENAL CODE § 18.
27. CAL. HEALTH & SAFETY CODE § 11100(e)(4). See supra note 1 (list of specified exempt persons).
Health and Welfare; elder and dependent adult abuse

Evidence Code § 972 (amended); Penal Code § 368 (amended); Welfare and Institutions Code §§ 9380, 9381, 9382, 9383, 9384, 9385, 9386, 9387, 15602, 15621 (repealed); § 15650 (new); §§ 15600, 15601, 15610, 15620, 15630, 15631, 15632, 15633, 15633.5, 15634, 15635, 15640 (amended).
AB 3988 (Papan); 1986 STAT. Ch. 769
Sponsor: Author
Support: Commission on Aging

Under existing law, any person who willfully causes or permits a dependent adult to suffer physical abuse or mental suffering, or any person having care or custody of a dependent adult who causes or permits the dependent adult to be injured or placed in a dangerous situation, is guilty of a misdemeanor. A caretaker of a dependent adult who steals or embezzles property of the dependent adult is also guilty of a misdemeanor. With the enactment of Chapter 769, a person or caretaker is likewise guilty of a misdemeanor for causing an elder to suffer physical abuse or mental suffering, for permitting an elder in custody to be injured or placed in a dangerous situation, or for stealing or embezzling the property of an elder.

Existing law prescribes methods by which law enforcement agencies may receive referrals or complaints concerning the welfare of an elder or dependent adult so that the agency may aid the elder or dependent adult who is a victim of abuse, neglect, or abandon-

1. CAL. PENAL CODE § 368(b) (under circumstances or conditions other than those likely to produce great bodily harm or death).
2. CAL. PENAL CODE § 368(b), (e) (must have knowledge of dependent adult status). Under Chapter 769, a dependent adult is any person between 18 and 64 years of age who has physical or mental limitations which restrict that person's ability to carry out normal activities or to protect personal rights. CAL. WELF. & INST. CODE § 15610(a).
3. CAL. WELF. & INST. CODE § 15610(c) (definition of physical abuse pursuant to Chapter 769).
4. Id. § 15610(p) (definition of mental suffering pursuant to Chapter 769).
5. See CAL. PENAL CODE § 368(f) (under Chapter 769, a caretaker is any person who has the care, custody, or control of, or who stands in a position of trust with, an elder or dependent adult).
6. Id. § 368(b).
7. Id. § 368(f) (definition of caretaker pursuant to Chapter 769).
8. Id. § 368(c).
9. Id. § 368(d) (definition of elder).
10. Id. § 368(d). The caretaker must have knowledge of elder status. Id. § 368(a), (b).
11. CAL. WELF. & INST. CODE § 15610(a) (definition of elder pursuant to Chapter 769).
12. Id. § 15610(g) (definition of abuse pursuant to Chapter 769).
13. Id. § 15610(d) (definition of neglect pursuant to Chapter 769).
ment. Chapter 769 expands existing law by extending to elders the reporting standards, investigatory requirements, and law enforcement assistance given to dependent adults. Furthermore, Chapter 769 allows dependent adults or elder abuse victims to refuse or withdraw consent to the assistance of a protective service.

Under existing law, a married person must be denied certain testimonial privileges when the married person's spouse is a party to a criminal proceeding in which the spouse is charged with a crime against the person or property of the other spouse or child. Chapter 769 expands existing law by providing that a married person must be denied disclosure privileges in any proceeding against the person or property of a parent, relative, or cohabitant of either spouse.
Health and Welfare; life care contracts

Health and Safety Code §§ 1773.5, 1788 (repealed and new); §§ 1773.6, 1773.7, 1773.8, 1773.9, 1775.5, 1780.5, 1780.6, 1788.5, 1791 (new); §§ 1343, 1770, 1770.5, 1771, 1790.7, 1790.9 (amended); Welfare & Institutions Code § 10557 (repealed and new).
SB 1620 (Hart); 1986 STAT. Ch. 1093

Under existing law, any person who receives a transfer of property from an elderly person in exchange for an agreement to furnish care for life, or for a period of more than one year, is required to obtain a written license and a certificate of authority from the State Department of Social Services (the Department). Chapter 1093 extends these requirements to any provider who promises to provide care for life, or for more than one year, to any person sixty years or older in return for consideration. In addition, Chapter 1093 authorizes the Department to institute proceedings to obtain injunctive or other equitable relief in the superior court of the county in which the violation occurred, or where the provider’s principal place of business is located. Chapter 1093 was enacted in response to a finding by the legislature that safeguards are necessary to protect the elderly from selling or mortgaging their homes, or transferring substantial amounts of money, in anticipation of the construction of a health care facility, when there is a material reason to believe the facility will not obtain the necessary financing or licensing to sustain operation.

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1. Under Chapter 1093, an elderly person is defined as a person 60 years of age or older. CAL. HEALTH & SAFETY CODE § 1771(i).
2. Pursuant to Chapter 1093, care is defined as nursing services, medical services, health related services, or assistance in the personal activities of daily life. Id. § 1771(c).
3. Id. § 1251 (definition of license).
4. Id. § 1771(d) (definition of certificate of authority).
5. Id. § 1770(a).
6. Id. § 1771(v) (definition of provider).
7. Id. § 1771(t) (definition of promise to provide care).
8. Id. § 1770(a). Any transaction in which care is promised to an elderly person in return for an entrance fee or other consideration is regarded as a life care contract under this chapter. Id. § 1770(c). Chapter 1093 provides that any provider who promises or proposes to enter into a life care contract with an elderly person, without first having secured a certificate of authority or placing the consideration in escrow, is guilty of a misdemeanor. Id. § 1788.
9. Id. § 1788.5.
10. Id. § 1770.5(d).

Selected 1986 California Legislation 677
Health and Welfare; public records—exemption from disclosure

Civil Code § 1798.57 (new).
SB 1461 (Carpenter); 1986 Stat. Ch. 94
(Effective May 13, 1986)
Sponsor: Veterans of Foreign Wars

Under existing law, every person has a right to inspect the public records of local and state agencies, with specified exceptions. Existing law also permits local and state agencies to withhold from public disclosure confidential or personal information to protect the privacy of the individual to whom the information pertains, or to promote the legitimate interests of the governmental agency. Chapter 94 expands existing law by providing that any person who intentionally discloses medical, psychiatric, or psychological records, except where disclosure is required or permitted by law, is guilty of a misdemeanor if the wrongful disclosure results in economic loss or personal injury to the individual to whom the information pertains.

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1. Cal. Gov't Code § 6252(c) (definition of person).
2. Id. § 6252(d) (definition of public records).
3. Id. § 6252(b) (definition of local agency).
4. Id. § 6252(a) (definition of state agency).
7. Id. § 1798.3(a) (definition of personal information).
8. Id. § 1798.1(c) (to protect the privacy of individuals, strict limitations should be placed on the dissemination of personal information).
9. Id. § 1798.14.
10. Id. § 1798.3(f) (definition of person pursuant to the California Information Practices Act).
11. Id. § 1798.57 (disclosure must be in violation of the Information Practices Act of 1977 found in Civil Code §§ 1798-1798.78).
12. See id. § 1798.24 (specified conditions under which personal or confidential records may be disclosed). See also 64 Op. Att'y Gen. 575, 588 (1981) (a public agency is not prohibited by the Information Practices Act of 1977 from disclosing information if the agency can, under the Public Records Act, find a compelling reason to release such information).
Health and Welfare; resource recovery projects

Under existing law, an enforcement agency\(^1\) may not issue a solid waste facilities permit to any stationary project designed to convert solid waste into energy until the enforcement agency makes specified findings.\(^2\) Chapter 1134 extends existing law by requiring the enforcement agency to determine that the project applicant has considered reasonable and feasible methods to remove recyclable materials prior to incineration.\(^3\)

Under existing law, a district board\(^4\) (the District) must issue permits for the construction of projects with an electrical generating capacity greater than or equal to fifty megawatts, after determining that the project satisfies permit requirements, taking into consideration the potential emission of noncriteria pollutants,\(^5\) and after developing appropriate permit conditions.\(^6\) Chapter 1134 expands existing law by requiring a project that burns municipal solid waste or refuse-derived fuel applying for a permit renewal, and a facility using resource recovery technology,\(^7\) to demonstrate that the project will (1) not prevent or interfere with the attainment or maintenance of

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1. CAL. GOV'T CODE § 66796 (designation of enforcement agency).
2. Id. § 66796.40(a). The proposed project must (1) be consistent with state management policy; (2) have a defined source of waste, including waste available from existing solid waste transfer and processing stations; (3) be guaranteed more than sufficient quantities of waste to maintain the economic feasibility of the project for the duration of the bonded indebtedness of the project; and (4) meet the requirements of consistency with State Solid Waste Management Board (the Board) standards, and with legislative findings and intent. Id. See also id. §§ 66796.34(a)(2) (requiring consistency with standards of the Board and with legislative findings and intent); 66780 (legislative findings and intent). Facilities that recover methane gas from disposal sites are not subject to these requirements. Id. § 66796.40(b).
3. Id. § 6696.40(a)(5).
4. See CAL. HEALTH & SAFETY CODE §§ 39025 (district means an air pollution control district or an air quality management district); 39026 (district board means the governing body of a district).
5. See id. § 39013 (specifying types of air pollutants).
6. Id. § 42314.1(b). This section applies to facilities that burn municipal waste, landfill gas, or digester gas. Id.
7. Resource recovery technology incorporates the technology employed in cogeneration. See Danziger, Renewable Resources and Cogeneration: Community Systems and Grid Interaction as a Public Utility Enterprise, 1 WHITTIER L. REV. 81 (1979) (discussing how resource
state and federal ambient air quality standards,\(^8\) (2) comply with all applicable emission limitations,\(^9\) (3) comply with toxic air containment control measures adopted by the District,\(^10\) and (4) be periodically monitored as to emissions pursuant to specifications established by the District.\(^11\) Before issuing a construction permit, operation renewal, or compliance determination under Chapter 1134, the District must also assess the health risks created by the proposed project.\(^12\) The District must also determine that air pollution from the construction and operation of the project will not significantly increase the risk of illness or mortality.\(^13\) Chapter 1134 also requires a lead agency\(^14\) to prepare, and certify the completion of, an environmental impact report\(^15\) for the construction of any project that burns municipal waste or refuse-derived fuel.\(^16\)

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8. CAL. HEALTH & SAFETY CODE § 39014 (definition of ambient air quality standard).
9. See id. §§ 41700-41707 (regarding emission limitations). This demonstration only applies to limitations established prior to issuance of the permit or the determination of compliance. Id. § 42315(a)(2).
10. Compliance must be shown after issuance of the permit or determination of compliance. Id.
11. Id. § 42315(a)(1)-(3), (6); CAL. PUB. RES. CODE § 25523(h). These demonstrations are not required of any project that (1) exclusively burns digester gas produced from manure or other animal solid or semisolid waste; (2) exclusively burns methane gas produced from a disposal site; or (3) exclusively burns forest, agricultural, wood, or other biomass wastes. CAL. HEALTH & SAFETY CODE § 42315(c).
12. CAL. HEALTH & SAFETY CODE § 42315(a)(4). The assessment must be submitted for review to both the State Air Resources Board and the State Department of Health Services. The State Air Resources Board and the State Department of Health Services must submit written comments to the District within 45 days of receiving the health risk assessment. Id.
13. Id. § 42315(a)(5). This determination does not apply to an application for permit renewal. Id.
14. CAL. PUB. RES. CODE § 21067 (definition of lead agency).
15. Id. § 21061 (definition of an environmental impact report).
16. Id. § 21151.1(a). This requirement does not apply to any project under the jurisdiction of the State Energy Resources Conservation and Development Commission. Id. § 2115.1(c). Nor does this requirement apply to any project that (1) exclusively burns digester gas produced from manure or any other solid or semisolid animal waste; (2) exclusively burns methane gas produced from a disposal site; or (3) exclusively burns forest, agricultural, wood, or other biomass wastes. Id. § 2115.1(b).
Health and Welfare; selling of a removed food, drug, or cosmetic

Health and Welfare Code §§ 207.1, 207.2 (new).
AB 4090 (Molina); 1986 STAT. Ch. 1403
Sponsor: Los Angeles County
Support: Department of Health Services

Existing law empowers the State Department of Health Services (the Department) to recall or embargo foods, drugs, devices, or cosmetics which may be adulterated, misbranded, or falsely advertised. Under existing law, a violation of an embargo or recall order is a misdemeanor. Chapter 1403 creates a misdemeanor for the willful and knowing sale of a product which has been linked to an outbreak of illness, injury, or product tampering, and which is being ordered removed from sale by the Department. A violation of Chapter 1403 empowers a court, as a condition of probation, to require the violator to pay any expenses incurred by the Department.

1. CAL. HEALTH & SAFETY CODE § 26830 (embargo by authorized agent of the Department).
2. Id. § 26012 (definition of food).
3. Id. § 26010 (definition of drug).
4. Id. § 26009 (definition of device).
5. Id. § 26005 (definition of cosmetic).
6. Id. §§ 26520-26533, 26538 (adulterated food defined); 26610-26618 (adulterated drugs and devices defined); 26710-26714 (adulterated cosmetics defined).
7. Id. §§ 26550-26564.5, 26568, 26569, 26569.7(c) (misbranded food defined); 26630-26649.5 (misbranded drugs and devices defined); 26730-26735.5 (misbranded cosmetics defined).
8. Id. § 26830. See id. § 26400 (factors to be considered in determining that advertising or labeling is misleading); see also id. § 26002 (definition of advertising).
9. Id. § 26801 (violation of these provisions is punishable by imprisonment in the county jail for not more than 6 months, a fine not less than $100 nor more than $500, or both); see also CAL. PENAL CODE § 17(a)-(c) (definition of misdemeanor).
10. CAL. HEALTH & SAFETY CODE § 207.1(a) (punishment includes a fine of not less than $2,000 nor more than $10,000 for each day of the violation, imprisonment in the county jail for not more than 1 year, or both).
11. Id. Knowing includes a written notice from either (1) a manufacturer, distributor, wholesaler, or importer; or (2) the Department or local health officer that a product is linked to an outbreak of illness, injury, or product tampering, and is being removed from sale by the Department. Id.
12. Id. (sells, keeps for sale, or offers for sale).
13. Id. (includes food, drugs, devices, and cosmetics); see infra notes 2-5.
14. CAL. HEALTH & SAFETY CODE § 207.1(a).
15. Id. § 207.2 (in lieu of any fine). Total costs payable to the Department and the local agency collectively may not exceed the maximum fine allowed for the offense committed. Id.
16. Id. (including both direct and indirect expenses, but not limited to the costs of inspection and embargo).
Health and Welfare; sterilization of incompetents

Sponsor: Association of Retarded Citizens

Existing law provides judicial procedures necessary to create a limited conservatorship1 for a developmentally disabled2 adult.3 The powers and duties4 of a limited conservator include the ability to provide substitute consent5 for medical treatment of individuals who, because of their disabilities, are unable to provide the necessary consent themselves.6 Under prior law, no mechanism existed for obtaining the substitute consent required to authorize the sterilization of a developmentally disabled adult when the sterilization was a desirable form of birth control, but not a medical necessity.7 The

17. Id. (any amount collected shall be paid to the local entity incurring the costs or, in the case of the Department, to the General Fund).

2. Id. § 1420 (definition of developmental disability).
3. Id. §§ 1801(d)(1)-(3), 2351.5.
4. Id. § 2351.5 (powers and duties of limited conservators).
5. Id. § 2355(a) (if the conservatee lacks capacity to consent to medical treatment, the conservator has the exclusive authority to give the necessary consent). See also id. §§ 1880, 1890-1898 (procedures to appoint conservator when conservatee lacks capacity to give informed consent for medical treatment); 2357(b)-(i) (procedures for conservators in giving substitute consent to authorize medical treatment).
6. Id. § 2355(a).
7. 1985 Cal. Stat. ch. 726, sec. 301, at (enacting Cal. Prob. Code § 2356(d) (no conservatee may be sterilized under the conservatorship provisions of the Probate Code). See generally Conservatorship of Valerie N., 40 Cal. 3d 143, 707 P.2d 960, 219 Cal. Rptr. 387 (1985) (no judicial procedure exists to allow substituted consent for medically unnecessary sterilization; the court also discussed prior law regarding sterilization). See also Goldberg, The Sterilization of Incompetents and the “Late Probate Court” in California: How Bad Law
California Supreme Court, in *Conservatorship of Valerie N.*,\(^8\) held that this inability to obtain substitute consent violated the incompetent's\(^9\) constitutional right to privacy and freedom of procreative choice.\(^10\) In apparent response to *Conservatorship of Valerie N.*, Chapter 1012 provides the procedures for the establishment of a limited conservatorship for the purpose of giving substitute consent to sterilize\(^11\) an incompetent adult.\(^12\) The express intent of the legislature in passing Chapter 1012 is that individuals will not be sterilized solely because of a developmental disability, nor will they be sterilized involuntarily.\(^13\)

To protect the incompetent individual from indiscriminate sterilization, Chapter 1012 incorporates numerous safeguards into the procedures for obtaining authorization to supply consent, including but not limited to the following five protections: (1) the individual named in the petition for sterilization must be represented by legal counsel;\(^14\) (2) the counsel must undertake the representation based on the presumption that the individual opposes the appointment of the limited conservator;\(^15\) (3) to ensure that no individual will be sterilized involuntarily, a facilitator\(^16\) must be appointed by the court, to assist the disabled individual in understanding and participating in the proceedings, as well as aiding with the communication of the individual’s views on the subject;\(^17\) (4) an automatic appeal and stay of any order authorizing the limited conservatorship is provided;\(^18\) and (5) a limited conservatorship order for sterilization, that is upheld

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\(^8\) 40 Cal. 3d 143, 707 P.2d 960, 219 Cal. Rptr. 387 (1985).

\(^9\) Incompetent refers to a developmentally disabled individual who lacks the capacity to give consent to medical treatment. *See Cal. Prob. Code § 1950.*

\(^10\) Valerie N., 40 Cal. 3d at 148, 707 P.2d at 777, 219 Cal. Rptr. at 404.

\(^11\) *Cal. Prob. Code § 1950.* The legislature recognized that developmentally disabled adults, who were capable of engaging in sexual activity, were being denied the birth control option of sterilization. *Compare id. § 2356* (no minor may be sterilized under the conservatorship provisions of the Probate Code) with 1985 Cal. Stat. ch. 726, sec. 301, at _____(enacting *Cal. Prob. Code § 2356(d)*) (no ward or conservatee may be sterilized under the conservatorship provisions of the Probate Code).

\(^12\) Id. §§ 1950 (declaration of legislative intent); 1952 (petition for appointment of a limited conservatorship for consent to sterilization). *Compare id. § 2356* (no minor may be sterilized under the conservatorship provisions of the Probate Code) with 1985 Cal. Stat. ch. 726, sec. 301, at _____(enacting *Cal. Prob. Code § 2356(d)*) (no ward or conservatee may be sterilized under the conservatorship provisions of the Probate Code).

\(^13\) Id. § 1950. The legislature recognized that developmentally disabled adults, who were capable of engaging in sexual activity, were being denied the birth control option of sterilization, because no mechanism existed for obtaining the required consent. *Id.*

\(^14\) Id. § 1954 (if no counsel has been retained, and there is no intention to retain counsel, the court must appoint either the public defender or private counsel to represent the individual).

\(^15\) Id.

\(^16\) Id. § 1954.5(b) (factors to be considered in selecting facilitator).

\(^17\) Id. § 1954.5(a).

\(^18\) Id. §§ 1962(b), 1965.

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on appeal, automatically expires one year from the date of the final determination. In addition to protecting the incompetent individual, Chapter 1012 also extends protection to any person who takes part in the conservatorship proceedings by granting immunity from any civil or criminal liability which arises out of the proceedings, except in cases of negligent or willful misconduct.

Before authorizing the limited conservatorship, the court must order the director of the appropriate regional center for the developmentally disabled to coordinate an investigation and produce a comprehensive written report on the medical, psychological, and socio-sexual evaluations of the developmentally disabled individual. The report must address the following factors: (1) the inability of the individual to give consent and the permanence of that inability; (2) the individual’s fertility and ability to procreate; (3) the likelihood that the individual will engage in sexual activity in the present or near future; (4) the feasibility of alternative contraceptive devices and the extent of the individual’s knowledge of human sexuality; (5) the relative degree of bodily invasion resulting from the proposed method of sterilization; (6) any medical condition which would make pregnancy a substantial risk to the individual and which would warrant, in the absence of alternative methods of contraception, the sterilization of an otherwise nondisabled woman; (7) the ability of the individual to care for a child and the effect of training and assistance on that ability; and (8) the current state of medical knowledge with respect to reversible sterilization procedures and

19. Id. § 1964.
20. Id. § 1967(a).
21. Id. § 1955(a) (determination of appropriate).
22. CAL. WELF. & INST. CODE §§ 4620-4659 (provisions concerning regional centers for the developmentally disabled).
23. CAL. PROB. CODE § 1955(a), (b) (the report is based on evaluations of personal examinations made by at least three health professionals, including two physicians and either a psychologist or a clinical social worker. See id. § 1955(b) (requirements for appointing health professionals; one of the physicians must be a surgeon competent to perform the proposed sterilization procedure).
24. Id. § 1955(a). See id. §§ 1955(d) (reports prepared pursuant to Probate Code § 1955 are to be kept confidential); 1955(b) (at the request of counsel, the court must appoint one additional psychologist, physician, or clinical social worker named by the counsel).
25. Id. § 1958(a).
26. Id. § 1958(b).
27. Id. § 1958(c).
28. Id. § 1958(e).
29. Id. § 1958(f).
30. Id. § 1958(d)(2).
31. Id. § 1958(d)(1).
treatment of the individual’s disability. Chapter 1012 also specifically directs the individual’s examiners to consider all alternatives to sterilization and include a discussion of those alternatives in their reports.

Based on the foregoing reports, the court may authorize the appointment of a limited conservatorship for the purpose of giving substituted consent to sterilize an incompetent. Such authorization may be given only if the court finds that the petitioner establishes the following eight conditions beyond a reasonable doubt: (1) the person named in the petition is incapable of giving consent and in all likelihood will remain incapable of giving consent permanently; (2) based on reasonable evidence, the individual is fertile and capable of procreation; (3) the individual is capable of engaging in sexual activity in the present or near future under circumstances likely to result in pregnancy; (4) either the nature of the individual’s disability is such that the individual is permanently incapable of caring for a child, or, due to a medical condition, pregnancy would impose a substantial risk to the individual and in an otherwise nondisabled woman, a similar condition would result in a recommendation of sterilization; (5) all other less invasive methods of contraception are impractical; (6) the proposed method of sterilization involves the least amount of bodily invasion; (7) the current state of scientific and medical knowledge does not suggest that either a reversible method of sterilization or other less drastic method of contraception will be shortly available, or that science is on the verge of a breakthrough in treating the individual’s disability; and (8) the

32. Id. § 1958(g).
33. Id. § 1955(c).
34. Id. § 1958.
35. Id.
36. Id. § 1958(a) (consent to sterilization as defined in Probate Code § 1951(b)(1)).
37. Id. § 1958(b).
38. Id. § 1958(c).
39. Id. § 1958(d)(1) (the determination must be made on the basis of the objective evidence and not on the basis of any standardized test).
40. Id. § 1958(d)(2).
41. Id. § 1958(e) (impractical even with appropriate training in the use of alternative methods of birth control; isolation and segregation are not considered less invasive methods of contraception).
42. Id. § 1958(f).
43. Id. § 1958(g).
44. Id.
person named in the petition has not made a knowing objection to the sterilization.45

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45. *Id.* § 1958(h) (the court must ensure that an adequate effort has been made to elicit the actual views of the disabled individual).

Health and Welfare; water treatment devices

Business and Professions Code §§ 17577, 17577.1, 17577.2, 17577.3, 17577.4, 17577.5 (new); Health and Safety Code §§ 4057, 4057.1, 4057.2, 4057.3, 4057.4, 4057.5, 4057.6, 4057.7, 4057.8 (new).

SB 2119 (Torres); 1986 STAT. Ch. 1247
Sponsor: Senate Office of Research

SB 2361 (McCorquodale); 1986 STAT. Ch. 1278
Sponsor: Senate Office of Research

Under existing law, dissemination1 of false information2 by any advertising means3 for the purpose of inducing the public into an obligation relating to the advertised object4 is a misdemeanor.5 With the enactment of Chapter 1278, any person6 who induces the purchase, rental, or lease of a water treatment device7 through dissemination of false advertising8 is also guilty of a misdemeanor.9

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1. *Cal. Bus. & Prof. Code* § 17500 (make, disseminate, or cause to be disseminated within this State or from this State to any other state).
2. *Id.* (known to be untrue or misleading, or reasonably should be known to be untrue or misleading).
3. *Id.* (in any newspaper, other publication, or any advertising device, or by public outcry, proclamation, or in any other manner or means).
4. *Id.* (the provisions apply to any real or personal property or to the performance of services).
5. *Id.* See generally People v. Witzerman, 29 Cal. App. 3d 177, 179-80, 105 Cal. Rptr. 284, 290-91 (upholding the constitutionality of the false advertising provisions of the Business and Professions Code).
7. *Id.* § 17577(b) (definition of water treatment device). See also *Cal. Health & Safety Code* § 4057(a) (definition of water treatment device).
8. *Cal. Bus. & Prof. Code* § 17577.1(a) (an advertisement is false when false or misleading in any particular regarding the water treatment device). See *id.* § 17577(a) (definition of advertisement).
9. *Id.* §§ 17577.1(b), 17577.4.
Accordingly, Chapter 1278 prohibits any person from making false claims or statements regarding contamination problems in tap water, in conjunction with the sale, rental, or lease of a water treatment device.10

Chapter 1278 also prohibits a person from making statements which are either untrue or not applicable in all situations to which the statements refer.11 The prohibited statements and claims include but are not limited to (1) claims stating or implying a scientific certainty in the relationship between illness and water quality;12 (2) statements inflating the type and severity of problems caused by public water treatment systems;13 (3) claims stating that water from a water treatment device is pure or safe, or the use of other words which state or imply that the device improves the quality of tap water;14 (4) claims or statements concerning the performance or benefits of a water treatment device, unless the device has been certified15 by the Department of Health Services (Department) and factual data exists to substantiate the claim;16 (5) statements omitting material facts when the effect is to mislead or misrepresent;17 (6) the use of pictures, graphs, or other graphic portrayals, unless they are clear and unambiguously truthful;18 and (7) statements containing endorsements and testimonials, unless they contain no misleading information and are the most recent opinions of the endorser.19 In addition, Chapter 1278 requires all water treatment device advertising to include the following statement: “Operational, maintenance, and replacement requirements are essential for the product to perform as advertised."20

Before purchasers, renters, and lessors of water treatment devices may file an action under Chapter 1278, a written demand must be made upon the solicitor to reacquire the device and to return any

10. Id. § 17577.2(a).
11. Id. § 17577.2(b).
12. Id. § 17577.2(b)(1).
13. Id. § 17577.2(b)(2).
14. Id. § 17577.2(b)(3).
15. See CAL. HEALTH & SAFETY CODE § 4057.1(a) (implementation of certification procedures).
16. CAL. BUS. & PROF. CODE § 17577.2(d), (c). The claims must be adequately described or qualified in complete, comprehensive, and detailed terms. Id.
17. Id. § 17577.2(h).
18. Id. § 17577.2(g).
19. Id. § 17577.2(i). The endorsements or testimonials must also include the most recent qualifications of the person. Id.
20. Id. § 17577.3 (the disclosure statement must be clearly legible if the advertisement is printed, or be clearly audible if the advertisement is broadcast).
and all payments to the consumer. If no response is made to the demand within thirty days, and there has been a willful violation of the advertising provisions of Chapter 1278, the consumer of a water treatment device is entitled to damages equal to twice the purchase price or $250, whichever is greater.

Furthermore, Chapter 1247 requires the Department to adopt regulations and establish criteria for the certification of water treatment devices. Under Chapter 1247, any water treatment device that makes product performance or benefit claims may not be sold or distributed unless the device is certified by the Department. The Department may, however, accept a water treatment device certification issued by (1) another state, (2) an independent testing organization, or (3) the federal government, but only if the Department determines that the certification program meets the requirements of Chapter 1247.

Under Chapter 1247, the Department may revoke, suspend, or deny certification if the device does not meet claimed standards, or there has been a violation of Chapter 1247 or the advertising provisions of the Business and Professions Code in conjunction with the sale or distribution of the device. Any person or business entity who violates the provisions of Chapter 1247 will be liable for civil penalties of up to $5,000 for each violation.

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21. Id. § 17577.5 (but not less than $50).
22. Id. (this provision does not apply to a cause of action commenced under any other provision of law).
23. The regulations must include (1) performance and testing standards; (2) standards of design, construction, and materials; and (3) requirements for instruction, information, and any additional requirements as may be deemed necessary. Id. § 4057.1(b)(1)-(6). The Department is authorized to charge and collect a fee for each certificate and to institute the procedures necessary for certification. Id. § 4057.5.
25. Water treatment devices installed one or more years prior to the operative date of Chapter 1247 are exempt from the certification requirement. Id. § 4057.2(c).
26. Health and Safety Code § 4057.2(a), (b), and (c) does not become operative until one year after the effective date of the adoption of regulations. Id. § 4057.2(d).
27. Id. § 4057.2(b).
28. Id. § 4057.3(b)(1).
29. See CAL. BUS. & PROF. CODE §§ 17500-17508.
30. CAL. HEALTH & SAFETY CODE § 4057.3(b)(2).
31. Id. § 4057.3(c) (person, corporation, firm, partnership, joint stock company, or other association or organization).
32. Id. (each day of a continuing violation constitutes an individual violation).

The civil action is brought in the name of the people of California. Id.