

Proposition 2

This amendment proposed by Assembly Constitutional Amendment 1 of the 2013–2014 Second Extraordinary Session (Resolution Chapter 1, 2013–2014 Second Extraordinary Session) expressly amends the California Constitution by adding sections thereto and repealing and adding a section thereof; therefore, existing provisions proposed to be deleted are printed in strike-out type and new provisions proposed to be added are printed in italic type to indicate that they are new.

Proposed Amendments to Articles IV and XVI

First—That Section 12.5 is added to Article IV thereof, to read:

SEC. 12.5. Within 10 days following the submission of a budget pursuant to subdivision (a) of Section 12, following the proposed adjustments to the Governor’s Budget required by subdivision (e) of Section 13308 of the Government Code or a successor statute, and following the enactment of the budget bill, or as soon as feasible thereafter, the Director of Finance shall submit to the Legislature both of the following:

(a) Estimates of General Fund revenues for the ensuing fiscal year and for the three fiscal years thereafter.

(b) Estimates of General Fund expenditures for the ensuing fiscal year and for the three fiscal years thereafter.

Second—That Section 20 of Article XVI thereof is repealed.

SEC. 20. (a) The Budget Stabilization Account is hereby created in the General Fund.

(b) In each fiscal year as specified in paragraphs (1) to (3), inclusive, the Controller shall transfer from the General Fund to the Budget Stabilization Account the following amounts:

(1) No later than September 30, 2006, a sum equal to 1 percent of the estimated amount of General Fund revenues for the 2006–07 fiscal year.

(2) No later than September 30, 2007, a sum equal to 2 percent of the estimated amount of General Fund revenues for the 2007–08 fiscal year.

(3) No later than September 30, 2008, and annually thereafter, a sum equal to 3 percent of the estimated amount of General Fund revenues for the current fiscal year.

(c) The transfer of moneys shall not be required by subdivision (b) in any fiscal year to the extent that the resulting balance in the account would exceed 5 percent of the General Fund revenues estimate set forth in the budget bill for that fiscal year, as enacted, or eight billion dollars (\$8,000,000,000), whichever is greater. The Legislature may, by statute, direct the Controller, for one or more fiscal years, to transfer into the account amounts in excess of the levels prescribed by this subdivision.

(d) Subject to any restriction imposed by this section, funds transferred to the Budget Stabilization Account shall be deemed to be General Fund revenues for all purposes of this Constitution.

(e) The transfer of moneys from the General Fund to the Budget Stabilization Account may be suspended or reduced for a fiscal year as specified by an executive order issued by the Governor no later than June 1 of the preceding fiscal year.

(f) (1) Of the moneys transferred to the account in each fiscal year, 50 percent, up to the aggregate amount of five billion dollars (\$5,000,000,000) for all fiscal years, shall be deposited in the Deficit Recovery Bond Retirement Sinking Fund Subaccount, which is hereby created in the account for the purpose of retiring deficit recovery bonds authorized and issued as described in Section 1.3, in addition to any other payments provided for by law for the purpose of retiring those bonds. The moneys in the sinking fund subaccount are continuously appropriated to the Treasurer to be expended for that purpose in the amounts, at the times, and in the manner deemed appropriate by the Treasurer. Any funds remaining in the sinking fund subaccount after all of the deficit recovery bonds are retired

shall be transferred to the account, and may be transferred to the General Fund pursuant to paragraph (2).

(2) All other funds transferred to the account in a fiscal year shall not be deposited in the sinking fund subaccount and may, by statute, be transferred to the General Fund.

Third—That Section 20 is added to Article XVI thereof, to read:

SEC. 20. (a) (1) The Budget Stabilization Account is hereby created in the General Fund.

(2) For the 2015–16 fiscal year and each fiscal year thereafter, based on the Budget Act for the fiscal year, the Controller shall transfer from the General Fund to the Budget Stabilization Account, no later than October 1, a sum equal to 1.5 percent of the estimated amount of General Fund revenues for that fiscal year.

(b) (1) For the 2015–16 fiscal year and each fiscal year thereafter, based on the Budget Act for the fiscal year, the Department of Finance shall provide to the Legislature all of the following information:

(A) An estimate of the amount of General Fund proceeds of taxes that may be appropriated pursuant to Article XIII B for that fiscal year.

(B) (i) An estimate of that portion of the General Fund proceeds of taxes identified in subparagraph (A) that is derived from personal income taxes paid on net capital gains.

(ii) The portion of the estimate in clause (i) that exceeds 8 percent of the estimate made under subparagraph (A).

(C) That portion of the state’s funding obligation under Section 8 that results from including the amount calculated under clause (ii) of subparagraph (B), if any, as General Fund proceeds of taxes.

(D) The amount of any appropriations described in clause (ii) of subparagraph (B) of paragraph (1) of, or subparagraph (C) of paragraph (2) of, subdivision (c), that are made from the revenues described in clause (ii) of subparagraph (B) of this paragraph.

(E) The amount resulting from subtracting the combined values calculated under subparagraphs (C) and (D) from the value calculated under clause (ii) of subparagraph (B). If less than zero, the amount shall be considered zero for this purpose.

(F) The lesser of the amount calculated under subparagraph (E) or the amount of transfer resulting in the balance in the Budget Stabilization Account reaching the limit specified in subdivision (e).

(2) In the 2016–17 fiscal year, with respect to the 2015–16 fiscal year only, and in the 2017–18 fiscal year and each fiscal year thereafter, separately with respect to each of the two next preceding fiscal years, the Department of Finance shall calculate all of the following, using the same methodology used for the relevant fiscal year, and provide those calculations to the Legislature:

(A) An updated estimate of the amount of General Fund proceeds of taxes that may be appropriated pursuant to Article XIII B.

(B) (i) An updated estimate of that portion of the General Fund proceeds of taxes identified in subparagraph (A) that is derived from personal income taxes paid on net capital gains.

(ii) That portion of the updated estimate in clause (i) that exceeds 8 percent of the updated estimate made under subparagraph (A).

(C) The updated calculation of that portion of the state’s funding obligation under Section 8 that results from including the updated amount calculated under clause (ii) of subparagraph (B), if any, as General Fund proceeds of taxes.

(D) The amount of any appropriations described in clause (ii) of subparagraph (B) of paragraph (1) of, or subparagraph (C) of paragraph (2) of, subdivision (c), that are made from the revenues described in clause (ii) of subparagraph (B) of paragraph (1).

(E) The amount resulting from subtracting the combined values calculated under subparagraphs (C) and (D) from the value calculated under clause (ii) of subparagraph (B). If less than zero, the amount shall be considered zero for this purpose.

(F) The amount previously transferred for the fiscal year by the Controller from the General Fund to the Budget Stabilization Account pursuant to subdivisions (c) and (d).

(G) The lesser of (i) the amount, not less than zero, resulting from subtracting, from the amount calculated under subparagraph (E), the

value of any suspension or reduction of transfer pursuant to paragraph (1) of subdivision (a) of Section 22 previously approved by the Legislature for the relevant fiscal year, and the amount previously transferred for that fiscal year by the Controller as described in subparagraph (F), or (ii) the amount of transfer resulting in the balance in the Budget Stabilization Account reaching the limit as specified in subdivision (e).

(c) (1) (A) By October 1 of the 2015–16 fiscal year and each fiscal year thereafter to the 2029–30 fiscal year, inclusive, based on the estimates set forth in the annual Budget Act pursuant to paragraphs (2) and (3) of subdivision (h), and the sum identified in paragraph (2) of subdivision (a), the Controller shall transfer amounts from the General Fund and the Budget Stabilization Account, pursuant to a schedule provided by the Director of Finance, as provided in subparagraph (B).

(B) Notwithstanding any other provision of this section, in the fiscal year to which the Budget Act identified in subparagraph (A) applies:

(i) Fifty percent of both the amount identified in paragraph (2) of subdivision (a), and the amount resulting from subtracting the value calculated under subparagraph (C) of paragraph (1) of subdivision (b) from the value calculated under clause (ii) of subparagraph (B) of paragraph (1) of subdivision (b), shall be transferred from the General Fund to the Budget Stabilization Account.

(ii) The remaining 50 percent shall be appropriated by the Legislature for one or more of the following obligations and purposes:

(1) Unfunded prior fiscal year General Fund obligations pursuant to Section 8 that existed on July 1, 2014.

(II) Budgetary loans to the General Fund, from funds outside the General Fund, that had outstanding balances on January 1, 2014.

(III) Payable claims for mandated costs incurred prior to the 2004–05 fiscal year that have not yet been paid, and that pursuant to paragraph (2) of subdivision (b) of Section 6 of Article XIII B are permitted to be paid over a term of years, as prescribed by law.

(IV) Unfunded liabilities for state-level pension plans and prefunding other postemployment benefits, in excess of current base amounts as established for the fiscal year in which the funds would otherwise be transferred to the Budget Stabilization Account. For the purpose of this subclause, current base amounts are those required to be paid pursuant to law, an approved memorandum of understanding, benefit schedules established by the employer or entity authorized to establish those contributions for employees excluded or exempted from collective bargaining, or any combination of these. To qualify under this subclause, the appropriation shall supplement and not supplant funding that would otherwise be made available to pay for the obligations described in this subclause for the fiscal year or the subsequent fiscal year.

(2) (A) By October 1 of the 2030–31 fiscal year and each fiscal year thereafter, based on the estimates set forth in the annual Budget Act pursuant to paragraphs (2) and (3) of subdivision (h), the Controller shall transfer amounts from the General Fund to the Budget Stabilization Account, pursuant to a schedule provided by the Director of Finance, as provided in subparagraph (B).

(B) In the fiscal year to which the Budget Act identified in subparagraph (A) applies, both the amount identified in paragraph (2) of subdivision (a), and the amount resulting from subtracting the value calculated under subparagraph (C) of paragraph (1) of subdivision (b) from the value calculated under clause (ii) of subparagraph (B) of paragraph (1) of subdivision (b), shall be transferred from the General Fund to the Budget Stabilization Account.

(C) Notwithstanding any other provision of this section, the Legislature may appropriate up to 50 percent of both the amount identified in paragraph (2) of subdivision (a), and of the amount resulting from subtracting the value calculated under subparagraph (C) of paragraph (1) of subdivision (b) from the value calculated under clause (ii) of subparagraph (B) of paragraph (1) of subdivision (b), for one or more of the obligations and purposes described in clause (ii) of subparagraph (B) of paragraph (1).

(3) The transfers described in this subdivision are subject to suspension or reduction pursuant to paragraph (1) of subdivision (a) of Section 22.

(d) By October 1 of the 2016–17 fiscal year and each fiscal year thereafter, based on the estimates set forth in the annual Budget Act pursuant to paragraphs (4) and (5) of subdivision (h), the Controller shall transfer amounts between the General Fund and the Budget Stabilization Account pursuant to a schedule provided by the Director of Finance, as follows:

(1) If the amount in subparagraph (G) of paragraph (2) of subdivision (b) is greater than zero, transfer that amount from the General Fund to the Budget Stabilization Account, subject to any suspension or reduction of this transfer pursuant to paragraph (1) of subdivision (a) of Section 22.

(2) If the amount described in subparagraph (F) of paragraph (2) of subdivision (b) is greater than the amount calculated under subparagraph (E) of paragraph (2) of subdivision (b), transfer that excess amount from the Budget Stabilization Account back to the General Fund.

(e) Notwithstanding any other provision of this section, the amount of a transfer to the Budget Stabilization Account pursuant to paragraph (2) of subdivision (a) and subdivisions (c) and (d) for any fiscal year shall not exceed an amount that would result in a balance in the account that, when the transfer is made, exceeds 10 percent of the amount of General Fund proceeds of taxes for the fiscal year estimated pursuant to subdivision (b). For any fiscal year, General Fund proceeds of taxes that, but for this paragraph, would have been transferred to the Budget Stabilization Account may be expended only for infrastructure, as defined by Section 13101 of the Government Code, as that section read on January 1, 2014, including deferred maintenance thereon.

(f) The funds described in subdivision (b) as General Fund proceeds of taxes are General Fund proceeds of taxes for purposes of Section 8 for the fiscal year to which those proceeds are attributed, but are not deemed to be additional General Fund proceeds of taxes on the basis that the funds are thereafter transferred from the Budget Stabilization Account to the General Fund.

(g) The Controller may utilize funds in the Budget Stabilization Account, that he or she determines to currently be unnecessary for the purposes of this section, to help manage General Fund daily cashflow needs. Any use pursuant to this subdivision shall not interfere with the purposes of the Budget Stabilization Account.

(h) The annual Budget Act shall include the estimates described in all of the following:

(1) Paragraph (2) of subdivision (a).

(2) Clause (ii) of subparagraph (B) of paragraph (1) of subdivision (b).

(3) Subparagraph (F) of paragraph (1) of subdivision (b).

(4) Clause (ii) of subparagraph (B) of paragraph (2) of subdivision (b).

(5) Subparagraph (G) of paragraph (2) of subdivision (b).

Fourth—That Section 21 is added to Article XVI thereof, to read:
SEC. 21. (a) The Public School System Stabilization Account is hereby created in the General Fund.

(b) On or before October 1 of each fiscal year, commencing with the 2015–16 fiscal year, based on the amounts identified in the annual Budget Act pursuant to subdivision (b) of Section 20, the Controller shall transfer, pursuant to a schedule provided by the Director of Finance, amounts from the General Fund to the Public School System Stabilization Account as follows:

(1) (A) For the 2015–16 fiscal year, and for each fiscal year thereafter, any positive amount identified in subparagraph (C) of paragraph (1) of subdivision (b) of Section 20 shall be transferred from the General Fund to the Public School System Stabilization Account in the amount calculated under subparagraph (B), subject to any reduction or suspension of this transfer pursuant to any other provision of this section or paragraph (3) of subdivision (a) of Section 22.

(B) The Director of Finance shall calculate the amount by which the positive amount identified in subparagraph (C) of paragraph (1) of subdivision (b) of Section 20, in combination with all other moneys required to be applied by the State for the support of school districts and community college districts for that fiscal year pursuant to Section 8,

exceeds the sum of the total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B and allocated local proceeds of taxes in the prior fiscal year, plus any allocations from the Public School System Stabilization Account in the prior fiscal year, less any transfers to the Public School System Stabilization Account pursuant to this section in the prior fiscal year and any revenues allocated pursuant to subdivision (a) of Section 8.5, adjusted for the percentage change in average daily attendance and adjusted for the higher of the change in the cost of living pursuant to paragraph (1) of subdivision (e) of Section 8 of Article XIII B or the cost of living adjustment applied to school district and community college district general purpose apportionments.

(2) (A) Commencing with the 2016–17 fiscal year, and for each fiscal year thereafter, to the extent the amount calculated under this paragraph exceeds the amounts previously transferred by the Controller from the General Fund to the Public School System Stabilization Account for a preceding fiscal year, any positive amount calculated pursuant to subparagraph (C) of paragraph (2) of subdivision (b) of Section 20 for that fiscal year shall be transferred from the General Fund to the Public School System Stabilization Account in the amount calculated under subparagraph (B), subject to any reduction or suspension of this transfer pursuant to any other provision of this section or paragraph (3) of subdivision (a) of Section 22.

(B) The Director of Finance shall calculate the amount by which the positive amount identified in subparagraph (C) of paragraph (2) of subdivision (b) of Section 20, in combination with all other moneys required to be applied by the State for the support of school districts and community college districts for that fiscal year pursuant to Section 8, exceeds the sum of the total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B and allocated local proceeds of taxes in the prior fiscal year, plus any allocations from the Public School System Stabilization Account in the prior fiscal year, less any transfers to the Public School System Stabilization Account pursuant to this section in the prior fiscal year and any revenues allocated pursuant to subdivision (a) of Section 8.5, adjusted for the percentage change in average daily attendance and adjusted for the higher of the change in the cost of living pursuant to the paragraph (1) of subdivision (e) of Section 8 of Article XIII B or the cost of living adjustment applied to school district and community college district general purpose apportionments.

(c) Commencing with the 2016–17 fiscal year, and for each fiscal year thereafter, if the amount calculated pursuant to subparagraph (C) of paragraph (2) of subdivision (b) of Section 20 for a fiscal year is less than the amounts previously transferred by the Controller from the General Fund to the Public School System Stabilization Account for that fiscal year, the amount of this difference shall be appropriated and allocated by the State from the Public School System Stabilization Account for the support of school districts and community college districts.

(d) Notwithstanding any other provision of this section, the amount transferred to the Public School System Stabilization Account pursuant to subdivision (b) for a fiscal year shall not exceed the amount by which the amount of state support calculated pursuant to paragraph (1) of subdivision (b) of Section 8 exceeds the amount of state support calculated pursuant to paragraph (2) of subdivision (b) of Section 8 for that fiscal year. If the amount of state support calculated pursuant to paragraph (1) of subdivision (b) of Section 8 does not exceed the amount of state support calculated pursuant to paragraph (2) of subdivision (b) of Section 8 for a fiscal year, no amount shall be transferred to the Public School System Stabilization Account pursuant to subdivision (b) for that fiscal year.

(e) Notwithstanding any other provision of this section, no amount shall be transferred to the Public School System Stabilization Account pursuant to subdivision (b) for a fiscal year for which a maintenance factor is determined pursuant to subdivision (d) of Section 8.

(f) Notwithstanding any other provision of this section, no amount shall be transferred to the Public School System Stabilization Account pursuant to subdivision (b) until the maintenance factor determined pursuant to subdivisions (d) and (e) of Section 8 for fiscal years prior to

the 2014–15 fiscal year has been fully allocated. Transfers may be made beginning in the fiscal year following the fiscal year in which it is determined, based on the Budget Act for that fiscal year, that this condition will be met. If a transfer is made for a fiscal year for which it is later determined that this condition has not been met, the amount of the transfer shall be appropriated and allocated from the Public School System Stabilization Account for the support of school districts and community college districts. No transfer shall be made for a year for which it was determined, based on the Budget Act for that fiscal year, that this condition would not be met but was subsequently determined to have been met in that year or a prior fiscal year.

(g) Notwithstanding any other provision of this section, no amount shall be transferred to the Public School System Stabilization Account for any fiscal year for which any of the provisions of subdivision (b) of Section 8 are suspended pursuant to subdivision (h) of Section 8.

(h) Notwithstanding any other provision of this section, for any fiscal year, the amount of a transfer to the Public School System Stabilization Account pursuant to subdivision (b) shall not exceed an amount that would result in a balance in the account that is in excess of 10 percent of the total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B and allocated local proceeds of taxes for that fiscal year pursuant to Section 8. For any fiscal year, General Fund proceeds of taxes that, but for this subdivision, would have been transferred to the Public School System Stabilization Account shall be applied by the State for the support of school districts and community colleges.

(i) In any fiscal year in which the amount required to be applied by the State for the support of school districts and community college districts for that fiscal year pursuant to Section 8 is less than the total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B and allocated local proceeds of taxes in the prior fiscal year, plus any allocations from the Public School System Stabilization Account in the prior fiscal year, less any transfers to the Public School System Stabilization Account in the prior fiscal year and any revenues allocated pursuant to subdivision (a) of Section 8.5, adjusted for the percentage change in average daily attendance and adjusted for the higher of the change in the cost of living pursuant to paragraph (1) of subdivision (e) of Section 8 of Article XIII B or the cost of living adjustment applied to school district and community college district general purpose apportionments, the amount of the deficiency shall be appropriated and allocated by the State from the Public School System Stabilization Account for the support of school districts and community college districts.

(j) Funds transferred to the Public School System Stabilization Account shall be deemed, for purposes of Section 8, to be moneys applied by the State for the support of school districts and community college districts in the fiscal year for which the transfer is made, and not in the fiscal year in which moneys are appropriated from the account.

(k) Nothing in this section shall be construed to reduce the amount of the moneys required to be applied by the State for the support of school districts and community college districts pursuant to Sections 8 and 8.5.

(l) The Controller may utilize funds in the Public School System Stabilization Account, that he or she determines to currently be unnecessary for the purposes of this section, to help manage General Fund daily cashflow needs. Any use of funds by the Controller pursuant to this subdivision shall not interfere with the purposes of the Public School System Stabilization Account.

Fifth—That Section 22 is added to Article XVI thereof, to read:

SEC. 22. (a) Upon the Governor's proclamation declaring a budget emergency and identifying the conditions constituting the emergency, the Legislature may pass a bill that does any of the following:

(1) Suspends or reduces by a specified dollar amount for one fiscal year the transfer of moneys from the General Fund to the Budget Stabilization Account required by Section 20.

(2) (A) Returns funds that have been transferred to the Budget Stabilization Account pursuant to Section 20 to the General Fund for appropriation to address the budget emergency.

(B) Not more than 50 percent of the balance in the Budget Stabilization Account may be returned to the General Fund for appropriation pursuant to subparagraph (A) in any fiscal year, unless funds in the Budget Stabilization Account have been returned to the General Fund for appropriation in the immediately preceding fiscal year.

(3) Suspends or reduces by a specified dollar amount for one fiscal year the transfer of moneys from the General Fund to the Public School System Stabilization Account required by Section 21.

(4) Appropriates funds transferred to the Public School System Stabilization Account pursuant to Section 21 and allocates those funds for the support of school districts and community college districts.

(b) For purposes of this section, "budget emergency" means any of the following:

(1) An emergency declared by the Governor, within the meaning of paragraph (2) of subdivision (c) of Section 3 of Article XIII B.

(2) (A) A determination by the Governor that estimated resources are inadequate to fund General Fund expenditures for the current or ensuing fiscal year, after setting aside funds for the reserve for liquidation of encumbrances, at a level equal to the highest amount of total General Fund expenditures estimated at the time of enactment of any of the three most recent Budget Acts, adjusted for both of the following:

(i) The annual percentage change in the cost of living for the State, as measured by the California Consumer Price Index.

(ii) The annual percentage growth in the civilian population of the State pursuant to subdivision (b) of Section 7901 of the Government Code.

(B) The maximum amount that may be withdrawn for a budget emergency determined under this paragraph shall not exceed either an amount that would result in a total General Fund expenditure level for a fiscal year that is greater than the highest amount of total General Fund expenditures estimated at the time of enactment of any of the three most recent Budget Acts, as calculated pursuant to subparagraph (A), or any limit imposed by subparagraph (B) of paragraph (2) of subdivision (a).

Proposition 45

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure adds a section to the Insurance Code; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

Proposed Law

Insurance Rate Public Justification and Accountability Act

SECTION 1. Findings and Purpose.

Health insurance, home insurance and auto insurance are mandatory for Californians due to economic necessity or the force of law. In such cases, government has an obligation to guarantee that the insurance is affordable, available, competitive and fair.

The purpose of this measure is to ensure fair and transparent rates for health, home and auto insurance by: (1) requiring health insurance companies to publicly disclose and justify their rates, under penalty of perjury, before the rates can take effect; (2) prohibiting unfair pricing for health, auto and home insurance based on prior coverage and credit history; and (3) requiring health insurance companies to pay a fee to cover the costs of administering these new laws so that this initiative will cost taxpayers nothing.

SEC. 2. Public Scrutiny and Review of Insurance Rates.

Section 1861.17 is added to the Insurance Code, to read:

1861.17. (a) Subdivisions (a) and (b) of Section 1861.03 and Sections 1861.04 to 1861.14, inclusive, shall apply to health insurance, notwithstanding subdivision (e) of Section 1851 and Sections 10181 to 10181.13, inclusive, Sections 1385.01 to 1385.13, inclusive, of the

Health and Safety Code, or any other provision of law. Health insurance rates proposed after November 6, 2012, shall be approved by the commissioner prior to their use, and health insurance rates in effect on November 6, 2012, are subject to refund under this section. Applications for health insurance rates shall be accompanied by a statement, sworn under penalty of perjury by the chief executive of the company, declaring that the contents are accurate and comply in all respects with California law.

(b) There shall be a transitional period during which the commissioner may permit, on a conditional basis and subject to refund as required by subdivision (c), rates for new health insurance that have not been approved pursuant to Section 1861.05, provided (1) that the rates have an implementation date on or before January 1, 2014, and (2) that the new health insurance has not previously been marketed in California and contains provisions mandated by federal law, or state law in effect as of January 1, 2012.

(c) In a proceeding pursuant to the authority of subdivision (a) of Section 1861.10, including a proceeding under Section 1861.03 or 1861.05, where it is determined that a company charged health insurance rates that are excessive or otherwise in violation of this article, the company shall be required to pay refunds with interest, notwithstanding any other provision of law and in addition to any other penalty permitted by law.

(d) With respect to health, automobile, and homeowners insurance, the absence of prior insurance coverage, or a person's credit history, shall not be a criterion for determining eligibility for a policy or contract, or generally for rates, premiums or insurability.

(e) Notwithstanding any other provision of law, the commissioner is granted the powers necessary to carry out the provisions of this section, including any and all authority for health care service plan rate review granted to the Department of Managed Health Care by Section 1385.01 and following of the Health and Safety Code.

(f) Health insurance companies shall pay the filing fees required by Section 12979, which, notwithstanding Section 13340 of the Government Code, are continuously appropriated to cover any operational or administrative costs arising from this section. The commissioner shall annually report to the public all such expenditures and the impact of this section.

(g) For purposes of this section:

(1) "Health insurance" means a policy or contract issued or delivered in California (A) as defined in subdivision (b) of Section 106, or (B) a health care service plan, as defined by subdivision (f) of Section 1345 of the Health and Safety Code.

(2) "Rate" means the charges assessed for health insurance or anything that affects the charges associated with health insurance, including, but not limited to, benefits, premiums, base rates, underwriting relativities, discounts, co-payments, coinsurance, deductibles, premium financing, installment fees, and any other out-of-pocket costs of the policyholder.

(3) The following shall not be subject to this section: A large group health insurance policy or contract as defined by subdivision (a) of Section 10181 or subdivision (a) of Section 1385.01 of the Health and Safety Code, or a policy or contract excluded under Section 10181.2 or 1385.02 of the Health and Safety Code, as those provisions were in effect on January 1, 2011.

SEC. 3. Technical Matters.

This act shall be liberally construed and applied in order to fully promote its underlying purposes, and shall not be amended, directly or indirectly, by the Legislature except to further its purposes by a statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electorate. If any provision of this act or the application thereof to any person or circumstances is held invalid or unenforceable, it shall not affect other provisions or applications of the act which can be given effect without the invalid or unenforceable provision or application, and to this end the provisions of this act are severable.

Proposition 46

This initiative measure is submitted to the people of California in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure adds sections to the Business and Professions Code, amends and adds sections to the Civil Code, and adds a section to the Health and Safety Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

Proposed Law

Troy and Alana Pack Patient Safety Act of 2014

SECTION 1. Title.

This measure shall be known as the Troy and Alana Pack Patient Safety Act of 2014.

SEC. 2. Findings and Declarations.

The people of California find and declare the following:

1. Protecting the safety of patients is of paramount interest to the public.

2. Substance abuse by doctors is a growing problem in California and harms more and more patients every year. Last year, the Medical Board of California reported that it had suspended more physicians than it had the year before and that “[t]his increase correlates to the observed trend in an increased number of physician impairment cases.”

3. Studies find that at least one in ten physicians suffers from drug or alcohol abuse during his or her career. According to an article in the *Annals of Internal Medicine*, one-third of physicians will, at some time in their careers, experience a condition, including alcohol or drug abuse, that impairs their ability to practice medicine safely. Nonetheless, no mandatory drug and alcohol testing exists for physicians, as it does for pilots, bus drivers, and others in safety-sensitive occupations, and no effective safeguards exist to stop physicians from practicing until a substance abuse problem is addressed.

4. Physicians who are impaired by drugs and alcohol while on the job pose a serious threat to patients and to the public at large. By one estimate cited in the *Journal of the American Medical Association*, one-third of all hospital admissions experience a medical error – and physician impairment may be a contributor to such patient harm. Doctors who are impaired while on duty may misdiagnose a communicable or life-threatening disease, perform surgery or other procedures in dangerous and unprofessional ways, and prescribe medication in ways that can cause permanent injury or death to their patients.

5. Studies show that a small percentage of doctors, including those who abuse drugs and alcohol, commit the vast majority of malpractice and go undeterred. Yet no law exists to require physicians to report peers they suspect of medical negligence or of practicing under the influence.

6. Patients are also being harmed by doctors who over-prescribe prescription drugs and fail to prevent prescription drug abuse. The Centers for Disease Control and Prevention report that drug overdose is the leading cause of fatal injury, and most of those deaths are caused by prescription drugs, yet too few California physicians check a patient’s prescription history in the state-run electronic database known as CURES before prescribing addictive and potentially harmful narcotics.

7. Patients who are harmed by doctors who are impaired by drugs or alcohol, who over-prescribe addictive narcotics, or who commit other negligent medical acts are entitled to recover compensation for such things as pain, suffering, physical impairment, disfigurement, and decline of quality of life. The surviving family of a person killed

by medical negligence should recover fair and reasonable compensation for the loss of their loved one.

8. In 1975, however, the Legislature set a cap of \$250,000 on compensation for these losses. That severe restriction on patients’ legal rights to hold dangerous doctors accountable was accompanied by a promise that a strong regulatory system would be created to protect patients from harm. Patient safety scandals over the last 38 years, however, have demonstrated that physicians have been unable to police themselves.

9. After 38 years, that \$250,000 cap has never been adjusted for inflation. Despite the rulings of juries, it limits the value of children’s lives, as well as the loss of quality of life for all people injured by medical negligence, to \$250,000, no matter how egregious the malpractice or serious the injury. As a result, negligent doctors are not held accountable and patients’ safety has suffered.

10. Research has found that by providing fair and adequate compensation to patients injured by medical negligence, malpractice litigation prods health care providers to be more open and honest about mistakes and then take corrective action to reduce the chances of repeated errors, thereby limiting the chances of future harm to patients and acting as a deterrent to bad practices.

SEC. 3. Purpose and Intent.

It is the intent of the people of California in enacting this measure to:

1. Protect patients and their families from injury caused by doctors who are impaired by alcohol or drugs by requiring hospitals to conduct random drug and alcohol testing of the doctors who practice there and requiring them to test physicians after an unexpected death or serious injury occurs.

2. Protect patients and their families from injury by requiring doctors to report other physicians who appear to be impaired by drugs or alcohol while on duty or if any physician who was responsible for the care and treatment of a patient during an adverse event failed to follow the appropriate standard of care.

3. Require hospitals to report any verified positive results of drug and alcohol testing to the Medical Board of California.

4. Require that any doctor who tests positive for alcohol or drugs while on duty or who willfully fails or refuses to submit to such testing be temporarily suspended from the practice of medicine pending an investigation.

5. Require the board to take disciplinary action against a doctor if the board finds that the doctor was impaired by drugs or alcohol while on duty or during an adverse event or that the doctor willfully refused to comply with drug and alcohol testing.

6. Require doctors to check the state’s Controlled Substance Utilization Review and Evaluation System (CURES) database prior to writing a prescription for a Schedule II or Schedule III controlled substance for a patient for the first time and, if the patient already has a prescription, determine that the patient has a legitimate need before prescribing the medication, in order to protect patients and others.

7. Adjust the \$250,000 cap on compensation for pain, suffering, physical impairment, disfigurement, decline of quality of life, and death in medical negligence lawsuits set by the Legislature in 1975 to account for inflation and to provide annual adjustments in the future in order to boost health care accountability, act as a deterrent, and ensure that patients, their families, and others who are injured by negligent doctors are entitled to be made whole for their loss.

8. Retain the cap on attorney’s fees in medical negligence cases.

SEC. 4. Article 14 (commencing with Section 2350.10) is added to Chapter 5 of Division 2 of the Business and Professions Code, to read:

Article 14. Physician and Surgeon Alcohol or Drug Impairment Prevention

2350.10. The Medical Board of California shall administer this article, and shall adopt regulations necessary to implement this article within one year of its effective date. These regulations shall be consistent

with the standards for drug and alcohol testing, including, but not limited to, the collection of specimens, the testing of specimens, the concentration levels of drugs and alcohol, the verification of test results, the retention of specimens and requests for testing of a sample of the specimen by the subject of the test, record keeping, due process, return to duty, and privacy and confidentiality, set forth in Title 49, Part 40, of the Code of Federal Regulations, as of the effective date of this act, to the extent that such standards do not conflict with the terms of this act or the California or United States Constitutions.

2350.15. For the purposes of this article, the following terms have the following meanings:

(a) "Test" or "testing" means examination of a physician for use of drugs or alcohol while on duty that may impair or may have impaired the physician's ability to practice medicine.

(b) "Adverse event" has the same meaning as set forth in Section 1279.1 of the Health and Safety Code.

(c) "Board" means the Medical Board of California.

(d) "Drug" means marijuana metabolites, cocaine metabolites, amphetamines, opiate metabolites, and phencyclidine (PCP). "Drug" does not include drugs prescribed by a licensed third party for a specific medical condition if the manner in which the physician uses the drug is not known to cause impairment.

(e) "Physician" means a holder of a physician and surgeon's certificate under this chapter.

(f) "Hospital" means a general acute care hospital as defined in Section 1250 of the Health and Safety Code or any successor statute and an "outpatient setting" as defined in paragraph (1) of subdivision (b) of Section 1248 of the Health and Safety Code or any successor statute.

(g) "Verified positive test result" means a positive test result that has been verified through a process established by the board that includes a confirming test, an opportunity for the physician to offer an explanation, and review and determination by a medical review officer, and that satisfies the concentration levels for impairment specified by the board.

2350.20. Every physician shall, and any other person may, report to the board any information known to him or her which appears to show that any physician may be or has been impaired by drugs or alcohol while on duty, or that any physician who was responsible for the care and treatment of a patient during an adverse event failed to follow the appropriate standard of care. Notwithstanding any other provision of law, any physician or other person who in good faith makes such a report to the board shall not be liable under any law of this state for any statement or opinion made in such report.

2350.25. (a) Upon the effective date of the regulations adopted by the board to implement this article, hospitals shall conduct testing for drugs and alcohol on physicians as follows:

(1) On a random basis on physicians who are employees or contractors or who have the privilege to admit patients.

(2) Immediately upon the occurrence of an adverse event on physicians who were responsible for the care and treatment of the patient during the event or who treated the patient or prescribed medication for the patient within 24 hours prior to the event. Testing shall be the responsibility of the physician, who shall make himself or herself available for testing at the hospital as soon as possible, and failure to submit to testing at the hospital within 12 hours after the physician learns of the adverse event may be cause for suspension of the physician's license.

(3) At the direction of the board following a referral pursuant to Section 2350.20 on a physician who is the subject of a referral.

(b) The hospital shall bill the physician for the cost of his or her test and shall not pass on any of the costs of the test to patients or their insurers.

2350.30. Hospitals shall report any verified positive test results, or the willful failure or refusal of a physician to submit to a test, to the board, which shall do all of the following:

(a) Refer the matter to the Attorney General's Health Quality Enforcement Section for investigation and enforcement pursuant to Article 12 (commencing with Section 2220).

(b) Temporarily suspend the physician's license pending the board's investigation and hearing on the matter pursuant to Article 12 (commencing with Section 2220).

(c) Notify the physician and each of the health facilities at which the physician practices that the physician's license has been temporarily suspended pending the board's investigation and hearing on the matter.

2350.35. (a) If, after investigation and hearing, the board finds that a physician was impaired by drugs or alcohol while on duty or during an adverse event or that a physician has willfully refused or failed to comply with drug and alcohol testing, the board shall take disciplinary action against the physician, which may include treatment for addiction as a condition of licensure, additional drug and alcohol testing during a period of probation, and suspension of the physician's license until such time as the physician demonstrates to the board's satisfaction that he or she is fit to return to duty.

(b) If the board finds that a physician was impaired by drugs or alcohol during an adverse event, the board shall inform the patient or, in the case of the patient's death, the patient's family, of its determination.

2350.40. The board shall assess an annual fee on physicians sufficient to pay the reasonable costs of administering this article by the board and the Attorney General. Every physician shall pay the fee as a condition of licensure or license renewal. The board shall reimburse the Attorney General's office for its costs in conducting investigations and enforcement actions under this article.

SEC. 5. Section 3333.2 of the Civil Code is amended to read:

3333.2. (a) In any action for injury against a health care provider based on professional negligence, the injured plaintiff shall be entitled to recover noneconomic losses to compensate for pain, suffering, inconvenience, physical impairment, disfigurement and other nonpecuniary damage.

(b) In no action shall the amount of damages for noneconomic losses exceed two hundred fifty thousand dollars (\$250,000), as adjusted pursuant to subdivision (c).

(c) On January 1, 2015, the cap on the amount of damages specified in subdivision (b) shall be adjusted to reflect any increase in inflation as measured by the Consumer Price Index published by the United States Bureau of Labor Statistics since the cap was established. Annually thereafter, the cap on the amount of damages specified in this subdivision shall be adjusted to reflect any increase in inflation as measured by the Consumer Price Index published by the United States Bureau of Labor Statistics. The Department of Finance shall calculate and publish on its Internet Web site the adjustments required by this subdivision.

(d) For the purposes of this section:

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

(2) "Professional negligence" means a negligent act or omission to act by a health care provider in the rendering of professional services, which act or omission is the proximate cause of a personal injury or wrongful death, provided that such services are within the scope of services for which the provider is licensed and which are not within any restriction imposed by the licensing agency or licensed hospital.

(e) The adjusted cap provided for in subdivision (c) shall apply to an award of noneconomic damages in any action which has not been resolved by way of a final settlement, judgment, or arbitration award as of January 1, 2015.

(f) The limitation on attorney's fees set forth in Section 6146 of the Business and Professions Code shall apply to an action for injury or damage against a health care provider based upon such person's alleged professional negligence, as defined in this section.

SEC. 6. Section 1714.85 is added to the Civil Code, to read:

1714.85. *There shall be a presumption of professional negligence in any action against a health care provider arising from an act or omission by a physician and surgeon who tested positive for drugs or alcohol or who refused or failed to comply with the testing requirements of Article 14 (commencing with Section 2350.10) of Chapter 5 of Division 2 of the Business and Professions Code following the act or omission and in any action arising from the failure of a licensed health care practitioner to comply with Section 11165.4 of the Health and Safety Code.*

SEC. 7. Section 11165.4 is added to the Health and Safety Code, to read:

11165.4. (a) *Licensed health care practitioners and pharmacists shall access and consult the electronic history maintained pursuant to this code of controlled substances dispensed to a patient under his or her care prior to prescribing or dispensing a Schedule II or Schedule III controlled substance for the first time to that patient. If the patient has an existing prescription for a Schedule II or Schedule III controlled substance, the health care practitioner shall not prescribe any additional controlled substances until the health care practitioner determines there is a legitimate need.*

(b) *Failure to consult a patient's electronic history as required in subdivision (a) shall be cause for disciplinary action by the health care practitioner's licensing board. The licensing boards of all health care practitioners authorized to write or issue prescriptions for controlled substances shall notify all authorized practitioners subject to the board's jurisdiction of the requirements of this section.*

SEC. 8. Amendment.

This act may be amended only to further its purpose of improving patient safety, including ensuring that patients, their families, and others who are injured by negligent doctors are made whole for their loss, by a statute approved by a two-thirds vote of each house of the Legislature and signed by the Governor.

SEC. 9. Conflicting Initiatives.

In the event that this measure and another initiative measure or measures that involve patient safety, including the fees charged by attorneys in medical negligence cases, shall appear on the same statewide election ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this measure. In the event that this measure receives a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and the provisions of the other measure shall be null and void.

SEC. 10. Severability.

If any provision of this act, or part thereof, is for any reason held to be invalid or unconstitutional, the remaining provisions shall not be affected, but shall remain in full force and effect, and to this end the provisions of this act are severable.

Proposition 47

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure adds sections to the Government Code, amends and adds sections to the Penal Code, and amends sections of the Health and Safety Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

Proposed Law

THE SAFE NEIGHBORHOODS AND SCHOOLS ACT
SECTION 1. Title.

This act shall be known as "the Safe Neighborhoods and Schools Act."

SEC. 2. Findings and Declarations.

The people of the State of California find and declare as follows:

The people enact the Safe Neighborhoods and Schools Act to ensure that prison spending is focused on violent and serious offenses, to maximize alternatives for nonserious, nonviolent crime, and to invest the savings generated from this act into prevention and support programs in K–12 schools, victim services, and mental health and drug treatment. This act ensures that sentences for people convicted of dangerous crimes like rape, murder, and child molestation are not changed.

SEC. 3. Purpose and Intent.

In enacting this act, it is the purpose and intent of the people of the State of California to:

(1) Ensure that people convicted of murder, rape, and child molestation will not benefit from this act.

(2) Create the Safe Neighborhoods and Schools Fund, with 25 percent of the funds to be provided to the State Department of Education for crime prevention and support programs in K–12 schools, 10 percent of the funds for trauma recovery services for crime victims, and 65 percent of the funds for mental health and substance abuse treatment programs to reduce recidivism of people in the justice system.

(3) Require misdemeanors instead of felonies for nonserious, nonviolent crimes like petty theft and drug possession, unless the defendant has prior convictions for specified violent or serious crimes.

(4) Authorize consideration of resentencing for anyone who is currently serving a sentence for any of the offenses listed herein that are now misdemeanors.

(5) Require a thorough review of criminal history and risk assessment of any individuals before resentencing to ensure that they do not pose a risk to public safety.

(6) This measure will save significant state corrections dollars on an annual basis. Preliminary estimates range from \$150 million to \$250 million per year. This measure will increase investments in programs that reduce crime and improve public safety, such as prevention programs in K–12 schools, victim services, and mental health and drug treatment, which will reduce future expenditures for corrections.

SEC. 4. Chapter 33 (commencing with Section 7599) is added to Division 7 of Title 1 of the Government Code, to read:

CHAPTER 33. CREATION OF SAFE NEIGHBORHOODS AND SCHOOLS FUND

7599. (a) *A fund to be known as the "Safe Neighborhoods and Schools Fund" is hereby created within the State Treasury and, notwithstanding Section 13340 of the Government Code, is continuously appropriated without regard to fiscal year for carrying out the purposes of this chapter.*

(b) *For purposes of the calculations required by Section 8 of Article XVI of the California Constitution, funds transferred to the Safe Neighborhoods and Schools Fund shall be considered General Fund revenues which may be appropriated pursuant to Article XIII B.*

7599.1. *Funding Appropriation.*

(a) *On or before July 31, 2016, and on or before July 31 of each fiscal year thereafter, the Director of Finance shall calculate the savings that accrued to the state from the implementation of the act adding this chapter ("this act") during the fiscal year ending June 30, as compared to the fiscal year preceding the enactment of this act. In making the calculation required by this subdivision, the Director of Finance shall use actual data or best available estimates where actual data is not available. The calculation shall be final and shall not be adjusted for any subsequent changes in the underlying data. The Director of Finance shall certify the results of the calculation to the Controller no later than August 1 of each fiscal year.*

(b) *Before August 15, 2016, and before August 15 of each fiscal year thereafter, the Controller shall transfer from the General Fund to the Safe Neighborhoods and Schools Fund the total amount calculated pursuant to subdivision (a).*

46

47

(c) Moneys in the Safe Neighborhoods and Schools Fund shall be continuously appropriated for the purposes of this act. Funds transferred to the Safe Neighborhoods and Schools Fund shall be used exclusively for the purposes of this act and shall not be subject to appropriation or transfer by the Legislature for any other purpose. The funds in the Safe Neighborhoods and Schools Fund may be used without regard to fiscal year.

7599.2. Distribution of Moneys from the Safe Neighborhoods and Schools Fund.

(a) By August 15 of each fiscal year beginning in 2016, the Controller shall disburse moneys deposited in the Safe Neighborhoods and Schools Fund as follows:

(1) Twenty-five percent to the State Department of Education, to administer a grant program to public agencies aimed at improving outcomes for public school pupils in kindergarten and grades 1 to 12, inclusive, by reducing truancy and supporting students who are at risk of dropping out of school or are victims of crime.

(2) Ten percent to the California Victim Compensation and Government Claims Board, to make grants to trauma recovery centers to provide services to victims of crime pursuant to Section 13963.1 of the Government Code.

(3) Sixty-five percent to the Board of State and Community Corrections, to administer a grant program to public agencies aimed at supporting mental health treatment, substance abuse treatment, and diversion programs for people in the criminal justice system, with an emphasis on programs that reduce recidivism of people convicted of less serious crimes, such as those covered by this measure, and those who have substance abuse and mental health problems.

(b) For each program set forth in paragraphs (1) to (3), inclusive, of subdivision (a), the agency responsible for administering the programs shall not spend more than 5 percent of the total funds it receives from the Safe Neighborhoods and Schools Fund on an annual basis for administrative costs.

(c) Every two years, the Controller shall conduct an audit of the grant programs operated by the agencies specified in paragraphs (1) to (3), inclusive, of subdivision (a) to ensure the funds are disbursed and expended solely according to this chapter and shall report his or her findings to the Legislature and the public.

(d) Any costs incurred by the Controller and the Director of Finance in connection with the administration of the Safe Neighborhoods and Schools Fund, including the costs of the calculation required by Section 7599.1 and the audit required by subdivision (c), as determined by the Director of Finance, shall be deducted from the Safe Neighborhoods and Schools Fund before the funds are disbursed pursuant to subdivision (a).

(e) The funding established pursuant to this act shall be used to expand programs for public school pupils in kindergarten and grades 1 to 12, inclusive, victims of crime, and mental health and substance abuse treatment and diversion programs for people in the criminal justice system. These funds shall not be used to supplant existing state or local funds utilized for these purposes.

(f) Local agencies shall not be obligated to provide programs or levels of service described in this chapter above the level for which funding has been provided.

SEC. 5. Section 459.5 is added to the Penal Code, to read:

459.5. (a) Notwithstanding Section 459, shoplifting is defined as entering a commercial establishment with intent to commit larceny while that establishment is open during regular business hours, where the value of the property that is taken or intended to be taken does not exceed nine hundred fifty dollars (\$950). Any other entry into a commercial establishment with intent to commit larceny is burglary. Shoplifting shall be punished as a misdemeanor, except that a person with one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or for an offense requiring registration pursuant to subdivision (c) of Section 290 may be punished pursuant to subdivision (h) of Section 1170.

(b) Any act of shoplifting as defined in subdivision (a) shall be charged as shoplifting. No person who is charged with shoplifting may also be charged with burglary or theft of the same property.

SEC. 6. Section 473 of the Penal Code is amended to read:

473. (a) Forgery is punishable by imprisonment in a county jail for not more than one year, or by imprisonment pursuant to subdivision (h) of Section 1170.

(b) Notwithstanding subdivision (a), any person who is guilty of forgery relating to a check, bond, bank bill, note, cashier's check, traveler's check, or money order, where the value of the check, bond, bank bill, note, cashier's check, traveler's check, or money order does not exceed nine hundred fifty dollars (\$950), shall be punishable by imprisonment in a county jail for not more than one year, except that such person may instead be punished pursuant to subdivision (b) of Section 1170 if that person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or for an offense requiring registration pursuant to subdivision (c) of Section 290. This subdivision shall not be applicable to any person who is convicted both of forgery and of identity theft, as defined in Section 530.5.

SEC. 7. Section 476a of the Penal Code is amended to read:

476a. (a) Any person who, for himself or herself, as the agent or representative of another, or as an officer of a corporation, willfully, with intent to defraud, makes or draws or utters or delivers a check, draft, or order upon a bank or depository, a person, a firm, or a corporation, for the payment of money, knowing at the time of that making, drawing, uttering, or delivering that the maker or drawer or the corporation has not sufficient funds in, or credit with the bank or depository, person, firm, or corporation, for the payment of that check, draft, or order and all other checks, drafts, or orders upon funds then outstanding, in full upon its presentation, although no express representation is made with reference thereto, is punishable by imprisonment in a county jail for not more than one year, or pursuant to subdivision (h) of Section 1170.

(b) However, if the total amount of all checks, drafts, or orders that the defendant is charged with and convicted of making, drawing, or uttering does not exceed ~~four hundred fifty dollars~~ (\$450) ~~nine hundred fifty dollars~~ (\$950), the offense is punishable only by imprisonment in the county jail for not more than one year, except that such person may instead be punished pursuant to subdivision (b) of Section 1170 if that person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or for an offense requiring registration pursuant to subdivision (c) of Section 290. This subdivision shall not be applicable if the defendant has previously been convicted of a ~~three or more violation~~ ~~violations~~ of Section 470, 475, or 476, or of this section, or of the crime of petty theft in a case in which defendant's offense was a violation also of Section 470, 475, or 476 or of this section or if the defendant has previously been convicted of any offense under the laws of any other state or of the United States which, if committed in this state, would have been punishable as a violation of Section 470, 475 or 476 or of this section or if he has been so convicted of the crime of petty theft in a case in which, if defendant's offense had been committed in this state, it would have been a violation also of Section 470, 475, or 476, or of this section.

(c) Where the check, draft, or order is protested on the ground of insufficiency of funds or credit, the notice of protest shall be admissible as proof of presentation, nonpayment, and protest and shall be presumptive evidence of knowledge of insufficiency of funds or credit with the bank or depository, person, firm, or corporation.

(d) In any prosecution under this section involving two or more checks, drafts, or orders, it shall constitute prima facie evidence of the identity of the drawer of a check, draft, or order if both of the following occur:

(1) When the payee accepts the check, draft, or order from the drawer, he or she obtains from the drawer the following information: name and residence of the drawer, business or mailing address, either

a valid driver's license number or Department of Motor Vehicles identification card number, and the drawer's home or work phone number or place of employment. That information may be recorded on the check, draft, or order itself or may be retained on file by the payee and referred to on the check, draft, or order by identifying number or other similar means.

(2) The person receiving the check, draft, or order witnesses the drawer's signature or endorsement, and, as evidence of that, initials the check, draft, or order at the time of receipt.

(e) The word "credit" as used herein shall be construed to mean an arrangement or understanding with the bank or depository, person, firm, or corporation for the payment of a check, draft, or order.

(f) If any of the preceding paragraphs, or parts thereof, shall be found unconstitutional or invalid, the remainder of this section shall not thereby be invalidated, but shall remain in full force and effect.

(g) A sheriff's department, police department, or other law enforcement agency may collect a fee from the defendant for investigation, collection, and processing of checks referred to their agency for investigation of alleged violations of this section or Section 476.

(h) The amount of the fee shall not exceed twenty-five dollars (\$25) for each bad check, in addition to the amount of any bank charges incurred by the victim as a result of the alleged offense. If the sheriff's department, police department, or other law enforcement agency collects a fee for bank charges incurred by the victim pursuant to this section, that fee shall be paid to the victim for any bank fees the victim may have been assessed. In no event shall reimbursement of the bank charge to the victim pursuant to this section exceed ten dollars (\$10) per check.

SEC. 8. Section 490.2 is added to the Penal Code, to read:

490.2. (a) *Notwithstanding Section 487 or any other provision of law defining grand theft, obtaining any property by theft where the value of the money, labor, real or personal property taken does not exceed nine hundred fifty dollars (\$950) shall be considered petty theft and shall be punished as a misdemeanor, except that such person may instead be punished pursuant to subdivision (h) of Section 1170 if that person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or for an offense requiring registration pursuant to subdivision (c) of Section 290.*

(b) *This section shall not be applicable to any theft that may be charged as an infraction pursuant to any other provision of law.*

SEC. 9. Section 496 of the Penal Code is amended to read:

496. (a) Every person who buys or receives any property that has been stolen or that has been obtained in any manner constituting theft or extortion, knowing the property to be so stolen or obtained, or who conceals, sells, withholds, or aids in concealing, selling, or withholding any property from the owner, knowing the property to be so stolen or obtained, shall be punished by imprisonment in a county jail for not more than one year, or imprisonment pursuant to subdivision (h) of Section 1170. However, ~~if the district attorney or the grand jury determines that this action would be in the interests of justice, the district attorney or the grand jury, as the case may be, may, if the value of the property does not exceed nine hundred fifty dollars (\$950), specify in the accusatory pleading that the offense shall be a misdemeanor, punishable only by imprisonment in a county jail not exceeding one year, if such person has no prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or for an offense requiring registration pursuant to subdivision (c) of Section 290.~~

A principal in the actual theft of the property may be convicted pursuant to this section. However, no person may be convicted both pursuant to this section and of the theft of the same property.

(b) Every swap meet vendor, as defined in Section 21661 of the Business and Professions Code, and every person whose principal business is dealing in, or collecting, merchandise or personal

property, and every agent, employee, or representative of that person, who buys or receives any property of a value in excess of nine hundred fifty dollars (\$950) that has been stolen or obtained in any manner constituting theft or extortion, under circumstances that should cause the person, agent, employee, or representative to make reasonable inquiry to ascertain that the person from whom the property was bought or received had the legal right to sell or deliver it, without making a reasonable inquiry, shall be punished by imprisonment in a county jail for not more than one year, or imprisonment pursuant to subdivision (h) of Section 1170.

Every swap meet vendor, as defined in Section 21661 of the Business and Professions Code, and every person whose principal business is dealing in, or collecting, merchandise or personal property, and every agent, employee, or representative of that person, who buys or receives any property of a value of nine hundred fifty dollars (\$950) or less that has been stolen or obtained in any manner constituting theft or extortion, under circumstances that should cause the person, agent, employee, or representative to make reasonable inquiry to ascertain that the person from whom the property was bought or received had the legal right to sell or deliver it, without making a reasonable inquiry, shall be guilty of a misdemeanor.

(c) Any person who has been injured by a violation of subdivision (a) or (b) may bring an action for three times the amount of actual damages, if any, sustained by the plaintiff, costs of suit, and reasonable attorney's fees.

(d) Notwithstanding Section 664, any attempt to commit any act prohibited by this section, except an offense specified in the accusatory pleading as a misdemeanor, is punishable by imprisonment in a county jail for not more than one year, or by imprisonment pursuant to subdivision (h) of Section 1170.

SEC. 10. Section 666 of the Penal Code is amended to read:

666. (a) ~~Notwithstanding Section 490, every person who, having been convicted three or more times of petty theft, grand theft, a conviction pursuant to subdivision (d) or (e) of Section 368, auto theft under Section 10851 of the Vehicle Code, burglary, carjacking, robbery, or a felony violation of Section 496 and having served a term therefor in any penal institution or having been imprisoned therein as a condition of probation for that offense, and who is subsequently convicted of petty theft, is punishable by imprisonment in a county jail not exceeding one year, or imprisonment pursuant to subdivision (h) of Section 1170.~~

(b) (a) Notwithstanding Section 490, any person described in subdivision (b) ~~paragraph (1)~~ who, having been convicted of petty theft, grand theft, a conviction pursuant to subdivision (d) or (e) of Section 368, auto theft under Section 10851 of the Vehicle Code, burglary, carjacking, robbery, or a felony violation of Section 496, and having served a term of imprisonment therefor in any penal institution or having been imprisoned therein as a condition of probation for that offense, and who is subsequently convicted of petty theft, is punishable by imprisonment in the county jail not exceeding one year, or in the state prison.

(1) (b) ~~This subdivision~~ Subdivision (a) shall apply to any person who is required to register pursuant to the Sex Offender Registration Act, or who has a prior violent or serious felony conviction, as specified in subdivision (e) of Section 667.5 or subdivision (e) of Section 1192.7 clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667, or has a conviction pursuant to subdivision (d) or (e) of Section 368.

(2) (c) ~~This subdivision section~~ shall not be construed to preclude prosecution or punishment pursuant to subdivisions (b) to (i), inclusive, of Section 667, or Section 1170.12.

SEC. 11. Section 11350 of the Health and Safety Code is amended to read:

11350. (a) Except as otherwise provided in this division, every person who possesses (1) any controlled substance specified in subdivision (b), ~~or~~ (c), (e), or paragraph (1) of subdivision (f) of

Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment *in a county jail for not more than one year, except that such person shall instead be punished pursuant to subdivision (h) of Section 1170 of the Penal Code if that person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290 of the Penal Code.*

~~(b) Except as otherwise provided in this division, every person who possesses any controlled substance specified in subdivision (e) of Section 11054 shall be punished by imprisonment in a county jail for not more than one year or pursuant to subdivision (h) of Section 1170 of the Penal Code.~~

~~(c) (b) Except as otherwise provided in this division, whenever a person who possesses any of the controlled substances specified in subdivision (a) or (b), the judge may, in addition to any punishment provided for pursuant to subdivision (a) or (b), assess against that person a fine not to exceed seventy dollars (\$70) with proceeds of this fine to be used in accordance with Section 1463.23 of the Penal Code. The court shall, however, take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this subdivision.~~

~~(d) (c) Except in unusual cases in which it would not serve the interest of justice to do so, whenever a court grants probation pursuant to a felony conviction under this section, in addition to any other conditions of probation which may be imposed, the following conditions of probation shall be ordered:~~

~~(1) For a first offense under this section, a fine of at least one thousand dollars (\$1,000) or community service.~~

~~(2) For a second or subsequent offense under this section, a fine of at least two thousand dollars (\$2,000) or community service.~~

~~(3) If a defendant does not have the ability to pay the minimum fines specified in paragraphs (1) and (2), community service shall be ordered in lieu of the fine.~~

SEC. 12. Section 11357 of the Health and Safety Code is amended to read:

11357. (a) Except as authorized by law, every person who possesses any concentrated cannabis shall be punished by imprisonment in the county jail for a period of not more than one year or by a fine of not more than five hundred dollars (\$500), or by both such fine and imprisonment, ~~or shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code except that such person may instead be punished pursuant to subdivision (h) of Section 1170 of the Penal Code if that person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290 of the Penal Code.~~

(b) Except as authorized by law, every person who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, is guilty of an infraction punishable by a fine of not more than one hundred dollars (\$100).

(c) Except as authorized by law, every person who possesses more than 28.5 grams of marijuana, other than concentrated cannabis, shall be punished by imprisonment in a county jail for a period of not more than six months or by a fine of not more than five hundred dollars (\$500), or by both such fine and imprisonment.

(d) Except as authorized by law, every person 18 years of age or over who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, upon the grounds of, or within, any school providing instruction in kindergarten or any of grades 1

through 12 during hours the school is open for classes or school-related programs is guilty of a misdemeanor and shall be punished by a fine of not more than five hundred dollars (\$500), or by imprisonment in a county jail for a period of not more than 10 days, or both.

(e) Except as authorized by law, every person under the age of 18 who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, upon the grounds of, or within, any school providing instruction in kindergarten or any of grades 1 through 12 during hours the school is open for classes or school-related programs is guilty of a misdemeanor and shall be subject to the following dispositions:

(1) A fine of not more than two hundred fifty dollars (\$250), upon a finding that a first offense has been committed.

(2) A fine of not more than five hundred dollars (\$500), or commitment to a juvenile hall, ranch, camp, forestry camp, or secure juvenile home for a period of not more than 10 days, or both, upon a finding that a second or subsequent offense has been committed.

SEC. 13. Section 11377 of the Health and Safety Code is amended to read:

11377. (a) Except as authorized by law and as otherwise provided in subdivision (b) or Section 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who possesses any controlled substance which is (1) classified in Schedule III, IV, or V, and which is not a narcotic drug, (2) specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d), (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of Section 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be punished by imprisonment in a county jail for a period of not more than one year ~~or pursuant to subdivision (h) of Section 1170 of the Penal Code, except that such person may instead be punished pursuant to subdivision (b) of Section 1170 of the Penal Code if that person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290 of the Penal Code.~~

~~(b) (1) Any person who violates subdivision (a) by unlawfully possessing a controlled substance specified in subdivision (f) of Section 11056, and who has not previously been convicted of a violation involving a controlled substance specified in subdivision (f) of Section 11056, is guilty of a misdemeanor.~~

~~(2) Any person who violates subdivision (a) by unlawfully possessing a controlled substance specified in subdivision (g) of Section 11056 is guilty of a misdemeanor.~~

~~(3) Any person who violates subdivision (a) by unlawfully possessing a controlled substance specified in paragraph (7) or (8) of subdivision (d) of Section 11055 is guilty of a misdemeanor.~~

~~(4) Any person who violates subdivision (a) by unlawfully possessing a controlled substance specified in paragraph (8) of subdivision (f) of Section 11057 is guilty of a misdemeanor.~~

~~(c) (b) In addition to any fine assessed under subdivision (b), the judge may assess a fine not to exceed seventy dollars (\$70) against any person who violates subdivision (a), with the proceeds of this fine to be used in accordance with Section 1463.23 of the Penal Code. The court shall, however, take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this subdivision.~~

SEC. 14. Section 1170.18 is added to the Penal Code, to read:

1170.18. (a) *A person currently serving a sentence for a conviction, whether by trial or plea, of a felony or felonies who would have been guilty of a misdemeanor under the act that added this section ("this act") had this act been in effect at the time of the offense may petition for a recall of sentence before the trial court that entered the judgment of*

conviction in his or her case to request resentencing in accordance with Sections 11350, 11357, or 11377 of the Health and Safety Code, or Section 459.5, 473, 476a, 490.2, 496, or 666 of the Penal Code, as those sections have been amended or added by this act.

(b) Upon receiving a petition under subdivision (a), the court shall determine whether the petitioner satisfies the criteria in subdivision (a). If the petitioner satisfies the criteria in subdivision (a), the petitioner's felony sentence shall be recalled and the petitioner resentenced to a misdemeanor pursuant to Sections 11350, 11357, or 11377 of the Health and Safety Code, or Section 459.5, 473, 476a, 490.2, 496, or 666 of the Penal Code, those sections have been amended or added by this act, unless the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety. In exercising its discretion, the court may consider all of the following:

(1) The petitioner's criminal conviction history, including the type of crimes committed, the extent of injury to victims, the length of prior prison commitments, and the remoteness of the crimes.

(2) The petitioner's disciplinary record and record of rehabilitation while incarcerated.

(3) Any other evidence the court, within its discretion, determines to be relevant in deciding whether a new sentence would result in an unreasonable risk of danger to public safety.

(c) As used throughout this Code, "unreasonable risk of danger to public safety" means an unreasonable risk that the petitioner will commit a new violent felony within the meaning of clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667.

(d) A person who is resentenced pursuant to subdivision (b) shall be given credit for time served and shall be subject to parole for one year following completion of his or her sentence, unless the court, in its discretion, as part of its resentencing order, releases the person from parole. Such person is subject to Section 3000.08 parole supervision by the Department of Corrections and Rehabilitation and the jurisdiction of the court in the county in which the parolee is released or resides, or in which an alleged violation of supervision has occurred, for the purpose of hearing petitions to revoke parole and impose a term of custody.

(e) Under no circumstances may resentencing under this section result in the imposition of a term longer than the original sentence.

(f) A person who has completed his or her sentence for a conviction, whether by trial or plea, of a felony or felonies who would have been guilty of a misdemeanor under this act had this act been in effect at the time of the offense, may file an application before the trial court that entered the judgment of conviction in his or her case to have the felony conviction or convictions designated as misdemeanors.

(g) If the application satisfies the criteria in subdivision (f), the court shall designate the felony offense or offenses as a misdemeanor.

(h) Unless requested by the applicant, no hearing is necessary to grant or deny an application filed under subsection (f).

(i) The provisions of this section shall not apply to persons who have one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or for an offense requiring registration pursuant to subdivision (c) of Section 290.

(j) Any petition or application under this section shall be filed within three years after the effective date of the act that added this section or at a later date upon a showing of good cause.

(k) Any felony conviction that is recalled and resentenced under subdivision (b) or designated as a misdemeanor under subdivision (g) shall be considered a misdemeanor for all purposes, except that such resentencing shall not permit that person to own, possess, or have in his or her custody or control any firearm or prevent his or her conviction under Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6.

(l) If the court that originally sentenced the petitioner is not available, the presiding judge shall designate another judge to rule on the petition or application.

(m) Nothing in this section is intended to diminish or abrogate any rights or remedies otherwise available to the petitioner or applicant.

(n) Nothing in this and related sections is intended to diminish or abrogate the finality of judgments in any case not falling within the purview of this act.

(o) A resentencing hearing ordered under this act shall constitute a "post-conviction release proceeding" under paragraph (7) of subdivision (b) of Section 28 of Article I of the California Constitution (Marsy's Law).

SEC. 15. Amendment.

This act shall be broadly construed to accomplish its purposes. The provisions of this measure may be amended by a two-thirds vote of the members of each house of the Legislature and signed by the Governor so long as the amendments are consistent with and further the intent of this act. The Legislature may by majority vote amend, add, or repeal provisions to further reduce the penalties for any of the offenses addressed by this act.

SEC. 16. Severability.

If any provision of this measure, or part of this measure, or the application of any provision or part to any person or circumstances, is for any reason held to be invalid, the remaining provisions, or applications of provisions, shall not be affected, but shall remain in full force and effect, and to this end the provisions of this measure are severable.

SEC. 17. Conflicting Initiatives.

(a) This act changes the penalties associated with certain nonserious, nonviolent crimes. In the event that this measure and another initiative measure or measures relating to the same subject appear on the same statewide election ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this measure. In the event that this measure receives a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and the provisions of the other measure shall be null and void. However, in the event that this measure and another measure or measures containing provisions that eliminate penalties for the possession of concentrated cannabis are approved at the same election, the voters intend such provisions relating to concentrated cannabis in the other measure or measures to prevail, regardless of which measure receives a greater number of affirmative votes. The voters also intend to give full force and effect to all other applications and provisions of this measure, and the other measure or measures, but only to the extent the other measure or measures are not inconsistent with the provisions of this act.

(b) If this measure is approved by the voters but superseded by law by any other conflicting measure approved by the voters at the same election, and the conflicting ballot measure is later held invalid, this measure shall be self-executing and given full force and effect.

SEC. 18. Liberal Construction.

This act shall be liberally construed to effectuate its purposes.

Proposition 48

This law proposed by Assembly Bill 277 of the 2013–2014 Regular Session (Chapter 51, Statutes of 2013) is submitted to the people of California as a referendum in accordance with the provisions of Section 9 of Article II of the California Constitution.

This proposed law adds a section to the Government Code; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

Proposed Law

SECTION 1. Section 12012.59 is added to the Government Code, to read:

12012.59. (a) (1) *The tribal-state gaming compact entered into in accordance with the federal Indian Gaming Regulatory Act of 1988 (18 U.S.C. Secs. 1166 to 1168, inclusive, and 25 U.S.C. Sec. 2701 et seq.) between the State of California and the North Fork Rancheria Band of Mono Indians, executed on August 31, 2012, is hereby ratified.*

(2) *The tribal-state gaming compact entered into in accordance with the federal Indian Gaming Regulatory Act of 1988 (18 U.S.C. Secs. 1166 to 1168, inclusive, and 25 U.S.C. Sec. 2701 et seq.) between the State of California and the Wiyot Tribe, executed on March 20, 2013, is hereby ratified.*

(b) (1) *In deference to tribal sovereignty, none of the following shall be deemed a project for purposes of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code):*

(A) *The execution of an amendment to the tribal-state gaming compacts ratified by this section.*

(B) *The execution of the tribal-state gaming compacts ratified by this section.*

(C) *The execution of an intergovernmental agreement between a tribe and a county or city government negotiated pursuant to the express*

authority of, or as expressly referenced in, the tribal-state gaming compacts ratified by this section.

(D) *The execution of an intergovernmental agreement between a tribe and the Department of Transportation negotiated pursuant to the express authority of, or as expressly referenced in, the tribal-state gaming compacts ratified by this section.*

(E) *The on-reservation impacts of compliance with the terms of the tribal-state gaming compacts ratified by this section.*

(F) *The sale of compact assets, as defined in subdivision (a) of Section 63048.6, or the creation of the special purpose trust established pursuant to Section 63048.65.*

(2) *Except as expressly provided herein, this subdivision does not exempt a city, county, or city and county, or the Department of Transportation, from the requirements of the California Environmental Quality Act.*