



Bickmore Risk Services

# HANDBOOK ON CLAIMS PROCEDURES & LAWSUITS AGAINST PUBLIC ENTITIES

*Prepared for Clients of Bickmore Risk Services*



*June 2004*

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## **INTRODUCTION**

This handbook has been prepared for clients of Bickmore Risk Services as a guide for the processing of claims and lawsuits in which a member entity is a potential or actual defendant. It sets forth, in general terms, the requirements imposed by law on claimants, the circumstances wherein claims are required, how claims should be processed, the requirements of serving legal complaints, governmental immunities, and a glossary of common terms. All references made herein are to the California Government Code, unless otherwise indicated.

The handbook should be reviewed by the entity's attorney periodically to ensure that the information is current.

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## I. CLAIMS REQUIREMENTS

### A. Overview

With certain exceptions, a person who believes he or she has been injured or damaged by a public entity or a public employee must file a written claim with the public entity, and the entity must reject it before a lawsuit against the entity and/or employee may be filed in court (Section 945.4). (**Note:** The Government Code sections that deal with each statutory requirement are specified where appropriate.) The statutory process that must be followed for the filing of a claim, and the exceptions to these requirements, are the topics of this section.

### B. For What Injuries Must a Claim be Filed?

As a general rule, a claim must be filed with a public entity for “money or damages” allegedly caused by the public entity or employee(s) (Section 905). This covers most of the liability situations which will occur during normal governmental activities (*i.e.*, trip and falls, alleged dangerous conditions of property, police civil liability cases, and negligence, in which physical and/or emotional injury and/or property damage are claimed).

No claim is required in those cases in which no money is sought and the individual is merely trying to either compel or prevent some action by the entity.

### C. Matters Not Requiring a Claim

There are some “non-tort” claims in which money or damages are sought where a formal claim is not required by the Government Code (Sections 905 and 905.1).

#### No claim requirement for the following type of claims:

- 1) Claims under the Revenue and Taxation Code and related statutes;
- 2) Claims in connection with the filing of a notice of lien, statement of claim, or stop notice is required under any provision of law relating to mechanics’, laborers’, or materialmen’s liens;
- 3) Claims by public employees for fees, salaries, wages, mileage, or other expenses and allowances;
- 4) Claims for which Workers’ Compensation is the exclusive remedy;
- 5) Claims for employment discrimination under the California Fair Employment and Housing Act (FEHA);
- 6) Applications related to public retirement or pension systems;
- 7) Claims for return of personal property from a police agency;
- 8) Claims for principal or interest on bonds or related indebtedness;
- 9) Claims related to special assessments constituting specific liens;
- 10) Claims arising under any provision of the Unemployment Insurance Code;
- 11) Claims governed by the Pedestrian Mall Law of 1960 Streets & Highways Code;
- 12) Claims for the recovery of penalties or forfeiture made pursuant to certain provisions of the Labor Code;

- 13) Property damage claims framed in terms of Inverse Condemnation (3 year statute of limitations, Code of Civil Procedure Section 338) (Government Code Section 905.1);
- 14) Claims relating to public assistance under the Welfare and Institutions Code or other provisions of law related to public assistance; and
- 15) Federal Civil Rights Actions under 42 U.S.C. Section 1983.

D. **Claims by One Public Entity Against Another**

Claims by the state or another local public entity are also exempt from the claims requirement, unless the defendant public entity has adopted a resolution or ordinance pursuant to Government Code Section 935. Government Code Section 935 empowers local public entities to establish their own policies and procedures for the presentation of those claims against them which are exempt by Government Code Section 905. If your entity has not yet enacted an ordinance or resolution which establishes claim requirements for these exceptions, please contact our office for assistance, as it is in your best interest to do so. A sample model ordinance is attached as **Form Y-Sample Government Code Section 935 Ordinance**, but a resolution may be substituted.

E. **When Must a Claim be Filed?**

A claim relating to a cause of action for death or bodily injury or for damage to personal property must be filed not later than six (6) months after the accrual of the cause of action (see discussion below). A claim relating to any other cause of action (*i.e.*, a contract claim or a claim for damage to real property) must be filed within one (1) year after the accrual of the cause of action (Section 911.2).

F. **When Does a Claim Accrue?**

For purposes of evaluating a claim's timeliness, the general rule to follow is that a claim accrues when the injury or damage occurs which gives rise to a cause of action (Section 901) (*i.e.*, the date of the auto accident or the date of the damage to claimant's property). The date of accrual, however, can vary depending on various circumstances. The following is a partial list of some circumstances in which the date of accrual may vary:

- 1) Claims for indemnification, which accrues when the claimant is served with a lawsuit that is the basis for the claim of indemnification;
- 2) Claims based on the "late discovery rule." There are occasions when the cause of action does not accrue until the injury or damage is actually discovered or, with reasonable diligence, should have been discovered. An example of this would be a cause of action against a county or city hospital for medical malpractice which is not actually discovered for many months, or sometimes years, after the actual surgery or procedure. Another example would involve claims of soil subsidence.
- 3) Claims where the cause of action does not accrue at the initial alleged injury, but at the conclusion of a series of events. An example of this would be a claim for false imprisonment in which the claim accrues upon release from custody. Another example would be a claim for malicious prosecution in

which the claim accrues as of the date of exoneration by a court hearing. (**Note:** While claims for false arrest generally accrue as of the date of arrest, there is authority indicating that the date of release from custody is the actual date of accrual.)

- 4) Claims on behalf of minors, generally, must be presented within six (6) months of the date of injury or damage; however, the cause of action for injuries to a minor accrues at the time the parent(s) or guardian knew or should have known, through reasonable inquiry, that the acts of the public entity or its employee(s) caused the injuries. (**Note:** In the event the parent(s) or guardian of a minor child presents an entity with an Application for Leave to Present a Late Claim, you should be aware that special rules apply which generally favor the granting of such application.) (See Section III.C.(2).)
- 5) Claims on behalf of those in military service. The time to present a claim may be tolled by the recently enacted Servicemembers Civil Relief Act of 2004, formerly known as the Soldiers' and Sailors' Relief Act of 1940, if the claimant was, during the all or part of the six (6) month period, in active military service.

(**Note:** A person charged with a criminal offense may not bring a civil action based on the conduct of a law enforcement officer relating to the offense for which the person is charged during the time in which the criminal charges are pending (Section 945.3). The individual is not exempt from the six (6) month claim filing statute.)

These complicated issues, and any others that arise, should immediately be directed to the third party administrator, the Litigation Manager, or your legal counsel.

G. **Where Must a Claim be Filed?**

A claim must be filed with the "clerk, secretary, or auditor" of the local public entity from which damages are sought (Section 915). Claimants and/or their representatives often mail or deliver a claim to the wrong department or the wrong public entity. Although the claimant has the burden of proving that the claim was presented to the right person and/or entity, you must not treat misdirected claims lightly. A claim may be deemed "presented" if it is eventually "actually received" by the clerk, secretary, auditor, or governing body of the correct entity.

H. **How Must a Claim be Filed?**

The claim may be presented in person to the clerk, secretary, or auditor of the public entity from which damages are sought. Alternatively, the claim may be mailed to such clerk, secretary, auditor, or governing body at its principal office (Section 915(a)). (**Note:** A claim which is mailed is considered filed on the date on which it is placed in the mail; therefore, saving the envelope with the postmark may be an important step in determining whether the claim was timely filed. Additionally, maintaining a log of claims received, the date they were received by the entity, and date-stamping the claim can be of invaluable assistance if a conflict were to arise.) **Form ZZ-Liability Incident Report and Verified Claim Log** is attached for your use.

As noted above, a claim may be considered properly presented if it is actually received, even though not delivered or mailed as specified above (*i.e.*, a file clerk at one of the entity's departments receives the claim in the mail and then forwards it to the appropriate person designated to receive claims). Therefore, again, it is important to date-stamp every claim to show when it was actually received by one of the persons specified above.

## I. What Information Must the Claim Include?

The statutes require that certain information be included in any claim filed with a public entity. The courts recognize, however, that many claims are filed by people without any legal skills or sophistication; therefore, as long as the critical information is provided (that which would allow the entity to investigate and respond to the claim), the statutes may be satisfied (Section 910). Technical defects may not invalidate a claim if there is “substantial compliance” with the requirements.

Generally, a claim must contain the following information:

- (1) Name and residential address of claimant;
- (2) Post office address to which the claimant wants responses to the claim sent (if different than the residential address);
- (3) Date, place, and other circumstances which give rise to the claim. In a claim for indemnification, this would be the date the claimant was served with the lawsuit which is the basis of the claim for indemnification;
- (4) Description of damage, injury, or loss known at the time of the claim;
- (5) Name(s) of public employee(s) causing damage, injury, or loss, if known;
- (6) The actual amount claimed, **if it totals less than ten thousand dollars (\$10,000)** as of the date of the presentation of the claim, including the estimated amount of any prospective injury, damage, or loss insofar as it may be known at the time of the presentation of the claim, together with the basis of the computation of the amount claimed. **If the amount claimed exceeds ten thousand dollars (\$10,000), no dollar amount shall be included in the claim; however, it shall indicate the court of appropriate jurisdiction and, if the superior and municipal courts have been consolidated, whether the claim would be a limited civil case.** The limited civil case jurisdictional limit is presently \$25,000. As is typical with some legislation, the code does not address the issue of a claim for exactly \$10,000 (Section 910(f)); and
- (7) The signature of the claimant or representative (Section 910.2). A representative is simply a person who acts on someone’s behalf and need not be an attorney.

One of the purposes of the claim is to allow the entity to investigate the allegations and resolve the claim, if possible, before the expense of litigation. To conduct such an investigation often calls for information about the claimant or the incident beyond that required by the statute. For that reason, the use of the attached **Form B-Claim Form** is recommended when anyone requests a claim form from the entity.

J. **Right of Claimant to Obtain Information from the Entity**

The California Public Records Act (Section 6250) gives a potential claimant the right to obtain public documents for the purpose of formulating a legally sufficient claim. If you receive such a request, please forward it to the third party administrator immediately so that issues such as a reasonable time for production and costs can be addressed.

K. **Claims Against Public Employees**

Claims against public employees must be made to the public entity employer as a prerequisite to a legal action against a public employee for acts or omissions committed during the course and scope of employment (Section 950.2); however, Section 910(e) only requires the claim to state the name(s) of the employee(s) if known. This may be a critical issue when deciding on what action to take on the claim.

L. **What If The Claim Is For Allegations Of Workplace Wrongdoing?**

Sometimes an employee, or former employee, will file a claim with the public entity alleging employment discrimination or some other form of employment practice liability under state and/or federal law. Based on the wording used in the claim, it may be difficult to determine if the claim is one for general liability or for workplace wrongdoing. If the public entity is a member of a self-insurance pool, there is usually coverage for general liability, subject to certain exclusions and other limiting language, but often employment practices liability coverage is excluded. The public entity may or may not be a member of a separate self-insurance pool for employment practices liability.

It is important to determine as early as possible whether the primary risk sharing pool includes coverage for employment practices liability claims (most do not). If you are unsure, contact the third party administrator, the Litigation Manager, or your legal counsel immediately.

If your public entity is a member of the Employment Risk Management Authority (ERMA), ERMA must be notified immediately upon receipt of a claim. Failure to notify ERMA of the claim may void any coverage for the alleged employment related act(s).

II. **PROCEDURES UPON RECEIPT OF CLAIM/NOTICE OF INCIDENT**

A. **Handling the Claim**

Immediately upon receipt of a claim, **the claim should be date-stamped** and a copy forwarded to the third party administrator. If the claim was received by mail, the envelope should be kept and a copy forwarded as well, so that the date of mailing by the claimant can be preserved.

It is recommended that a **Liability/Loss Notice Form**, attached as **Form A**, be completed and attached to the copy of the claim to be forwarded to the third party administrator. An original of the Liability/Loss Notice Form should be maintained for

your records. Only the top half of **Form A-Liability/Loss Notice** needs to be filled out if the case is to be handled by the third party administrator.

The adjuster for the third party administrator will review the claim, confer with the Litigation Manager, if necessary, and communicate with the city's claims representative within a short period of time as to how the claim should be processed (*i.e.*, returned for insufficiency, lack of timeliness, etc., or placed on the governing body agenda for consideration).

It is extremely important that the claim be forwarded to the third party administrator for review as soon as it is received. There have been many instances wherein defective, untimely, or legally insufficient claims have been placed on the governing body agenda for consideration and subsequently rejected, giving the claimant six (6) months within which to file a lawsuit or allowed to be rejected by operation of law, forth-five (45) days later (Section II.I.). Return of the claim without action as a result of a defect, untimeliness, or insufficiency would have precluded the continuation of the legal process against the entity.

In those minor "property damage only" cases which you intend to handle in-house, the bottom half of **Form A-Liability/Loss Notice** must also be filled out and forwarded to the third party administrator (with a copy of the claim). Additionally, you must notify the third party administrator of any substantial change in reserves, as well as the final disposition, so that a complete record of all claims, costs, and disposition can be recorded and maintained.

In the event of a serious incident or accident which results in significant property damage, bodily injury, personal injury, or death, it is strongly recommended that a **Serious Incident Loss Notice Form**, attached as **Form T**, be completed and forwarded to the third party administrator, even though no formal claim has been received. In almost every such instance, a claim will eventually be received. The relatively small amount of financial expenditure and effort required to complete this form on an incident that does not go to claim status is far outweighed by the advantage of having evidence obtained and preserved at an early stage in the case.

In all situations, occurrences that meet the following criteria must immediately be reported to the third party administrator:

- (1) One or more fatalities;
- (2) Loss of limb or amputations;
- (3) Loss of use of any sensory organ;
- (4) Spinal cord injuries (quadriplegia or paraplegia);
- (5) Third degree burns involving ten percent (10%) or more of the body;
- (6) Serious facial disfigurement;
- (7) Paralysis;
- (8) Closed head injuries;
- (9) Serious loss of use of any body function;
- (10) Long-term hospitalization; or

- (11) Title 42 U.S.C. §1983 claims or other claims involving civil rights violations.

It is strongly recommended that each entity designate a single individual, as well as a back-up, to be responsible for processing all claims and reports of serious incidents and accidents. In addition, it is advisable for each entity to maintain its own log of pending and closed claims and to cross-check that log against the loss run, which is periodically provided by the third party administrator. A sample **Liability Incident Report and Verified Claim Log (Form ZZ)** is attached.

**B. Documents That Don't Look Like a Claim But May Be**

Effective April 1, 2003, Section 910.4(a) requires a public entity to provide its own claim form to potential claimants. A claim may be returned if the entity's form is not used. A sample **Claim Form** is attached as **Form B**. Section 910.4(a) states, in part, that:

“The person presenting a claim shall use the form in order that his or her claim is deemed in conformity with sections 910 and 910.2.”

However, items you may not recognize as a claim, such as letters, notices, and other informal documents, could serve as a valid claim if all of the necessary elements are present. Therefore, you must be alert to the possibility that a claimant who failed to file a claim using a formal claim form may later contend that letters or other documents submitted constituted a claim. It is advisable to forward any such questionable documentation to the third party administrator. The third party administrator and, if necessary, the Litigation Manager, can review the documents and advise the entity on the sufficiency of the claim and how it is to be treated. Failure to recognize documents as a claim may cause the entity to miss relevant deadlines and waive important rights with respect to the claim.

You should seek the immediate advice and counsel of the third party administrator and/or the Litigation Manager if questions arise as to whether correspondence or miscellaneous documents received constitute a “claim” or if you have questions regarding the use of the public entity's form.

**C. Review of the Claim**

Immediately upon receipt of the claim, the adjuster for the third party administrator will review the claim to ensure the following:

- (1) The signature of the claimant or representative is present. (**Note:** If the claim is for supplies, materials, equipment, or services provided to the entity, the claim need only be on a billhead or invoice regularly used by the claimant's business);
- (2) The claim has been filed within six (6) months or, where appropriate, one (1) year of the incident or accident;
- (3) It can be reasonably understood from the claim why the claimant is seeking damages from the entity and when and where the incident or accident giving rise to the claim occurred (see below for detailed discussion);

- (4) Claimant's or representative's name and residence address is present; and
- (5) Either (1) the amount of damages the claim seeks is specified, if the amount is under \$10,000, or (2) the court of appropriate jurisdiction is designated instead of the amount sought, if the amount exceeds \$10,000 (Section 910 (f)).

D. **Recognizing Insufficiency/Defects**

One of the most important questions on the recommended **Form B-Claim Form** is, “What did the entity or the employee do to cause this loss, damage, or injury?” It is this area where the claimant needs to provide the most detailed information surrounding the claim. Be on the lookout for vague responses to this question. Catch-all phrases such as “negligent conduct of your employee,” “improper design,” “inadequate maintenance,” “excessive force,” and “dangerous condition” should trigger a notice of insufficiency. (In these cases, Paragraph 6 of **Form C-Notice of Insufficiency of Claim and Return Without Action** should be circled or referenced in the notice of insufficiency.)

It is also important to be on the lookout for the more obvious defects as well. Make sure all claims contain the information required by statute, such as the name and mailing address of the claimant, the amount sought by the claimant or the court of appropriate jurisdiction, and the claimant’s or representative’s signature.

E. **What if a Claim is not Sufficient?**

If a review of the claim by the adjuster or the Litigation Manager determines that the claim is defective or legally insufficient, the entity may forward to the claimant a notice of the insufficiency or defect within twenty (20) days of the filing of the claim. Section 910.8 requires that the insufficiencies must be described with particularity. (See **Form C-Notice of Insufficiency of Claim and Return Without Action** for recommended notice.) After notice is given, action may not be taken on the claim for fifteen (15) days from the date of this notice. (**Note:** The suggested form lists as "insufficiencies" information which is inadequate in that the claim cannot be investigated without that information.) Failure to give notice of insufficiency will waive any defect or omission in the claim.

F. **Why Sending a Notice of Insufficiency is Important**

The notice of insufficiency process is a very important tool and has two (2) important purposes. First, it can be used as a vehicle for fact-finding, allowing an entity to investigate the facts giving rise to the claim. For example, a notice of insufficiency will preclude a claimant from describing a trip and fall accident on a sidewalk as such by compelling the claimant to provide more detailed information, such as the exact location and type of every defect that may have caused the harm. Armed with this information, the entity can begin to thoroughly investigate the claim at the earliest stage. Second, a notice of insufficiency will preclude a claimant from advancing a vague theory (or theories) regarding the cause of the incident by again compelling the claimant to allege a specific theory (or theories) regarding the cause. This is useful as the claimant will not be able to later allege different or additional theories in a complaint if they were not originally set forth in the claim.

Failure to send a notice of insufficiency where a claim uses generalities and vague terms may allow a claimant to later proceed on theories not considered by the entity at the time the claim was submitted. Alternatively, a court may dismiss a complaint if it is based on facts or theories other than those identified in the preceding claim, particularly if the claimant had been previously advised of insufficiencies in the claim. A timely filed notice of insufficiency, therefore, can serve to narrow and limit the exposure to the entity.

G. **Amending a Claim**

Claimants may amend their claim within the fifteen (15) day period allowed upon notification of an insufficiency, as previously described, or at any time during the period designated for the filing of the claim (either six (6) months or one (1) year), or before final action is taken by the governing board, whichever is later. The amended claim must relate to the same transaction or facts which gave rise to the original claim (Section 910.6(a)). If the amended claim filed in response to a notice of insufficiency is again insufficient, arguably, the entity does not have to send out another notice of insufficiency.

Any questions about this procedure should be directed to the third party administrator, the Litigation Manager, or your legal counsel.

H. **What if a Claim is Untimely?**

This (and later) discussions regarding late claims apply only to claims which must be filed within six (6) months. There are no late claim procedures for a claim that must be filed within one (1) year.

If, on the face of the claim, it appears that the claimant has failed to file a claim within the six (6) month time period required by statute, the adjuster or the Litigation Manager will recommend that a notice of return without action be sent to the claimant. The claim must also be returned with the notice. This must be done within forty-five (45) days of the filing of the claim or the defense of "untimeliness" is waived (Section 911.3). The notice is required to be in a format specified by statute so it is recommended that the attached **Form D-Notice Of Return, Without Action, Of A Claim Required To Be Filed Within Six (6) Months** be used.

A claim should not be rejected on its merits if it appears "late on its face," *i.e.*, submitted more than six (6) months after the accrual of the cause of action. This may have the effect of waiving any late claim defenses. These dilemmas are best handled by the third party administrator, the Litigation Manager, or your legal counsel.

(**Note:** While there is no late notice requirement with regard to a claim required to be filed within one (1) year, **Form E-Notice Of Return, Without Action, Of A Claim Required To Be Filed Within One (1) Year Or An Application For Leave To Present A Late Claim** has been designed to give this notice in the interest of public relations and to keep a proper accounting of all claims.) **Form E** is also the form which is to be used to respond to an untimely filing of an application for leave to present a late claim. This issue is discussed later.

## I. What if the Claim is Sufficient and Timely?

If it is determined by the adjuster or the Litigation Manager that a claim is legally sufficient and timely, the entity will be notified to place the claim on the governing body agenda for consideration and action. A claim must be allowed or rejected within forty-five (45) days of its presentation (either personally delivered or mailed). It is important to monitor this forty-five (45) day rule to make sure that rejections are made in a timely manner. A rejection is effective on the date the notice is personally given or mailed. (**Note:** If the claim was mailed, Section 910.4(a) allows forty-five (45) days plus five (5) days for mailing of the rejection.)

Adherence to this forty-five (45) day rule is important because it triggers the time within which the claimant must legally file any lawsuit arising from the incident. If an entity's governing body rejects a claim within the forty-five (45) day period, and sends notice of such rejection, the claimant has only six (6) months from the date of rejection to file a lawsuit (Section 945.6). (**Note:** **Form G-Notice of Rejection of Claim** is the standard rejection notice which is recommended in most situations. This form clearly advises the claimant or his/her representative of the six (6) month requirement.)

If the governing body fails to reject the claim and give notice of such rejection within the forty-five (45) day period, by statute, the claim is deemed to have been rejected on the forty-fifth (45<sup>th</sup>) day (Section 912.4). In this case, the claimant has two (2) years from the date of accrual of the cause of action within which to file suit, extending the period of vulnerability for the entity (Section 945.6). Upon discovery that a formal rejection was not made within the allotted forty-five (45) day period, giving the claimant two (2) years from the date of accrual of the cause action to file suit, a notice of rejection by operation of law should be sent to the claimant as soon thereafter as possible, as the six (6) month statute of limitation for the filing of a lawsuit begins on the date this notice is sent to the claimant. **Form K-Notice of Rejection by Operation of Law** has been provided for your use.

**DO NOT**, however, send this notice within six (6) months of the date on which the two (2) year statute of limitations will expire. To send the notice within that period of time would lengthen the statute of limitations.

**Example:** If an accident happened on January 1, 2003, and assuming a claim was filed in a timely manner but the governing body did not give notice of rejection of the claim as required (within forty-five (45) days), the claimant would have until January 1, 2005, to file a lawsuit (two (2) years from the accrual of the cause of action). If, however, someone at the entity realizes that the **Notice of Rejection** was not sent, and then mails a **Notice of Rejection by Operation of Law** on October 1, 2004, the claimant would then have until April 1, 2005, to file the lawsuit (six (6) months from the date of notice) instead of having to file a lawsuit by January 1, 2005. By sending the **Notice of Rejection by Operation of Law** within six (6) months of the date the two (2) year statute of limitations would have expired, the entity waived the two (2) year statute of limitations (January 1, 2005) and gave the claimant an additional four (4) months to file suit (April 1, 2005).

In the case of an amended claim, the governing body has the same forty-five (45) days after the amendment is filed to reject the amended claim (Section 912.4).

J. **Presentation of the Claim to the Governing Body**

When a claim is submitted to the entity's governing body, it should be submitted with a recommendation, not with a specific directive. Never submit a claim to the governing body using language such as, "This claim is being submitted for your rejection." Instead, use wording such as, "After consideration and investigation, it is our recommendation that the claim be rejected." The law clearly states that the governing body shall make the determination on the claim, unless they have specifically delegated that responsibility to someone such as a risk manager, city attorney or county counsel, city manager, or county administrator.

K. **How is a Claim Rejected or Accepted?**

The manner in which a claim is rejected or accepted is also governed by statute (Section 913). Therefore, to be effective, it is recommended that one of the appropriate attached forms, **Form F-Notice Of Action On Claim**, **Form G-Notice Of Rejection Of Claim**, **Form I-Notice Of Full Payment Of Claim**, or **Form J-Notice Of Partial Payment Of Claim**, be used. The forms provide for partial or complete payment, acceptance, or rejection of a claim.

Frequently, a more personal approach than the formal rejection procedure will allow a claim to be settled without pushing the claimant into an attorney's office. A sample letter advising the claimant of receipt of the claim is attached as **Form X-Sample Notice of Receipt of Claim**. Another sample letter explaining the reasons for rejection is attached as **Form W-Sample Explanation Letter**. Both of these forms are included as samples only of a more "personal approach" and should be tailored to fit your individual situation, if you choose to use them. This approach might well keep a claimant from seeking legal advice while the claim is pending and/or deter the claimant from seeking legal advice when he/she is informed of the reasons for rejection.

L. **Benefits to Early Acceptance of a Claim**

From time to time, during the investigation of the claim, a financial settlement can be made with the claimant(s) that is beneficial to both the claimant(s) and the entity. When it is advantageous for the entity to settle such claim(s), settlement should be done in a timely and expeditious manner.

It is a valuable tool to accept a claim when there is clear liability, and the damages sought by the claimant are reasonable. The danger in not accepting a claim under these circumstances is that, if you reject such a claim, the claimant is then not bound to the dollar amount requested in the claim. Conversely, if the claim is accepted, then the claimant is bound by the amount of damages sought.

In order for such an early acceptance of a claim to take place, there should be a representative of the entity who has settlement authority. This person could be someone

such as a city attorney, city manager, risk manager, or administrator. It is our recommendation that the delegated settlement authority be at least in the amount of \$10,000. Authority may be granted up to and inclusive of the sum of \$50,000 (Section 935.2 and 935.4). If the governing board of a given entity is reluctant to grant authority in that amount, then authority in the amount of \$5,000, at a minimum, should be granted. This delegation of authority can be accomplished either by resolution or ordinance. A sample resolution is attached as **Form H-Sample Resolution**.

- M. Beware, that if an advance payment is made on behalf of a public entity, the claimant must be notified in writing of any time limitations to file a claim with that public entity. Failure to do so may toll the claim filing requirements. Notification is not required if the recipient of the advance payment is represented by an attorney. (California Insurance Code Section 11583).

### **III. PROCEDURES FOR PROCESSING AN APPLICATION FOR LEAVE TO PRESENT A LATE CLAIM**

#### **A. When Must an Application for Leave to Present a Late Claim be Filed?**

An application for leave to present a late claim must be submitted within a reasonable time, but generally no later than one (1) year after the accrual of the cause of action. The application must state the reason(s) for delay in filing the claim, and the proposed claim must be attached to the application (Section 911.4). Although it is not uncommon for applicants to fail to attach a proposed claim, the application should be denied on the ground that it fails to conform to the mandatory requirements of the Government Code (Section 911.4).

In certain limited situations, an application for leave to present a late claim may be presented later than one (1) year after the accrual of the cause of action if the person who suffered the injury, damage, or loss can show that there was a period of time in which he/she was mentally incapacitated and without a guardian or conservator or, in very limited cases, where the person was a minor (under the age of 18) during that time. The period of time the individual was incapacitated or was a minor, in some instances, can be deducted from the overall time between the date of accrual and the date of application. If the balance is less than one (1) year, the application could be timely; however, the burden is on the plaintiff to convince a court why the one (1) year statute could not have been met. In almost all cases, the one (1) year limitation period is upheld by the courts.

The claimant need only comply with the statute to make a properly presented application. **Form E-Notice Of Return, Without Action, Of A Claim Required To Be Filed Within One (1) Year Or An Application For Leave To Present A Late Claim** is designed to notify a claimant that either a one (1) year claim or an application for leave to present a late claim was received too late to be considered. This notification is not required by any statute but is recommended for public relations and in the interest of proper accounting for all claims.

B. **How Long Does the Governing Body Have to Review an Application for Leave to Present a Late Claim?**

The statute requires that a governing body grant or deny an application for leave to present a late claim within forty-five (45) days after it is presented. If no action is taken, it is presumed to have been denied (Section 911.6). The statute provides no "penalty" for failure to take action on an application as it does in the situation where the governing body fails to act on a claim. However, it is in the financial interest of the entity to review and act promptly on all applications. Approval, where appropriate, saves the litigation costs incurred in opposing petitions made to the court for relief from the claims statute.

C. **Under What Circumstances Must an Application for Leave to Present a Late Claim be Granted?**

Section 911.6 is very specific in stating that the governing body shall grant the application where any one or more of the following is applicable:

- (1) The failure to present the claim was through mistake, inadvertence, surprise, or excusable neglect and the public entity was not prejudiced in its defense of the claim by the failure of the claimant to present the claim within six (6) months after the incident or accident; or
- (2) The person who sustained the alleged injury, damage, or loss was a minor (under the age of 18) during all of the six (6) month period after the incident or accident, and applies within one (1) year after the date of accrual; or
- (3) The person who sustained the alleged injury, damage, or loss was physically or mentally incapacitated during all of the six (6) month period after the incident or accident and because of that disability failed to present the claim; or
- (4) The person who sustained the alleged injury, damage, or loss died before the expiration of the six (6) month period after the incident or accident.

The last three (3) are much easier to determine objectively. The first basis for sustaining the application is very subjective and, therefore, very difficult to define. On occasion, the admission in a declaration of attorney neglect will be enough to allow relief. However, the failure to consult an attorney, the failure to identify the public entity, or ignorance of the claims filing requirements is not proper grounds to grant relief. The adjuster, Litigation Manager, or the entity's attorney should be consulted on these issues.

Written notice of the governing body's action must be sent to the claimant (Section 911.8). The use of **Form L-Notice of Board Action on Application for Relief from the Claim Filing Statute** is recommended, as it incorporates the language required by statute to be in the notice.

If the application for leave to present a late claim is granted, the claim should be processed in the same manner as a properly filed claim. The date that the application is granted serves as the date upon which the claim was "filed" (Section 912.2).

D. **When a Claimant Simultaneously Files the Claim and the Application to Present a Late Claim**

If the situation occurs where a claimant simultaneously files both a claim and an application to present a late claim, instead of just an application with a proposed claim attached, the entity must both respond to the claim (*i.e.*, return it as late) and submit the application to the governing body for action on the application. When faced with this situation you should:

- (1) Return the claim, without action, as untimely forty-five (45) days; and
- (2) Submit the application to be determined on the next governing body agenda.

The only recourse for the claimant if the application is denied is to present a petition for relief from the claim filing statute to the court within a reasonable time.

V. **PROCEDURES UPON RECEIPT OF A PETITION FOR RELIEF FROM THE CLAIM FILING STATUTE**

A. **When Must a Petition be Filed?**

The statute requires that a petition for relief from the claim filing statute be filed with the court that would have had proper jurisdiction over the lawsuit had the application for leave to present a late claim been granted. The petition must be filed within six (6) months from the date that notice is given by the entity that the application for leave to present a late claim is denied (not date the notice is mailed) or six (6) months from the date that the application is deemed to be denied by operation of law (after forty-five (45) days) (Section 946.6).

In this situation, the court decides whether to grant the claimant complete relief from the claims filing requirements. It does not decide whether the application for the late claim should be accepted by the public entity. If the court grants the petition, the claimant only has thirty (30) days to file a complaint with the court (Section 946.6(f)).

B. **What Should Be Done When the Petition is Received?**

The petition for relief from the claim filing statute should immediately be forwarded to the adjuster or the defense attorney who will be handling the opposition to the petition. In addition, all of the following should be sent with the petition, or as soon thereafter as possible:

- (1) A copy of the application for leave to present a late claim, including a copy of the claim;
- (2) All documents or other items provided by the claimant in support of the application;
- (3) All documents pertaining to the claim, including any investigation of the incident or accident which is the subject of the claim;
- (4) All documents, including minutes or transcripts, which provide any insight into the reason(s) why the governing body denied the application; and

- (5) A copy of the notice of the denial of the application.

## VI. PROOF OF MAILING OF NOTICES

### A. Proving Claimant Received Notices

If a claimant denies receiving a statutory notice, the public entity must be prepared to offer legal proof of mailing. Statutory notice would include such items as a notice of insufficiency, return of untimely claims, rejection of claim, or rejection of a late claim application.

By statute, proof of mailing requires a declaration based on personal knowledge that (1) the declarant deposited the notice at a United States Post Office or a mail box, sub-post office, substation or mail chute, or other like facility regularly maintained by the U.S. government; (2) a statement of where the declarant deposited it in the mail; and (3) that the item mailed had proper postage (Section 915.2). Each entity should establish procedures requiring that the clerk mailing the notice check the applicable provision on the declaration and sign the declaration at the time the notice is mailed. **Form M-Declaration of Service by Mail** contains sample language for proofs of mailing.

## VII. PROCEDURES UPON RECEIPT OF A LAWSUIT

### A. How are Lawsuits Served?

Lawsuits are generally served against the entity in one of three ways:

- (1) By mail. A lawsuit can be served by mail by mailing a copy of the lawsuit (summons and complaint) to the entity and/or defendant employee along with a form entitled "Notice and Acknowledgment of Receipt." If the "Notice and Acknowledgement" form is signed and returned to the sending party (usually the plaintiff's attorney), the lawsuit is deemed to have been properly served on the date that the document is signed and returned. **DO NOT SIGN AND RETURN THIS FORM.** The unsigned "Notice and Acknowledgement" form should be forwarded, along with a copy of the lawsuit, to the adjuster and/or Litigation Manager for forwarding to the attorney who will be defending the case. Not signing the "Notice and Acknowledgement" form allows the defense attorney some extra time in which to prepare a response to the lawsuit.
- (2) By substitute service. A lawsuit can be served on an entity and/or defendant employee through an employee of legal age of majority by leaving a copy of the lawsuit at the entity's office during business hours in the employee's name followed by mailing a copy of the lawsuit to the entity and/or defendant employee. The suit is considered served only after both tasks are completed and service is effective ten (10) days after mailing (Code of Civil Procedure Section 415.20).
- (3) By personal service. A lawsuit can be personally served on an entity and/or defendant employee at the entity's business office.

B. **What Should be Done After a Lawsuit is Served?**

The lawsuit (summons and complaint) should immediately be forwarded to the adjuster who will consult with the Litigation Manager and forward it to the attorney who is, or will be, handling the defense of the lawsuit. In state court, a defendant normally has thirty (30) days from the date of service until responsive pleadings must be filed. In federal court, it is usually only twenty (20) days, and a default may be entered automatically if a response is not filed; therefore, prompt action is important!

C. **What Should be Done if a Lawsuit is Served on an Employee?**

The most common cause of a default judgment arising during litigation involving a public entity is the failure of a defendant employee to notify the proper person or department that he or she has been served with a lawsuit. Conversely, a complaint that is often heard from employees is that they never knew they were named in a lawsuit until many months, and often years, after a lawsuit was served on the agency. Therefore, it is recommended that a policy be adopted on an entity-wide basis that places obligations on employees who have been served with a lawsuit to immediately notify the appropriate person or department within the entity. This policy should also provide a mechanism to keep defendant employees informed as to the status of any litigation in which they are named and encourage defendant employees to cooperate in the litigation process. As part of that policy, it is recommended your entity utilize **Form N-Notice of Receipt of Lawsuit; Form O-Notice of Substitute Service; Form P-Notice of Personal Service or Attempted Personal Service-Tender of Defense; Form Q-Acceptance of Tender of Defense and Request for Indemnification; Form R-Tentative Acceptance of Tender of Defense and Request for Indemnification with Reservation of Rights; and Form S-Denial of Tender of Defense and Request for Indemnification**. In addition, if an employee of an entity is named in a lawsuit in which punitive damages are sought, the entity should consider sending the employee a copy of the attached “**Advisement of Law**” letter (**Form Z**). Some defense attorneys prefer to send this letter to the affected employee. Please consult with the third party administrator, the Litigation Manager, or your legal counsel, if a situation such as this should arise.

## VIII. CONCLUDING COMMENTS

The discussion of the claim and lawsuit handling process above is not intended to be a detailed analysis of all aspects of the statutory process involving claims against public agencies. Rather, it is intended as an overview of the process, coupled with suggestions and methods for handling these claims and suits. Any specific questions that may arise, or problems which may surface, that do not fall within any of the discussions or recommended approaches, should be promptly discussed with the Litigation Manager, third party administrator, or your own legal counsel before action is taken.

The entity, at any time, and at just about any step of the claims process, may grant a claimant a longer period of time to comply with the provisions of the statute, or obtain from the claimant an extension of time for the entity to perform some act or make some decision. This can occur formally or informally and intentionally or unintentionally. All persons who deal with claimants should be cautioned against making any statement that might later be construed to have been a waiver of some obligation placed upon the claimant by statute, unless it is specifically intended that the waiver of the obligation be made or the extension of time be granted.

Finally, it should be noted that the laws governing claims change from time to time, so this handbook should be periodically reviewed by the entity's attorney to be kept current.

Because a number of entities have requested it, we have included a sample "release" form (**Form V-Release of All Property Claims**) to be used in those minor "property damage only" cases to be handled by you in-house. We have also included a sample "Release of All Claims" form to be used if there is a bodily injury component to the claim (**Form U-Release of All Claims**). In addition, as stated above, we have included a sample log form (**Form ZZ-Liability Incident Report and Verified Claim Log**) which you can use to track all cases, whether or not they are sent to the third party administrator or disposed of in-house.

## **ADDITIONAL REFERENCES**

## **GLOSSARY OF COMMON TERMS**

Please note: The definitions provided in this section convey common, frequent understandings. Many of the words may be defined differently in specific insurance contracts or may have expanded, reduced, or in other ways different meanings in particular circumstances. They are provided here for convenience only, as they will frequently appear in communications from our office, defense counsel, or adjusters.

### **ABANDONMENT**

A relinquishing of property by the owner to the insurer in order to claim loss when, in fact, the loss may be less than total.

### **ACT OF GOD**

An accident or event that is the result of natural causes, without human intervention or agency, and one that could not have been prevented by reasonable foresight or care; e.g., floods, lightning, earthquake, or storms.

### **ACTUAL CASH VALUE (ACV)**

The replacement cost of an item less depreciation. Frequently, the price that would need to be paid to acquire a similar item with the same wear and tear as the original item.

### **ANSWER**

One of a number of responsive pleadings following service of a lawsuit. *Black's Law Dictionary* offers the following definition: "Strictly speaking, it is a pleading by which defendant in suit at law endeavors to resist the plaintiff's demand by an allegation of facts, either denying allegations of plaintiff's complaint or confessing them and alleging new matter in avoidance, which defendant alleges should prevent recovery on facts alleged by plaintiff."

The answer or another form of responsive pleading must be filed with the appropriate State Court in California within thirty days after the defendant has been served, and with the Federal Court, within twenty days after service.

### **BETTERMENT**

The replacing of an item with another of greater value. This term is frequently used in conjunction with "depreciation" which, in common usage, is another side of the same coin. A carrier will charge depreciation to prevent the possibility of the insured profiting from betterment. For example, replacing a stolen two-year old battery with a new one would be an act of betterment; it would improve the insured's condition.

## **BODILY INJURY**

Physical damage to the body, including death, mental damage, pain, sickness, and disease. Not generally included in this category are items considered to be "personal injury", libel/slander, humiliation, and embarrassment. The category of mental distress can fall in either category depending upon the circumstances.

## **CLAIM**

The notice form required to be filed with a public entity (pursuant to Government Code 910) prior to the filing of a legal complaint.

## **COMPARATIVE NEGLIGENCE**

Comparative negligence is negligence measured in terms of percentage. One party may be 60% responsible for a loss and another may be 40% responsible. California law currently operates on a comparative fault basis, allowing each party either to recover or be liable for damages in proportion to his/her share in the negligent incident.

## **COMPLAINT**

The initial legal pleading filed with the court by the plaintiff to initiate the legal process against defendant(s).

## **DAMAGES**

That which has been lost because of an accident or event. Damages include loss to property, loss of use, bodily injury, personal injury, loss of income, loss of reputation, etc. Generally, damages are expressed in dollar terms and by divisions such as Special Damages, General Damages, Punitive and Exemplary Damages.

**-Special Damages** include those amounts which have been incurred and can be verified. These include medical bills, funeral and burial costs, loss of wages, loss of future income, and expenditures which are required as a result of the loss.

**-General Damages** are monies that are payable to compensate for pain and suffering, embarrassment, inconvenience, and the like.

**-Punitive Damages** are sums awarded by the Court beyond special and general damages for the purpose of punishing a defendant for conduct deemed to be willful and especially heinous or outrageous. The purpose is to punish and to set aside by example.

## **DEMUR/DEMURRER**

One of several responsive pleadings to the court following service of a Complaint. The demurrer states that, even if the facts alleged in the Complaint are correct, the legal consequences are not such that liability accrues to the defendant and there is no need to answer them.

## **DEPOSITION**

Testimony by a party having knowledge material to a cause of action taken outside of court but under oath. The deposition provides access to information and can be read into evidence in court under certain circumstances such as inconsistency between deposition and trial testimony by the same witness. Depositions are part of a larger information gathering process prior to trial known as Discovery.

## **DISCOVERY**

The information gathering process occurring under power of subpoena and with written and oral testimony being provided under oath. Interrogatories and depositions are part of that larger process.

## **DISMISSAL**

An order or judgment finally disposing of an action or suit. Dismissals may be with prejudice which bars the right to bring or maintain an action on the same claim or grounds. They may also be without prejudice whereby there is no bar to bringing or maintaining the action in the future on the same claim or grounds.

## **EMINENT DOMAIN (OR PUBLIC TAKING)**

Eminent Domain is the power to take private property for public use by a public entity, provided the property is taken for a public purpose and just compensation is given to the owner of the property which is taken.

## **EXCESS COVERAGE**

Insurance coverage which does not provide for payment of damages on behalf of the insured until either underlying insurance coverage has paid its limits or the insured has paid its self-insured retention. Public entity excess coverage frequently begins after payment of the self-insured retention per occurrence. Some excess insurance contracts are “following form” and written with coverages identical to those in the underlying or basic policies thereby providing for no gap or break in coverage. Other policies have coverages and conditions worded differently from those found in the basic policies that may broaden or restrict coverage.

**EXEMPLARY DAMAGES** See DAMAGES, Punitive

## **FIRST PARTY**

Refers to the insured in an insurance contract. The second party is the insurance carrier. The third party is a claimant seeking recovery for damages against the insured through the insured's liability insurance provisions.

**GENERAL DAMAGES** See DAMAGES, General

## **HOLD HARMLESS AGREEMENT**

A contractual provision establishing that one party will not be considered liable for particular damages which might arise. This type of agreement frequently is expanded by the requirement that the party holding another harmless agrees to defend and to indemnify the party held harmless. This may be done personally or it may be easily and more safely done by adding the name of the party held harmless to an insurance policy as an Additional Insured.

## **INDEMNITY**

*Black's Law Dictionary* provides the following definition:

"A collateral contract or assurance by which one person engages to secure another against an anticipated loss or to prevent him from being damnified by the legal consequences of an act or forbearance on the part of one of the parties or of some third party. The term is also used to denote a compensation given to make the person whole from a loss already sustained; as where the government gives indemnity for private property taken by it for public use."

The provisions in the liability insurance contract calling for payment of damages on behalf of the insured for certain circumstances are considered the indemnity provisions of the contract.

## **INTERROGATORIES**

Part of the information gathering process known as Discovery occurring between the time that a responsive pleading is filed following service of a lawsuit and the time of trial. Interrogatories are written questions submitted to a party or witness to a lawsuit, with written responses provided under oath within a specified time.

## **INVERSE CONDEMNATION**

The reduction in value of a citizen's property by reason of public action taken or damage to the property leading to diminution in value for which the public entity is held responsible. Coverage for indemnity on actions arising out of inverse condemnation is quite frequently excluded from liability coverage for public entities.

## **LIEN**

A charge or security or encumbrance upon property.

## **NEGLIGENCE**

The omission to do something that a reasonable person guided by those normal considerations which ordinarily regulate human affairs would do under the same or similar circumstances, or the doing of something that a reasonable and prudent person would not do under the same or similar circumstances.

## **NON-SUIT**

Per *Black's Law Dictionary*:

"A term broadly applied to a variety of terminations of an action which do not adjudicate issues on the merits. Name of a judgment given against the plaintiff when he is unable to prove a case, or when he refuses or neglects to proceed to trial and leaves the issue undetermined."

## **NUISANCE**

Something wrongfully done or permitted which interferes with another person's enjoyment of his or her legal rights.

## **OCCURRENCE**

Generally, an accident or event neither expected nor intended from the standpoint of an insured and which gives rise to property damage or bodily injury during the period during which a policy of coverage is maintained. Definitions of this term vary somewhat and the definition is a key term with respect to policy provisions. The reader is cautioned to review the definition provided in each policy of insurance or memorandum of coverage.

## **PROPERTY DAMAGE**

Generally, physical injury to tangible property, destruction of tangible property, loss of use of such injured or destroyed property, and, in some circumstances, loss of use of property not injured or destroyed.

## **PROXIMATE CAUSE (also sometimes referred to as LEGAL CAUSE)**

That which, in a natural and continuous sequence unbroken by an efficient intervening and superseding cause, produces the injury and, without which, the result would not have occurred.

**PUNITIVE DAMAGES** See DAMAGES, Punitive

## **REPLACEMENT COST**

The amount required for replacement of a damaged item. Coverage by insurance for replacement cost makes no deduction for betterment/depreciation and pays whatever is reasonably required to replace the item with a new item of like kind and quality.

## **RESERVES**

Amounts required to be set aside for the eventual payment of losses and loss related expenses.

## **RESPONSIVE PLEADINGS**

A written statement filed within a specific period (in California courts, within 20 or 30 days after service of a lawsuit) to respond to the accusations contained in the Complaint. Two such responsive pleadings are the Answer and the Demurrer. Please see those items on the preceding pages.

## **RETAINED LIMIT**

That amount which will be paid by the member entity before the pool is obligated to make any payment from pooled funds for damages and/or defense costs.

## **SELF-INSURED RETENTION (SIR)**

That amount which a self-insured client agrees to be responsible for before any excess coverages or policies of insurance step in to pay damages and/or defense costs. Exact provisions vary depending upon the coverages offered in differing excess insurance contracts.

## **SOFT-TISSUE INJURY**

An injury to the skin, muscles, or connective tissues of the body. Injury to the internal organs may or may not be included in this category. Direct injury to the skeletal structures is generally not part of this category.

**SPECIAL DAMAGES** See DAMAGES, Special

## **STANDARD OF CARE**

The standard of performance, skill and knowledge to which an individual holding himself out as expert in a profession or skill or possessing certification through governmental or professional bodies will be held. The term is occasionally used more broadly to denote the standard of performance to be expected by an average, reasonable man in the conduct of his day-to-day activities. Performance below a standard of care may be deemed to be negligence.

## **SUBROGATION**

The legal process by which an insurance company seeks recovery of the amount paid to the policyholder from a third party, who has caused a loss.

## **SUMMARY JUDGMENT**

A judgment granted without formal trial when it appears on the pleadings and other evidence to the court that there is no genuine issue of material fact for the trier of fact to decide, and that the moving party is entitled to a judgment as a matter of law.

## **SUMMONS**

Notice which accompanies the complaint which must be served upon a defendant to inform the defendant of the pending action.

## **TORT LAW (TORTS)**

A wrongful act or omission other than a breach of contract and for which a civil action is the appropriate remedy.

## **VERIFIED CLAIMS**

The form of claim required by the Government Code for presentation to a public entity. Technically, a claim where a person presenting such is required to certify under oath the truthfulness of the allegations contained therein.

## **PARTIAL INDEX OF IMMUNITIES/STATUTES**

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**HS = Health & Safety Code**  
**PC = Penal Code**  
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Recreational activity		GC 831.7
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Public entities indemnification of public employees		GC 825.4
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Conditions of		GC 831.8
Roads		
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Repair work on non-accepted road, immunity		GC 831.3
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Duty of citizen to refrain from use of weapon during arrest	PC 834a

## **PUBLIC ENTITY LIABILITY BACKGROUND AND IMMUNITIES**

Prior to the enactment of the California Tort Claims Act of 1963, the law respecting public entity liability was a mixture of historic common law and statutory law. The general thrust was consistent with the doctrine of sovereign immunity, but the arguments advanced for that approach lacked consistency of reasoning and reflected inconsistency of approach. Various attempts to clarify and unify the statutes were made prior to 1963, but those attempts were far from adequate.

In 1963, the Legislature passed six components which comprised the Tort Claims Act. One of those components dealt with the creation of substantive liabilities and immunities for public entities and their employees. The general thrust of that effort was to establish that common law liabilities were abolished and that all liability for torts by public entities had to arise specifically by statute. Government Code Section 815 provides:

Except as otherwise provided by statute:

- (a) A public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person.
- (b) The liability of a public entity established by this part (commencing with Section 814) is subject to any immunity of the public entity provided by statute, including this part, and is subject to any defenses that would be available to the public entity if it were a private person.

Inherent in that section is the principle that immunities prevail over liabilities.

The Tort Claims Act provides that public entities and their employees are liable for their tortious acts or omissions only if a statute imposes such liability. As a general rule, a public entity is liable for injuries legally caused by an act or omission of an employee acting within the course and scope of his or her employment (Section 815.2). The Tort Claims Act also states that, except as otherwise provided by statute, a public employee is liable for injury caused by his or her act or omission to the same extent as a private person, and is subject to any available defenses and immunities.

Included in this section are a number of immunities and other statutes most commonly involved in claims against public entities. Two significant words of caution must be stressed:

- 1) These selections, while representing a major number of immunities applicable to local entities, are a sampling. They are not represented to be a comprehensive listing.
- 2) Liability may be present and payment of damages may be appropriate or required even when immunities are present that appear to address the issue under consideration. Reasons for this include the following:

- A) The plaintiff may be able to recover on another theory of statutory liability or on matters involving Constitutional protections. These fall outside the protections provided by the Tort Claims Act and include such items as Inverse Condemnation, Civil Rights, Contracts and the Right to Privacy.
- B) The immunity, upon further scrutiny, may not apply to the exact circumstances of a particular case.
- C) There may be inconsistency between two separate statutes, or ambiguity which is resolved in favor of the claimant.
- D) The courts are taking an increasingly reticent or cautious approach to the enforcement of immunities, and different Courts of Appeal have taken opposite positions with respect to their interpretation of particular statutory immunities.
- E) The cost of continuing to resist particular cases through litigation may not be justified in the face of reasonable settlement opportunities and well-reasoned arguments against the applicability of a particular immunity.

Bearing these items in mind, it must be clear that the immunities cannot safely be regarded as iron-clad barriers to recovery by plaintiffs. Rather, the immunities should be used skillfully as negotiation tools in a fervent effort to reduce, as much as possible, the public entity's liability exposure.

## CALIFORNIA GOVERNMENT CODE

### **815. [Public Entity Not Liable for Injury Except Where Provided by Statute; Immunity.]**

Except as otherwise provided by statute:

- (a) A public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person.
- (b) The liability of a public entity established by this part (commencing with Section 814) is subject to any immunity of the public entity provided by statute, including this part, and is subject to any defenses that would be available to the public entity if it were a private person. Leg. H. (added by Stats. 1963, Ch. 1681.)

### **815.2. [Act of Employee; Immunity.]**

- (a) A public entity is liable for injury proximately caused by an act or omission of an employee of the public entity within the scope of his employment if the act or omission would, apart from this section, have given rise to a cause of action against that employee or his personal representative.
- (b) Except as otherwise provided by statute, a public entity is not liable for an injury resulting from an act or omission of an employee of the public entity where the employee is immune from liability. Leg. H. (added by Stats. 1963, Ch. 1681.)

### **815.3 [Act of Elected Official; Intentional Torts.]**

- (a) Notwithstanding any other provision of this part, unless the elected official and the public entity are named as codefendants in the same action, a public entity is not liable to a plaintiff under this part for any act or omission of an elected official employed by or otherwise representing that public entity, which act or omission constitutes an intentional tort, including, but not limited to, harassment, sexual battery, and intentional infliction of emotional distress. For purposes of this section, harassment in violation of state or federal law constitutes an intentional tort, to the extent permitted by federal law. This section shall not apply to defamation.
- (b) If the elected official is held liable for an intentional tort other than defamation in such an action, the trier of fact in reaching the verdict shall determine if the act or omission constituting the intentional tort arose from and was directly related to the elected official's performance of his or her official duties. If the trier of fact determines that the act or omission arose from and was directly related to the elected official's performance of his or her official duties, the public entity shall be liable for the judgment as provided by law. For the purpose of this subdivision, employee managerial functions shall be deemed to arise from, and to directly relate to, the elected official's official duties. However, acts or omissions constituting sexual harassment shall not be deemed to arise from, and to directly relate to, the elected official's official duties.

- (c) If the trier of fact determines that the elected official's act or omission did not arise from and was not directly related to the elected official's performance of his or her official duties, upon a final judgment, including any appeal, the plaintiff shall first seek recovery of the judgment against the assets of the elected official. If the court determines that the elected official's assets are insufficient to satisfy the total judgment, including plaintiff's costs as provided by law, the court shall determine the amount of the deficiency and the plaintiff may seek to collect that remainder of the judgment from the public entity. The public entity may pay that deficiency if the public entity is otherwise authorized by law to pay that judgment.
- (d) To the extent the public entity pays any portion of the judgment against the elected official pursuant to subdivision (c) or has expended defense costs in an action in which the trier of fact determines the elected official's action did not arise from and did not directly relate to his or her performance of official duties, the public entity shall pursue all available creditor's remedies against the elected official in indemnification, including garnishment, until the elected official has fully reimbursed the public entity.
- (e) If the public entity elects to appeal the judgment in an action brought pursuant to this section, the entity shall continue to provide a defense for the official until the case is finally adjudicated, as provided by law.
- (f) It is the intent of the Legislature that elected officials assume full fiscal responsibility for their conduct which constitutes an intentional tort not directly related to their official duties committed for which the public entity they represent may also be liable, while maintaining fair compensation for those persons injured by such conduct.
- (g) This section shall not apply to a criminal or civil enforcement action brought on behalf of the state by an elected district attorney, city attorney, or Attorney General.
- (h) If any provision of this section or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable. Leg. H. (added by Stats. 1994, Ch. 796.)

#### **815.4. [Act of Independent Contractor.]**

A public entity is liable for injury proximately caused by a tortious act or omission of an independent contractor of the public entity to the same extent that the public entity would be subject to such liability if it were a private person. Nothing in this section subjects a public entity to liability for the act or omission of an independent contractor if the public entity would not have been liable for the injury had the act or omission been that of an employee of the public entity. Leg. H. (added by Stats. 1963, Ch. 1681.)

#### **815.6. [Duty Imposed by Enactment.]**

Where a public entity is under a mandatory duty imposed by an enactment that is designed to protect against the risk of a particular kind of injury, the public entity is liable for an injury of that kind proximately caused by its failure to discharge the duty unless the public entity

establishes that it exercised reasonable diligence to discharge the duty. Leg. H. (added by Stats. 1963, Ch. 1681.)

### **818. [Immunity from Punitive Damages.]**

Notwithstanding any other provision of law, a public entity is not liable for damages awarded under Section 3294 of the Civil Code or other damages imposed primarily for the sake of example and by way of punishing the defendant. Leg. H. (added by Stats. 1963, Ch. 1681.)

### **818.2. [Adoption of or Failure to Adopt Enactment or Enforce Law.]**

A public entity is not liable for an injury caused by adopting or failing to adopt an enactment or by failing to enforce any law. Leg. H. (added by Stats. 1963, Ch. 1681.)

### **818.4. [Issuance, Revocation of License, Certificate.]**

A public entity is not liable for an injury caused by the issuance, denial, suspension or revocation of, or by the failure or refusal to issue, deny, suspend or revoke, any permit, license, certificate, approval, order, or similar authorization where the public entity or an employee of the public entity is authorized by enactment to determine whether or not such authorization should be issued, denied, suspended or revoked. Leg. H. (added by Stats. 1963, Ch. 1681.)

### **818.6. [Failure to Make Inspection; Inadequate Inspection of Potentially Hazardous Property.]**

A public entity is not liable for injury caused by its failure to make an inspection, or by reason of making an inadequate or negligent inspection, of any property, other than its property (as defined in subdivision (c) of Section 830), for the purpose of determining whether the property complies with or violates any enactment or contains or constitutes a hazard to health or safety. Leg. H. (added by Stats. 1963, Ch. 1681.)

### **818.7. [Damage Resulting From Publication of Reports.]**

No board, commission, or any public officer or employee of the state or of any district, county, city and county, or city is liable for any damage or injury to any person resulting from the publication of any reports, records, prints, or photographs of or concerning any person convicted of violation of any law relating to the use, sale, or possession of controlled substances, when such publication is to school authorities for use in instruction on the subject of controlled substances or to any person when used for the purpose of general education. However, the name of any person concerning whom any such reports, records, prints, or photographs are used shall be kept confidential and every reasonable effort shall be made to maintain as confidential any information which may tend to identify such person. Leg. H. (amended by Stats. 1984, Ch. 1635, Sec. 40.)

**818.8. [Misrepresentation by Employee of Public Entity.]**

A public entity is not liable for an injury caused by misrepresentation by an employee of the public entity, whether or not such misrepresentation be negligent or intentional. Leg. H. (added by Stats. 1963, Ch. 1681.)

**818.9. [Advice Provided to Small Claims Court Litigants.]**

A public entity, its employees, and volunteers shall not be liable because of any advice provided to small claims court litigants pursuant to the Small Claims Act (Chapter 5.5 (commencing with Section 116.110) of Title 1 of Part 1 of the Code of Civil Procedure). Leg. H. (amended by Stats. 1990, Ch. 1305, Sec. 10.)

**820. [Public Employee Liable for Act to Same Extent as Private Person Except Where Provided by Statute; Defenses.]**

- (a) Except as otherwise provided by statute (including Section 820.2), a public employee is liable for injury caused by his act or omission to the same extent as a private person.
- (b) The liability of a public employee established by this part (commencing with Section 814) is subject to any defenses that would be available to the public employee if he were a private person. Leg. H. (added by Stats. 1963, Ch. 1681.)

**820.2. [Exercise of Discretion.]**

Except as otherwise provided by statute, a public employee is not liable for an injury resulting from his act or omission where the act or omission was the result of the exercise of the discretion vested in him, whether or not such discretion be abused. Leg. H. (added by Stats. 1963, Ch. 1681.)

**820.21.[Juvenile Court and Child Protection Workers; Exceptions to Immunity; Malice.]**

- (a) Notwithstanding any other provision of the law, the civil immunity of juvenile court social workers, child protection workers, and other public employees authorized to initiate or conduct investigations or proceedings pursuant to Chapter 2 (commencing with Section 200) of Part 1 of Division 2 of the Welfare and Institutions Code shall not extend to any of the following, if committed with malice:
  - (1) Perjury.
  - (2) Fabrication of evidence.
  - (3) Failure to disclose known exculpatory evidence.
  - (4) Obtaining testimony by duress, as defined in Section 1569 of the Civil Code, fraud, as defined in either Section 1572 or Section 1573 of the Civil Code, or undue influence, as defined in Section 1575 of the Civil Code.
- (b) As used in this section, "malice" means conduct that is intended by the person described in subdivision (a) to cause injury to the plaintiff or despicable conduct that is carried on

by the person described in subdivision (a) with a willful and conscious disregard of the rights or safety of others. Leg. H. (added by Stats. 1995, Ch. 977.)

**820.25. [Decision of Peace Officer, Law Enforcement Official to Assist Motorist Involved in Accident Deemed Exercise of Discretion; Ministerial Duty.]**

- (a) For purposes of Section 820.2, the decision of a peace officer, as defined in Sections 830.1 and 830.2 of the Penal Code, or a state or local law enforcement official, to render assistance to a motorist who has not been involved in an accident or to leave the scene after rendering assistance, upon learning of a reasonably apparent emergency requiring his immediate attention elsewhere or upon instructions from a superior to assume duties elsewhere, shall be deemed an exercise of discretion.
- (b) The provision in subdivision (a) shall not apply if the act or omission occurred pursuant to the performance of a ministerial duty. For purposes of this section, "ministerial duty" is defined as a plain and mandatory duty involving the execution of a set task and to be performed without the exercise of discretion. Leg. H. (added by Stats. 1979, Ch. 806.)

**820.4. [Execution or Enforcement of Law by Public Employee; False Arrest.]**

A public employee is not liable for his act or omission, exercising due care, in the execution or enforcement of any law. Nothing in this section exonerates a public employee from liability for false arrest or false imprisonment. Leg. H. (added by Stats. 1963, Ch. 1681.)

**820.6. [Good Faith Act Under Apparent Authority of Unconstitutional Enactment.]**

If a public employee acts in good faith, without malice, and under the apparent authority of an enactment that is unconstitutional, invalid or inapplicable, he is not liable for an injury caused thereby except to the extent that he would have been liable had the enactment been constitutional, valid and applicable. Leg. H. (added by Stats. 1963, Ch. 1681.)

**820.8. [Injury Caused by Act or Omission of Another Person.]**

Except as otherwise provided by statute, a public employee is not liable for an injury caused by the act or omission of another person. Nothing in this section exonerates a public employee from liability for injury proximately caused by his own negligent or wrongful act or omission. Leg. H. (added by Stats. 1963, Ch. 1681.)

**820.9. [Vicarious Liability.]**

Members of city councils, mayors, members of boards of supervisors, members of school boards, members of governing boards of other local public entities, members of locally appointed boards and commissions, and members of locally appointed or elected advisory bodies are not vicariously liable for injuries caused by the act or omission of the public entity or advisory body. Nothing in this section exonerates an official from liability for injury caused by that individual's own wrongful conduct. Nothing in this section affects the immunity of any other public official.

This section shall become operative January 1, 2000. Leg. H. (added by Stats. 1997, Ch. 132.)

**821. [Adoption of or Failure to Adopt or Enforce Enactment.]**

A public employee is not liable for an injury caused by his adoption of or failure to adopt an enactment or by his failure to enforce an enactment. Leg. H. (added by Stats. 1963, Ch. 1681.)

**821.2. [Issuance, Revocation of License, Certificate.]**

A public employee is not liable for an injury caused by his issuance, denial, suspension or revocation of, or by his failure or refusal to issue, deny, suspend or revoke, any permit, license, certificate, approval, order, or similar authorization where he is authorized by enactment to determine whether or not such authorization should be issued, denied, suspended or revoked. Leg. H. (added by Stats. 1963, Ch. 1681.)

**821.4. [Failure to Make Inspection, Inadequate Inspection of Potentially Hazardous Property.]**

A public employee is not liable for injury caused by his failure to make an inspection, or by reason of making an inadequate or negligent inspection, of any property, other than the property (as defined in subdivision (c) of Section 830) of the public entity employing the public employee, for the purpose of determining whether the property complies with or violates any enactment or contains or constitutes a hazard to health or safety. Leg. H. (added by Stats. 1963, Ch. 1681.)

**821.5 [Cargo Tank Vehicles/Tunnels.]**

A public entity or a public employee acting within the scope of his employment is not liable for failing to prohibit or restrict the time that cargo tank vehicles required to display flammable liquid placards may travel through a tunnel. Leg. H. (added by Stats. 1982, Ch. 1255.)

**821.6. [Instituting, Prosecuting Judicial or Administrative Proceeding.]**

A public employee is not liable for injury caused by his instituting or prosecuting any judicial or administrative proceeding within the scope of his employment, even if he acts maliciously and without probable cause. Leg. H. (added by Stats. 1963, Ch. 1681.)

**821.8. [Entry Upon Property.]**

A public employee is not liable for an injury arising out of his entry upon any property where such entry is expressly or impliedly authorized by law. Nothing in this section exonerates a public employee from liability for an injury proximately caused by his own negligent or wrongful act or omission. Leg. H. (added by Stats. 1963, Ch. 1681.)

**822. [Money Stolen from Custody.]**

A public employee is not liable for money stolen from his official custody. Nothing in this section exonerates a public employee from liability if the loss was sustained as a result of his own negligent or wrongful act or omission. Leg. H. (added by Stats. 1963, Ch. 1681.)

**822.2. [Misrepresentation.]**

A public employee acting in the scope of his employment is not liable for an injury caused by his misrepresentation, whether or not such misrepresentation be negligent or intentional, unless he is guilty of actual fraud, corruption or actual malice. Leg. H. (added by Stats. 1963, Ch. 1681.)

**825. [Defense of Public Employee Against Claim or Action.]**

- (a) Except as otherwise provided in this section, if an employee or former employee of a public entity requests the public entity to defend him or her against any claim or action against him or her for an injury arising out of an act or omission occurring within the scope of his or her employment as an employee of the public entity and the request is made in writing not less than 10 days before the day of trial, and the employee or former employee reasonably cooperates in good faith in the defense of the claim or action, the public entity shall pay any judgment based thereon or any compromise or settlement of the claim or action to which the public entity has agreed.

If the public entity conducts the defense of an employee or former employee against any claim or action with his or her reasonable good-faith cooperation, the public entity shall pay any judgment based thereon or any compromise or settlement of the claim or action to which the public entity has agreed. However, where the public entity conducted the defense pursuant to an agreement with the employee or former employee reserving the rights of the public entity not to pay the judgment, compromise, or settlement until it is established that the injury arose out of an act or omission occurring within the scope of his or her employment as an employee of the public entity, the public entity is required to pay the judgment, compromise, or settlement only if it is established that the injury arose out of an act or omission occurring in the scope of his or her employment as an employee of the public entity.

Nothing in this section authorizes a public entity to pay that part of a claim or judgment that is for punitive or exemplary damages.

- (b) Notwithstanding subdivision (a) or any other provision of law, a public entity is authorized to pay that part of a judgment that is for punitive or exemplary damages if the governing body of that public entity, acting in its sole discretion except in cases involving an entity of the state government, finds all of the following:
  - (1) The judgment is based on an act or omission of an employee or former employee acting within the course and scope of his or her employment as an employee of the public entity.
  - (2) At the time of the act giving rise to the liability, the employee or former employee acted, or failed to act, in good faith, without actual malice and in the apparent best interests of the public entity.
  - (3) Payment of the claim or judgment would be in the best interests of the public entity.

As used in this subdivision with respect to an entity of state government, "a decision of the governing body" means the approval of the Legislature for payment of that part of a

judgment that is for punitive damages or exemplary damages, upon recommendation of the appointing power of the employee or former employee, based upon the finding by the Legislature and the appointing authority of the existence of the three conditions for payment of a punitive or exemplary damages claim. The provisions of subdivision (a) of Section 965.6 shall apply to the payment of any claim pursuant to this subdivision.

The discovery of the assets of a public entity and the introduction of evidence of the assets of a public entity shall not be permitted in an action in which it is alleged that a public employee is liable for punitive or exemplary damages.

The possibility that a public entity may pay that part of a judgment that is for punitive damages shall not be disclosed in any trial in which it is alleged that a public employee is liable for punitive or exemplary damages, and that disclosure shall be grounds for a mistrial.

- (c) Except as provided in subdivision (d), if the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Chapter 10 (commencing with Section 3500) of Division 4 of Title 1, the memorandum of understanding shall be controlling without further legislative action, except that if those provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.
- (d) The subject of payment of punitive damages pursuant to this section or any other provision of law shall not be a subject of meet and confer under the provisions of Chapter 10 (commencing with Section 3500) of Division 4 of Title 1, or pursuant to any other law or authority.
- (e) Nothing in this section shall affect the provisions of Section 818 prohibiting the award of punitive damages against a public entity. This section shall not be construed as a waiver of a public entity's immunity from liability for punitive damages under Section 1981, 1983, or 1985 of Title 42 of the United States Code.
- (f)
  - (1) Except as provided in paragraph (2), a public entity shall not pay a judgment, compromise, or settlement arising from a claim or action against an elected official, if the claim or action is based on conduct by the elected official by way of tortuously intervening or attempting to intervene in, or by way of tortuously influencing or attempting to influence the outcome of, any judicial action or proceeding for the benefit of a particular party by contacting the trial judge or any commissioner, court-appointed arbitrator, court-appointed mediator, or court-appointed special referee assigned to the matter, or the court clerk, bailiff, or marshal after an action has been filed, unless he or she was counsel of record acting lawfully within the scope of his or her employment on behalf of that party. Notwithstanding Section 825.6, if a public entity conducted the defense of an elected official against such a claim or action and the elected official is found liable by the trier of fact, the court shall order the elected official to pay to the public entity the cost of that defense.

(2) If an elected official is held liable for monetary damages in the action, the plaintiff shall first seek recovery of the judgment against the assets of the elected official. If the elected official's assets are insufficient to satisfy the total judgment, as determined by the court, the public entity may pay the deficiency if the public entity is authorized by law to pay that judgment.

(3) To the extent the public entity pays any portion of the judgment or is entitled to reimbursement of defense costs pursuant to paragraph (1), the public entity shall pursue all available creditor's remedies against the elected official, including garnishment, until that party has fully reimbursed the public entity.

(4) This subdivision shall not apply to any criminal or civil enforcement action brought in the name of the people of the State of California by an elected district attorney, city attorney, or attorney general. Leg. H. (amended by Stats. 1985, Ch. 1373, Sec. 1; Stats. 1994, Ch. 794; Stats. 1995, Ch. 799.)

#### **825.2. [Recovery of Claim From Public Entity.]**

- (a) Subject to subdivision (b), if an employee or former employee of a public entity pays any claim or judgment against him, or any portion thereof, that the public entity is required to pay under Section 825, he is entitled to recover the amount of such payment from the public entity.
- (b) If the public entity did not conduct his defense against the action or claim, or if the public entity conducted such defense pursuant to an agreement with him reserving the rights of the public entity against him, an employee or former employee of a public entity may recover from the public entity under subdivision (a) only if he establishes that the act or omission upon which the claim or judgment is based occurred within the scope of his employment as an employee of the public entity and the public entity fails to establish that he acted or failed to act because of actual fraud, corruption or actual malice or that he willfully failed or refused to conduct the defense of the claim or action in good faith or to reasonably cooperate in good faith in the defense conducted by the public entity.
- (c) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1, the memorandum of understanding shall be controlling without further legislative action, except that if such provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act. Leg. H. (amended by Stats. 1979, Ch. 1072.)

#### **825.4. [Public Entity's Payment of Claim Against Itself; Employee Not Liable to Indemnify Public Entity.]**

Except as provided in Section 825.6, if a public entity pays any claim or judgment against itself or against an employee or former employee of the public entity, or any portion thereof, for an injury arising out of an act or omission of the employee or former employee of the public entity, he is not liable to indemnify the public entity. Leg. H. (added by Stats. 1963, Ch. 1681.)

**825.6. [Public Entity's Payment of Claim or Judgment.]**

- (a) (1) Except as provided in subdivision (b), if a public entity pays any claim or judgment, or any portion thereof, either against itself or against an employee or former employee of the public entity, for an injury arising out of an act or omission of the employee or former employee of the public entity, the public entity may recover from the employee or former employee the amount of that payment if he or she acted or failed to act because of actual fraud, corruption, or actual malice, or willfully failed or refused to conduct the defense of the claim or action in good faith. Except as provided in paragraph (2) or (3), a public entity may not recover any payments made upon a judgment or claim against an employee or former employee if the public entity conducted his or her defense against the action or claim.
- (2) If a public entity pays any claim or judgment, or any portion thereof, against an employee or former employee of the public entity for an injury arising out of his or her act or omission, and if the public entity conducted his or her defense against the claim or action pursuant to an agreement with him or her reserving the rights of the public entity against him or her, the public entity may recover the amount of the payment from him or her unless he or she establishes that the act or omission upon which the claim or judgment is based occurred within the scope of his or her employment as an employee of the public entity and the public entity fails to establish that he or she acted or failed to act because of actual fraud, corruption or actual malice or that he or she willfully failed or refused to reasonably cooperate in good faith in the defense conducted by the public entity.
- (3) If a public entity pays any claim or judgment, or any portion thereof, against an employee or former employee of the public entity for an injury arising out of his or her act or omission, and if the public entity conducted the defense against the claim or action in the absence of an agreement with him or her reserving the rights of the public entity against him or her, the public entity may recover the amount of that payment from him or her if he or she willfully failed or refused to reasonably cooperate in good faith in the defense conducted by the public entity.
- (b) (1) Upon a felony conviction for a violation of Section 1195 of this code, or of Section 68, 86, 93, 165, 504, or 518 of the Penal Code, by an elected official or former elected official of a public entity for an act or omission of that person while in office, the elected official or former elected official shall forfeit any rights to defense or indemnification under Section 825 with respect to a claim for damages for an injury arising from that act or omission.
- (2) If a public entity pays any claim or judgment, or any portion thereof, either against itself or against an elected official or former elected official of the public entity, for an injury arising out of an act or omission of the elected official or former elected official of the public entity, which act or omission constituted a felony violation of Section 1195 of this code, or of Section 68, 86, 93, 165, 504,

or 518 of the Penal Code, the public entity shall recover from the elected official or former elected official the amount of that payment upon the felony conviction of the elected official or former elected official for that act or omission. Upon that conviction, the public entity shall also recover from the elected official the costs of any defense to a civil action filed against the elected official for that act or omission.

- (c) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act. Leg. H. (amended by Stats. 1979, Ch. 1072; Stats. 1994, Ch. 797; Stats. 1995, Ch. 91.)

**830. ["Dangerous Condition," "Protect Against," "Property of a Public Entity," "Public Property," Defined.]**

As used in this chapter:

- (a) "Dangerous condition" means a condition of property that creates a substantial (as distinguished from a minor, trivial or insignificant) risk of injury when such property or adjacent property is used with due care in a manner in which it is reasonably foreseeable that it will be used.
- (b) "Protect against" includes repairing, remedying or correcting a dangerous condition, providing safeguards against a dangerous condition, or warning of a dangerous condition.
- (c) "Property of a public entity" and "public property" mean real or personal property owned or controlled by the public entity, but do not include easements, encroachments and other property that are located on the property of the public entity but are not owned or controlled by the public entity. Leg. H. (added by Stats. 1963, Ch. 1681.)

**830.1 [ Seismic Safety or Fire Sprinkler Improvements.]**

For purposes of this chapter, seismic safety improvements or fire sprinkler improvements which are owned, built, controlled, operated, and maintained by the private owner of the building in which they are installed are not public property or property of a public entity solely because the improvements were financed, in whole or in part, by means of the formation of a special assessment district. (added by Stats. 1990, Ch. 1318.)

**830.2. [Court Determination That Condition Not Dangerous.]**

A condition is not a dangerous condition within the meaning of this chapter if the trial or appellate court, viewing the evidence most favorably to the plaintiff, determines as a matter of law that the risk created by the condition was of such a minor, trivial or insignificant nature in view of the surrounding circumstances that no reasonable person would conclude that the condition created a substantial risk of injury when such property or adjacent property was used

with due care in a manner in which it was reasonably foreseeable that it would be used. Leg. H. (added by Stats. 1963, Ch. 1681.)

#### **830.4. [Failure to Provide Traffic Control Signals, Signs, Roadway Markings.]**

A condition is not a dangerous condition within the meaning of this chapter merely because of the failure to provide regulatory traffic control signals, stop signs, yield right-of-way signs, or speed restriction signs, as described by the Vehicle Code, or distinctive roadway markings as described in Section 21460 of the Vehicle Code. Leg. H. (added by Stats. 1963, Ch. 1681.)

#### **830.5. [Evidence of Property in Dangerous Condition].**

- (a) Except where the doctrine of *res ipsa loquitur* is applicable, the happening of the accident which results in the injury is not in and of itself evidence that public property was in a dangerous condition.
- (b) The fact that action was taken after an injury occurred to protect against a condition of public property is not evidence that the public property was in a dangerous condition at the time of the injury. Leg. H. (added by Stats. 1963, Ch. 1681.)

#### **830.6. [Injury Caused by Plan or Design of Construction of Public Property.]**

Neither a public entity nor a public employee is liable under this chapter for an injury caused by the plan or design of a construction of, or an improvement to, public property where such plan or design has been approved in advance of the construction or improvement by the legislative body of the public entity or by some other body or employee exercising discretionary authority to give such approval or where such plan or design is prepared in conformity with standards previously so approved, if the trial or appellate court determines that there is any substantial evidence upon the basis of which (a) a reasonable public employee could have adopted the plan or design or the standards therefore or (b) a reasonable legislative body or other body or employee could have approved the plan or design or the standards therefore. Notwithstanding notice that constructed or improved public property may no longer be in conformity with a plan or design or a standard which reasonably could be approved by the legislative body or other body or employee, the immunity provided by this section shall continue for a reasonable period of time sufficient to permit the public entity to obtain funds for and carry out remedial work necessary to allow such public property to be in conformity with a plan or design approved by the legislative body of the public entity or other body or employee, or with a plan or design in conformity with a standard previously approved by such legislative body or other body or employee. In the event that the public entity is unable to remedy such public property because of practical impossibility or lack of sufficient funds, the immunity provided by this section shall remain so long as such public entity shall reasonably attempt to provide adequate warnings of the existence of the condition not conforming to the approved plan or design or to the approved standard. However, where a person fails to heed such warning or occupies public property despite such warning, such failure or occupation shall not in itself constitute an assumption of the risk of the danger indicated by the warning. Leg. H. (Amended by Stats. 1979, Ch. 481.)

**830.8. [Failure to Provide Traffic or Warning Signal].**

Neither a public entity nor a public employee is liable under this chapter for an injury caused by the failure to provide traffic or warning signals, signs, markings or devices described in the Vehicle Code. Nothing in this section exonerates a public entity or public employee from liability for injury proximately caused by such failure if a signal, sign, marking or device (other than one described in Section 830.4) was necessary to warn of a dangerous condition which endangered the safe movement of traffic and which would not be reasonably apparent to, and would not have been anticipated by, a person exercising due care. Leg. H. (added by Stats. 1963, Ch. 1681.)

**830.9. [Injury Caused by Operation or Non-operation of Traffic Control Signal Controlled by Emergency Vehicle.]**

Neither a public entity nor a public employee is liable for an injury caused by the operation or non-operation of official traffic control signals when controlled by an emergency vehicle in accordance with the provisions of subdivision (a) of Section 25258 of the Vehicle Code. Leg. H. (added by Stats. 1967, Ch. 1037.)

**831. [Injury Caused by Effect on Use of Street of Weather Conditions.]**

Neither a public entity nor a public employee is liable for an injury caused by the effect on the use of streets and highways of weather conditions as such. Nothing in this section exonerates a public entity or public employee from liability for injury proximately caused by such effect if it would not be reasonably apparent to, and would not be anticipated by, a person exercising due care. For the purpose of this section, the effect on the use of streets and highways of weather conditions includes the effect of fog, wind, rain, flood, ice or snow but does not include physical damage to or deterioration of streets and highways resulting from weather conditions. Leg. H. (added by Stats. 1963, Ch. 1681.)

**831.2. [Injury Caused by Natural Condition of Unimproved Public Property.]**

Neither a public entity nor a public employee is liable for an injury caused by a natural condition of any unimproved public property, including, but not limited to, any natural condition of any lake, stream, bay, river, or beach. Leg. H. (added by Stats. 1963, Ch. 1681) **(NOTE: “[W]here a public entity’s conduct actively increases the degree of dangerousness of a natural condition, section 831.2 immunity is not available.” McCauley v. City of San Diego (1987) 190 Cal.App.3d 981, 989 fn. 7.)**

**831.21. [Public Beaches; Date Section Applicable.]**

- (a) Public beaches shall be deemed to be in a natural condition and unimproved notwithstanding the provision or absence of public safety services such as lifeguards, police or sheriff patrols, medical services, fire protection services, beach cleanup services, or signs. The provisions of this section shall apply only to natural conditions of public property and shall not limit any liability or immunity that may otherwise exist pursuant to this division.

- (b) This section shall only be applicable to causes of action based upon acts or omissions occurring on or after January 1, 1988. Leg. H. (added by Stats. 1987, Ch. 1209, Sec. 1.)

**831.25. [Injury Caused by Land Failure of Unimproved Public Property.]**

- (a) Neither a public entity nor a public employee is liable for any damage or injury to property, or for emotional distress unless the plaintiff has suffered substantial physical injury, off the public entity's property caused by land failure of any unimproved public property if the land failure was caused by a natural condition of the unimproved public property.
- (b) For the purposes of this section, a natural condition exists and property shall be deemed unimproved notwithstanding the intervention of minor improvements made for the preservation or prudent management of the property in its unimproved state that did not contribute to the land failure.
- (c) As used in this section, "land failure" means any movement of land, including a landslide, mudslide, creep, subsidence, and any other gradual or rapid movement of land.
- (d) This section shall not benefit any public entity or public employee who had actual notice of probable damage that is likely to occur outside the public property because of land failure and who fails to give a reasonable warning of the danger to the affected property owners. Neither a public entity nor a public employee is liable for any damage or injury arising from the giving of a warning under this section.
- (e) Nothing in this section shall limit the immunity provided by Section 831.2.
- (f) Nothing in this section creates a duty of care or basis of liability for damage or injury to property or of liability for emotional distress. Leg. H. (Amended by Stats. 1988, Ch. 1034, Sec. 1)

**831.3. [Injury Occurring on Account of Grading or Road Maintenance; "Reconstruction or Replacement," Defined.]**

Neither a public entity nor a public employee is liable for any injury occurring on account of the grading or the performance of other maintenance or repair on or reconstruction or replacement of any road which has not officially been accepted as a part of the road system under the jurisdiction of the public entity if the grading, maintenance, repair, or reconstruction or replacement is performed with reasonable care and leaves the road in no more dangerous or unsafe condition than it was before the work commenced. No act of grading, maintenance, repair, or reconstruction or replacement within the meaning of this section shall be deemed to give rise to any duty of the public entity to continue any grading, maintenance, repair, or reconstruction or replacement on any road not a part of the road system under the public entity's jurisdiction. As used in this section "reconstruction or replacement" means reconstruction or replacement performed pursuant to Article 3 (commencing with Section 1160) of Chapter 4 of Division 2 of the Streets and Highways Code. Leg. H. (amended by Stats. 1986, Ch. 578, Sec. 1., effective August 26, 1986.)

#### **831.4. [Injury Caused by Unpaved Road, Trail, Path, Sidewalk].**

A public entity, public employee, or a grantor of a public easement to a public entity for any of the following purposes, is not liable for an injury caused by a condition of:

- (a) Any unpaved road which provides access to fishing, hunting, camping, hiking, riding, including animal and all types of vehicular riding, water sports, recreational or scenic areas and which is not a (1) city street or highway or (2) county, state or federal highway or (3) public street or highway of a joint highway district, boulevard district, bridge and highway district or similar district formed for the improvement or building of public streets or highways.
- (b) Any trail used for the above purposes.
- (c) Any paved trail, walkway, path, or sidewalk on an easement of way which has been granted to a public entity, which easement provides access to any unimproved property, so long as such public entity shall reasonably attempt to provide adequate warnings of the existence of any condition of the paved trail, walkway, path, or sidewalk which constitutes a hazard to health or safety. Warnings required by this subdivision shall only be required where pathways are paved, and such requirement shall not be construed to be a standard of care for any unpaved pathways or roads. Leg. H. (amended by Stats. 1979, Ch. 1010.)

#### **831.5. [Public Land Trust.]**

- (a) The Legislature declares that innovative public access programs, such as agreements with public land trusts, can provide effective and responsible alternatives to costly public acquisition programs. The Legislature therefore declares that it is beneficial to the people of this state to encourage private nonprofit entities such as public land trusts to carry out programs that preserve open space or increase opportunities for the public to enjoy access to and use of natural resources if the programs are consistent (1) with public safety, (2) with the protection of the resources, and (3) with public and private rights.
- (b) For the purposes of Sections 831.2, 831.25, 831.4, and 831.7, "public entity" includes a public land trust which meets all of the following conditions:
  - (1) It is a nonprofit organization existing under the provisions of Section 501(c) of the United States Internal Revenue Code.
  - (2) It has specifically set forth in its articles of incorporation, as among its principal charitable purposes, the conservation of land for public access, agricultural, scientific, historical, educational, recreational, scenic, or open-space opportunities.
  - (3) It has entered into an agreement with the State Coastal Conservancy for lands located within the coastal zone, as defined in Section 31006 of the Public Resources Code, with the California Tahoe Conservancy or its designee for lands located within the Lake Tahoe region, as defined in subdivision (c) of Section

66953 of the Government Code, or with the State Public Works Board or its designee for lands not located within the coastal zone or the Lake Tahoe region, on such terms and conditions as are mutually agreeable, requiring the public land trust to hold the lands or, where appropriate, to provide nondiscriminatory public access consistent with the protection and conservation of either coastal or other natural resources, or both. The conservancy or the board, as appropriate, shall periodically review the agreement and determine whether the public land trust is in compliance with the terms and conditions. In the event the conservancy or the board determines that the public land trust is not in substantial compliance with the agreement, the conservancy or the board shall cancel the agreement, and the provisions of Sections 831.2, 831.25, 831.4, and 831.7 shall no longer apply with regard to that public land trust.

- (c) For the purposes of Sections 831.2, 831.25, 831.4, and 831.7, "public employee" includes an officer, authorized agent, or employee of any public land trust which is a public entity. Leg. H. (amended by Stats. 1990, Ch. 934, Sec. 2.)

**831.6. [Injury Caused by Ungranted Tidelands, Submerged Lands, Beds of Navigable Rivers, Streams, Bays, Estuaries, Inlets; Unsold Portions of School Lands.]**

Neither the State nor an employee of the State is liable under this chapter for any injury caused by a condition of the unimproved and unoccupied portions of:

- (a) The ungranted tidelands and submerged lands, and the beds of navigable rivers, streams, lakes, bays, estuaries, inlets and straits, owned by the State.
- (b) The unsold portions of the 16th and 36th sections of school lands, the unsold portions of the 500,000 acres granted to the State for school purposes, and the unsold portions of the listed lands selected of the United States in lieu of the 16th and 36th sections and losses to the school grant. Leg. H. (added by Stats. 1963, Ch. 1681.)

**831.7. [Hazardous Recreational Activity.]**

- (a) Neither a public entity nor a public employee is liable to any person who participates in a hazardous recreational activity, including any person who assists the participant, or to any spectator who knew or reasonably should have known that the hazardous recreational activity created a substantial risk of injury to himself or herself and was voluntarily in the place of risk, or having the ability to do so failed to leave, for any damage or injury to property or persons arising out of that hazardous recreational activity.
- (b) As used in this section, "hazardous recreational activity" means a recreational activity conducted on property of a public entity which creates a substantial (as distinguished from a minor, trivial, or insignificant) risk of injury to a participant or a spectator.

"Hazardous recreational activity" also means:

- (1) Water contact activities, except diving, in places where or at a time when lifeguards are not provided and reasonable warning thereof has been given or the

injured party should reasonably have known that there was no lifeguard provided at the time.

(2) Any form of diving into water from other than a diving board or diving platform, or at any place or from any structure where diving is prohibited and reasonable warning thereof has been given.

(3) Animal riding, including equestrian competition, archery, bicycle racing or jumping, mountain bicycling, boating, cross-country and downhill skiing, hang gliding, kayaking, motorized vehicle racing, off-road motorcycling or four-wheel driving of any kind, orienteering, pistol and rifle shooting, rock climbing, rocketeering, rodeo, spelunking, sky diving, sport parachuting, paragliding, body contact sports (i.e., sports in which it is reasonably foreseeable that there will be rough bodily contact with one or more participants), surfing, trampolining, tree climbing, tree rope swinging, water skiing, white water rafting, and windsurfing. For the purposes of this subdivision, "mountain bicycling" does not include riding a bicycle on paved pathways, roadways, or sidewalks.

(c) Notwithstanding the provisions of subdivision (a), this section does not limit liability which would otherwise exist for any of the following:

(1) Failure of the public entity or employee to guard or warn of a known dangerous condition or of another hazardous recreational activity known to the public entity or employee that is not reasonably assumed by the participant as inherently a part of the hazardous recreational activity out of which the damage or injury arose.

(2) Damage or injury suffered in any case where permission to participate in the hazardous recreational activity was granted for a specific fee. For the purpose of this paragraph, a "specific fee" does not include a fee or consideration charged for a general purpose such as a general park admission charge, a vehicle entry or parking fee, or an administrative or group use application or permit fee, as distinguished from a specific fee charged for participation in the specific hazardous recreational activity out of which the damage or injury arose.

(3) Injury suffered to the extent proximately caused by the negligent failure of the public entity or public employee to properly construct or maintain in good repair any structure, recreational equipment or machinery, or substantial work of improvement utilized in the hazardous recreational activity out of which the damage or injury arose.

(4) Damage or injury suffered in any case where the public entity or employee recklessly or with gross negligence promoted the participation in or observance of a hazardous recreational activity. For purposes of this paragraph, promotional literature or a public announcement or advertisement which merely describes the available facilities and services on the property does not in itself constitute a reckless or grossly negligent promotion.

- (5) An act of gross negligence by a public entity or a public employee which is the proximate cause of the injury.

Nothing in this subdivision creates a duty of care or basis of liability for personal injury or for damage to personal property.

- (d) Nothing in this section shall limit the liability of an independent concessionaire, or any person or organization other than the public entity, whether or not the person or organization has a contractual relationship with the public entity to use the public property, for injuries or damages suffered in any case as a result of the operation of a hazardous recreational activity on public property by the concessionaire, person, or organization. Leg. H. (added by Stats. 1983, Ch. 863, Sec. 1; Amended by Stats. 1995, Ch. 597.)

**\*\* NOTE: With respect to skateboarding and in-line skating as hazardous recreational activities, see Health & Safety Code sections 1115800 and 1115800.1 located on pp. 67 - 69.**

### **831.8. [Injury Caused by Condition of Reservoir, Canal, Conduit, Drain.]**

- (a) Subject to subdivisions (d) and (e), neither a public entity nor a public employee is liable under this chapter for an injury caused by the condition of a reservoir if at the time of the injury the person injured was using the property for any purpose other than that for which the public entity intended or permitted the property to be used.
- (b) Subject to subdivisions (d) and (e), neither an irrigation district nor an employee thereof nor the State nor a state employee is liable under this chapter for an injury caused by the condition of canals, conduits or drains used for the distribution of water if at the time of the injury the person injured was using the property for any purpose other than that for which the district or State intended it to be used.
- (c) Subject to subdivisions (d) and (e), neither a public agency operating flood control and water conservation facilities nor its employees are liable under this chapter for an injury caused by the condition or use of unlined flood control channels or adjacent groundwater recharge spreading grounds if, at the time of the injury, the person injured was using the property for any purpose other than that for which the public entity intended it to be used, and, if all of the following conditions are met:
  - (1) The public agency operates and maintains dams, pipes, channels, and appurtenant facilities to provide flood control protection and water conservation for a county whose population exceeds nine million residents.
  - (2) The public agency operates facilities to recharge a groundwater basin system which is the primary water supply for more than one million residents.
  - (3) The groundwater supply is dependent on imported water recharge which must be conducted in accordance with court-imposed basin management restrictions.

- (4) The basin recharge activities allow the conservation and storage of both local and imported water supplies when these waters are available.
  - (5) The public agency posts conspicuous signs warning of any increase in water flow levels of an unlined flood control channel.
- (d) Nothing in this section exonerates a public entity or a public employee from liability for injury proximately caused by a dangerous condition of property if all of the following occur:
- (1) The injured person was not guilty of a criminal offense under Article 1 (commencing with Section 552) of Chapter 12 of Title 13 of Part 1 of the Penal Code in entering on or using the property.
  - (2) The condition created a substantial and unreasonable risk of death or serious bodily harm when such property or adjacent property was used with due care in a manner in which it was reasonably foreseeable that it would be used.
  - (3) The dangerous character of the condition was not reasonably apparent to, and would not have been anticipated by, a mature, reasonable person using the property with due care.
  - (4) The public entity or the public employee had actual knowledge of the condition and knew or should have known of its dangerous character a sufficient time prior to the injury to have taken measures to protect against the condition.
- (e) Nothing in this section exonerates a public entity or a public employee from liability for injury proximately caused by a dangerous condition of property if all of the following occur:
- (1) The person injured was less than 12 years of age.
  - (2) The dangerous condition created a substantial and unreasonable risk of death or serious bodily harm to children under 12 years of age using the property or adjacent property with due care in a manner in which it was reasonably foreseeable that it would be used.
  - (3) The person injured, because of his or her immaturity, did not discover the condition or did not appreciate its dangerous character.
  - (4) The public entity or the public employee had actual knowledge of the condition and knew or should have known of its dangerous character a sufficient time prior to the injury to have taken measures to protect against the condition.
- (f) Subdivision (c) shall become inoperative on and after January 1, 2002. Leg. H. (added by Stats. 1963, Ch. 1681; amended by Stats. 1998, Ch. 659.)

### **835. [Injury Caused by Dangerous Condition of Property.]**

Except as provided by statute, a public entity is liable for injury caused by a dangerous condition of its property if the plaintiff establishes that the property was in a dangerous condition at the time of the injury, that the injury was proximately caused by the dangerous condition, that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred, and that either:

- (a) A negligent or wrongful act or omission of an employee of the public entity within the scope of his employment created the dangerous condition; or
- (b) The public entity had actual or constructive notice of the dangerous condition under Section 835.2 a sufficient time prior to the injury to have taken measures to protect against the dangerous condition. Leg. H. (added by Stats. 1963, Ch. 1681.)

#### **835.2. [Notice of Dangerous Condition.]**

- (a) A public entity had actual notice of a dangerous condition within the meaning of subdivision (b) of Section 835 if it had actual knowledge of the existence of the condition and knew or should have known of its dangerous character.
- (b) A public entity had constructive notice of a dangerous condition within the meaning of subdivision (b) of Section 835 only if the plaintiff establishes that the condition had existed for such a period of time and was of such an obvious nature that the public entity, in the exercise of due care, should have discovered the condition and its dangerous character. On the issue of due care, admissible evidence includes but is not limited to evidence as to:
  - (1) Whether the existence of the condition and its dangerous character would have been discovered by an inspection system that was reasonably adequate (considering the practicability and cost of inspection weighed against the likelihood and magnitude of the potential danger to which failure to inspect would give rise) to inform the public entity whether the property was safe for the use or uses for which the public entity used or intended others to use the public property and for uses that the public entity actually knew others were making of the public property or adjacent property.
  - (2) Whether the public entity maintained and operated such an inspection system with due care and did not discover the condition. Leg. H. (added by Stats. 1963, Ch. 1681.)

#### **835.4. [Injury Caused by Condition of Property-No Liability Where Act Causing Condition Reasonable, Action to Protect Against Risk Reasonable.]**

- (a) A public entity is not liable under subdivision (a) of Section 835 for injury caused by a condition of its property if the public entity establishes that the act or omission that created the condition was reasonable. The reasonableness of the act or omission that created the condition shall be determined by weighing the probability and gravity of

potential injury to persons and property foreseeably exposed to the risk of injury against the practicability and cost of taking alternative action that would not create the risk of injury or of protecting against the risk of injury.

- (b) A public entity is not liable under subdivision (b) of Section 835 for injury caused by a dangerous condition of its property if the public entity establishes that the action it took to protect against the risk of injury created by the condition or its failure to take such action was reasonable. The reasonableness of the action or inaction of the public entity shall be determined by taking into consideration the time and opportunity it had to take action and by weighing the probability and gravity of potential injury to persons and property foreseeably exposed to the risk of injury against the practicability and cost of protecting against the risk of such injury. Leg. H. (added by Stats. 1963, Ch. 1681.)

**840. [Public Employee Not Liable for Injury Caused by Condition of Public Property Except as Provided in Article; Immunity.]**

Except as provided in this article, a public employee is not liable for injury caused by a condition of public property where such condition exists because of any act or omission of such employee within the scope of his employment. The liability established by this article is subject to any immunity of the public employee provided by statute and is subject to any defenses that would be available to the public employee if he were a private person. Leg. H. (added by Stats. 1963, Ch. 1681.)

**840.2. [Conditions Under Which Employee of Public Entity Liable for Injury Caused by Dangerous Condition of Public Property.]**

An employee of a public entity is liable for injury caused by a dangerous condition of public property if the plaintiff establishes that the property of the public entity was in a dangerous condition at the time of the injury, that the injury was proximately caused by the dangerous condition, that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred, and that either:

- (a) The dangerous condition was directly attributable wholly or in substantial part to a negligent or wrongful act of the employee and the employee had the authority and the funds and other means immediately available to take alternative action which would not have created the dangerous condition; or
- (b) The employee had the authority and it was his responsibility to take adequate measures to protect against the dangerous condition at the expense of the public entity and the funds and other means for doing so were immediately available to him, and he had actual or constructive notice of the dangerous condition under Section 840.4 a sufficient time prior to the injury to have taken measures to protect against the dangerous condition. Leg. H. (added by Stats. 1963, Ch. 1681.)

#### **840.4. [Notice of Dangerous Condition.]**

- (a) A public employee had actual notice of a dangerous condition within the meaning of subdivision (b) of Section 840.2 if he had actual personal knowledge of the existence of the condition and knew or should have known of its dangerous character.
- (b) A public employee had constructive notice of a dangerous condition within the meaning of subdivision (b) of Section 840.2 only if the plaintiff establishes (1) that the public employee had the authority and it was his responsibility as a public employee to inspect the property of the public entity or to see that inspections were made to determine whether dangerous conditions existed in the public property, (2) that the funds and other means for making such inspections or for seeing that such inspections were made were immediately available to the public employee, and (3) that the dangerous condition had existed for such a period of time and was of such an obvious nature that the public employee, in the exercise of his authority and responsibility with due care, should have discovered the condition and its dangerous character. Leg. H. (added by Stats. 1963, Ch. 1681.)

#### **840.6. [Injury Caused by Condition of Property-No Liability Where Act Causing Condition Reasonable, Action to Protect Against Risk Reasonable.]**

- (a) A public employee is not liable under subdivision (a) of Section 840.2 for injury caused by a dangerous condition of public property if he establishes that the act or omission that created the condition was reasonable. The reasonableness of the act or omission that created the condition shall be determined by weighing the probability and gravity of potential injury to persons and property foreseeably exposed to the risk of injury against the practicability and cost of taking alternative action that would not create the risk of injury or of protecting against the risk of injury.
- (b) A public employee is not liable under subdivision (b) of Section 840.2 for injury caused by a dangerous condition of public property if he establishes that the action taken to protect against the risk of injury created by the condition or the failure to take such action was reasonable. The reasonableness of the inaction or action shall be determined by taking into consideration the time and opportunity the public employee had to take action and by weighing the probability and gravity of potential injury to persons and property foreseeably exposed to the risk of injury against the practicability and cost of protecting against the risk of such injury. Leg. H. (added by Stats. 1963, Ch. 1681.)

#### **844. ["Prisoner," Defined.]**

As used in this chapter, "prisoner" includes an inmate of a prison, jail or penal or correctional facility. For the purposes of this chapter, a lawfully arrested person who is brought into a law enforcement facility for the purpose of being booked, as described in Section 7 of the Penal Code, becomes a prisoner, as a matter of law, upon his or her initial entry into a prison, jail, or penal or correctional facility, pursuant to penal processes. Leg. H. (added by Stats. 1963, Ch. 1681; Amended by Stats. 1996, Ch. 395.)

#### **844.6. [Injury to Prisoner.]**

- (a) Notwithstanding any other provision of this part, except as provided in this section and in Sections 814, 814.2, 845.4, and 845.6, or in Title 2.1 (commencing with Section 3500) of Part 3 of the Penal Code, a public entity is not liable for:
  - (1) An injury proximately caused by any prisoner.
  - (2) An injury to any prisoner.
- (b) Nothing in this section affects the liability of a public entity under Article 1 (commencing with Section 17000) of Chapter 1 of Division 9 of the Vehicle Code.
- (c) Except for an injury to a prisoner, nothing in this section prevents recovery from the public entity for an injury resulting from the dangerous condition of public property under Chapter 2 (commencing with Section 830) of this part.
- (d) Nothing in this section exonerates a public employee from liability for injury proximately caused by his negligent or wrongful act or omission. The public entity may but is not required to pay any judgment, compromise or settlement, or may but is not required to indemnify any public employee, in any case where the public entity is immune from liability under this section; except that the public entity shall pay, as provided in Article 4 (commencing with Section 825) of Chapter 1 of this part, any judgment based on a claim against a public employee who is lawfully engaged in the practice of one of the healing arts under any law of this state for malpractice arising from an act or omission in the scope of his employment, and shall pay any compromise or settlement of a claim or action, based on such malpractice, to which the public entity has agreed. Leg. H. (amended by Stats. 1977, Ch. 1250.)

#### **845. [Failure to Establish Police Department, Provide Police Protection; Response to Burglar Alarm When Permit Not Obtained.]**

Neither a public entity nor a public employee is liable for failure to establish a police department or otherwise to provide police protection service or, if police protection service is provided, for failure to provide sufficient police protection service.

A police department shall not fail to respond to a request for service via a burglar alarm system or an alarm company referral service solely on the basis that a permit from the city has not been obtained. Leg. H. 1963 ch. 1681, 1992 ch. 547.

#### **845.2. [Failure to Provide Prison, Jail; Failure to Provide Sufficient Prison Equipment, Personnel.]**

Except as provided in Chapter 2 (commencing with Section 830), neither a public entity nor a public employee is liable for failure to provide a prison, jail or penal or correctional facility or, if such facility is provided, for failure to provide sufficient equipment, personnel or facilities therein. Leg. H. (added by Stats. 1963, Ch. 1681.)

**845.4. [Interference With Right of Prisoner to Obtain Judicial Determination or Review of Legality of Confinement.]**

Neither a public entity nor a public employee acting within the scope of his employment is liable for interfering with the right of a prisoner to obtain a judicial determination or review of the legality of his confinement; but a public employee, and the public entity where the employee is acting within the scope of his employment, is liable for injury proximately caused by the employee's intentional and unjustifiable interference with such right, but no cause of action for such injury shall be deemed to accrue until it has first been determined that the confinement was illegal. Leg. H. (Amended by Stats. 1970, Ch. 1099.)

**845.6. [Injury Caused by Failure to Furnish Medical Care for Prisoner in Custody.]**

Neither a public entity nor a public employee is liable for injury proximately caused by the failure of the employee to furnish or obtain medical care for a prisoner in his custody; but, except as otherwise provided by Sections 855.8 and 856, a public employee, and the public entity where the employee is acting within the scope of his employment, is liable if the employee knows or has reason to know that the prisoner is in need of immediate medical care and he fails to take reasonable action to summon such medical care. Nothing in this section exonerates a public employee who is lawfully engaged in the practice of one of the healing arts under any law of this state from liability for injury proximately caused by malpractice or exonerates the public entity from its obligation to pay any judgment, compromise, or settlement that it is required to pay under subdivision (d) of Section 844.6. Leg. H. (amended by Stats. 1970, Ch. 1099.)

**845.8. [Injury Caused by Paroled or Escaped Prisoner, Escaped Arrested Person, Person Resisting Arrest.]**

Neither a public entity nor a public employee is liable for:

- (a) Any injury resulting from determining whether to parole or release a prisoner or from determining the terms and conditions of his parole or release or from determining whether to revoke his parole or release.
- (b) Any injury caused by:
  - (1) An escaping or escaped prisoner;
  - (2) An escaping or escaped arrested person; or
  - (3) A person resisting arrest. Leg. H. (amended by Stats. 1970, Ch. 1099.)

**846. [Failure to Make Arrest or to Retain Arrested Person in Custody.]**

Neither a public entity nor a public employee is liable for injury caused by the failure to make an arrest or by the failure to retain an arrested person in custody. Leg. H. (added by Stats. 1963, Ch. 1681.)

**850. [Failure to Establish Fire Department.]**

Neither a public entity nor a public employee is liable for failure to establish a fire department or otherwise to provide fire protection service. Leg. H. (added by Stats. 1963, Ch. 1681.)

**850.2. [Injury Resulting From Failure to Provide Fire Department Personnel, Equipment.]**

Neither a public entity that has undertaken to provide fire protection service, nor an employee of such a public entity, is liable for any injury resulting from the failure to provide or maintain sufficient personnel, equipment or other fire protection facilities. Leg. H. (added by Stats. 1963, Ch. 1681.)

**850.4. [Injury Resulting From Condition of Fire Protection Equipment, Facilities, Fighting Fires.]**

Neither a public entity, nor a public employee acting in the scope of his employment, is liable for any injury resulting from the condition of fire protection or firefighting equipment or facilities or, except as provided in Article 1 (commencing with Section 17000) of Chapter 1 of Division 9 of the Vehicle Code, for any injury caused in fighting fires. Leg. H. (added by Stats. 1963, Ch. 1681.)

**850.6. [Fire Protection Provided Outside Area Regularly Served; Claims Presented to State Board of Control.]**

Whenever a public entity provides fire protection or firefighting service outside of the area regularly served and protected by the public entity providing such service, the public entity providing such service is liable for any injury for which liability is imposed by statute caused by its act or omission or the act or omission of its employee occurring in the performance of such fire protection or firefighting service. Notwithstanding any other law, the public entity receiving such fire protection or such firefighting service is not liable for any act or omission of the public entity providing the service or for any act or omission of an employee of the public entity providing the service; but the public entity providing such service and the public entity receiving such service may by agreement determine the extent, if any, to which the public entity receiving such service will be required to indemnify the public entity providing the service.

Notwithstanding any other provision of this section, any claims against the state shall be presented to the State Board of Control in accordance with Part 3 (commencing with Section 900) and Part 4 (commencing with Section 940) of Division 3.6 of Title 1 of the Government Code. Leg. H. (amended by Stats. 1965, Ch. 1203.)

**850.8. [Injury Sustained as Result of Transportation of Person Injured by Fire to Physician or Hospital.]**

Any member of an organized fire department, fire protection district, or other firefighting unit of either the state or any political subdivision, any employee of the Department of Forestry and Fire Protection, or any other public employee when acting in the scope of his or her employment, may transport or arrange for the transportation of any person injured by a fire, or by a fire

protection operation, to a physician and surgeon or hospital if the injured person does not object to the transportation.

Neither a public entity nor a public employee is liable for any injury sustained by the injured person as a result of or in connection with that transportation or for any medical, ambulance, or hospital bills incurred by or in behalf of the injured person or for any other damages, but a public employee is liable for injury proximately caused by his or her willful misconduct in transporting the injured person or arranging for the transportation. Leg. H. Amended by Stats. 1981, Ch. 714, Sec. 158, 1992 ch. 427.

**854. ["Medical Facility," Defined.]**

As used in this chapter, unless the context otherwise requires, "medical facility" includes a hospital, infirmary, clinic, dispensary, mental institution, or similar facility. Leg. H. (added by Stats. 1963, Ch. 1681.)

**854.2. ["Mental Institution," Defined.]**

As used in this chapter, "mental institution" means any state hospital for the care and treatment of the mentally disordered or the mentally retarded, the California Rehabilitation Center referred to in Section 3300 of the Welfare and Institutions Code, or any county psychiatric hospital. Leg. H. (amended by Stats. 1970, Ch. 1099.)

**854.3. ["County Psychiatric Hospital," Defined.]**

As used in this chapter, "county psychiatric hospital" means the hospital, ward, or facility provided by the county pursuant to the provisions of Section 7100 of the Welfare and Institutions Code. Leg. H. (added by Stats. 1970, Ch. 1099.)

**854.4. ["Mental Illness or Addiction," Defined.]**

As used in this chapter, "mental illness or addiction" means any condition for which a person may be detained, cared for, or treated in a mental institution, in a facility designated by a county pursuant to Chapter 2 (commencing with Section 5150) of Part 1 of Division 5 of the Welfare and Institutions Code, or in a similar facility. Leg. H. (amended by Stats. 1970, Ch. 1099.)

**854.5. ["Confine," Defined.]**

As used in this chapter, "confine" includes admit, commit, place, detain, or hold in custody. Leg. H. (added by Stats. 1970, Ch. 1099.)

**854.8. [Injury Caused by Patient of Mental Institution; Injury to Patient of Mental Institution.]**

- (a) Notwithstanding any other provision of this part, except as provided in this section and in Sections 814, 814.2, 855, and 855.2, a public entity is not liable for:
  - (1) An injury proximately caused by a patient of a mental institution.
  - (2) An injury to an inpatient of a mental institution.

- (b) Nothing in this section affects the liability of a public entity under Article 1 (commencing with Section 17000) of Chapter 1 of Division 9 of the Vehicle Code.
- (c) Except for an injury to an inpatient of a mental institution, nothing in this section prevents recovery from the public entity for an injury resulting from the dangerous condition of public property under Chapter 2 (commencing with Section 830) of this part.
- (d) Nothing in this section exonerates a public employee from liability for injury proximately caused by his negligent or wrongful act or omission. The public entity may but is not required to pay any judgment, compromise or settlement, or may but is not required to indemnify any public employee, in any case where the public entity is immune from liability under this section; except that the public entity shall pay, as provided in Article 4 (commencing with Section 825) of Chapter 1 of this part, any judgment based on a claim against a public employee who is lawfully engaged in the practice of one of the healing arts under any law of this state for malpractice arising from an act or omission in the scope of his employment, and shall pay any compromise or settlement of a claim or action, based on such malpractice, to which the public entity has agreed. Leg. H. (amended by Stats. 1970, Ch. 1099.)

**855. [Injury Caused by Failure to Provide Adequate Equipment or Personnel Required by Statute or Department of Health Services.]**

- (a) A public entity that operates or maintains any medical facility that is subject to regulation by the State Department of Health Services, Social Services, Developmental Services, or Mental Health is liable for injury proximately caused by the failure of the public entity to provide adequate or sufficient equipment, personnel or facilities required by any statute or any regulation of the State Department of Health Services, Social Services, Developmental Services, or Mental Health prescribing minimum standards for equipment, personnel or facilities, unless the public entity establishes that it exercised reasonable diligence to comply with the applicable statute or regulation.
- (b) A public entity that operates or maintains any medical facility that is not subject to regulation by the State Department of Health Services, Social Services, Developmental Services, or Mental Health is liable for injury proximately caused by the failure of the public entity to provide adequate or sufficient equipment, personnel or facilities substantially equivalent to those required by any statute or any regulation of the State Department of Health Services, Social Services, Developmental Services, or Mental Health prescribing minimum standards for equipment, personnel or facilities applicable to a public medical facility of the same character and class, unless the public entity establishes that it exercised reasonable diligence to conform with such minimum standards.
- (c) Nothing in this section confers authority upon, or augments the authority of, the State Department of Health Services, Social Services, Developmental Services, or Mental Health to adopt, administer or enforce any regulation. Any regulation establishing minimum standards for equipment, personnel or facilities in any medical facility operated

or maintained by a public entity, to be effective, must be within the scope of authority conferred by law. Leg. H. (amended by Stats. 1978, Ch. 429.)

**855.2. [Interference With Right of Inmate of Medical Facility to Obtain Judicial Determination or Review of Legality of Confinement.]**

Neither a public entity nor a public employee acting within the scope of his employment is liable for interfering with the right of an inmate of a medical facility operated or maintained by a public entity to obtain a judicial determination or review of the legality of his confinement; but a public employee, and the public entity where the employee is acting within the scope of his employment, is liable for injury proximately caused by the employee's intentional and unjustifiable interference with such right, but no cause of action for such injury shall be deemed to accrue until it has first been determined that the confinement was illegal. Leg. H. (amended by Stats. 1970, Ch. 1099.)

**855.4. [Injury Resulting From Decision to Perform or Not Perform Act to Promote Public Health by Preventing or Controlling Disease.]**

- (a) Neither a public entity nor a public employee is liable for an injury resulting from the decision to perform or not to perform any act to promote the public health of the community by preventing disease or controlling the communication of disease within the community if the decision whether the act was or was not to be performed was the result of the exercise of discretion vested in the public entity or the public employee, whether or not such discretion be abused.
- (b) Neither a public entity nor a public employee is liable for an injury caused by an act or omission in carrying out with due care a decision described in subdivision (a). Leg. H. (added by Stats. 1963, Ch. 1681.)

**855.6. [Injury Caused by Failure to Make Physical or Mental Examination to Determine Presence of Disease or Mental Condition.]**

Except for an examination or diagnosis for the purpose of treatment, neither a public entity nor a public employee acting within the scope of his employment is liable for injury caused by the failure to make a physical or mental examination, or to make an adequate physical or mental examination, of any person for the purpose of determining whether such person has a disease or physical or mental condition that would constitute a hazard to the health or safety of himself or others. Leg. H. (added by Stats. 1963, Ch. 1681.)

**855.8. [Injury Resulting From Diagnosing or Failing to Diagnose Mental Illness or Addiction.]**

- (a) Neither a public entity nor a public employee acting within the scope of his employment is liable for injury resulting from diagnosing or failing to diagnose that a person is afflicted with mental illness or addiction or from failing to prescribe for mental illness or addiction.

- (b) A public employee acting within the scope of his employment is not liable for administering with due care the treatment prescribed for mental illness or addiction.
- (c) Nothing in this section exonerates a public employee who has undertaken to prescribe for mental illness or addiction from liability for injury proximately caused by his negligence or by his wrongful act in so prescribing.
- (d) Nothing in this section exonerates a public employee from liability for injury proximately caused by his negligent or wrongful act or omission in administering any treatment prescribed for mental illness or addiction. Leg. H. (added by Stats. 1963, Ch. 1681.)

**856. [Injury Resulting From Determining Whether to Confine Person for Mental Illness or Addiction, Terms of Confinement, Parole or Release; Injury as Result of Carrying Out or Not Carrying Out Confinement.]**

- (a) Neither a public entity nor a public employee acting within the scope of his employment is liable for any injury resulting from determining in accordance with any applicable enactment:
  - (1) Whether to confine a person for mental illness or addiction.
  - (2) The terms and conditions of confinement for mental illness or addiction.
  - (3) Whether to parole, grant a leave of absence to, or release a person confined for mental illness or addiction.
- (b) A public employee is not liable for carrying out with due care a determination described in subdivision (a).
- (c) Nothing in this section exonerates a public employee from liability for injury proximately caused by his negligent or wrongful act or omission in carrying out or failing to carry out:
  - (1) A determination to confine or not to confine a person for mental illness or addiction.
  - (2) The terms or conditions of confinement of a person for mental illness or addiction.
  - (3) A determination to parole, grant a leave of absence to, or release a person confined for mental illness or addiction. Leg. H. (amended by Stats. 1970, Ch. 1099.)

**856.2. [Injury Caused by or to Escaped Person Confined for Mental Illness or Addiction.]**

- (a) Neither a public entity nor a public employee is liable for:
  - (1) An injury caused by an escaping or escaped person who has been confined for mental illness or addiction.
  - (2) An injury to, or the wrongful death of, an escaping or escaped person who has been confined for mental illness or addiction.
- (b) Nothing in this section exonerates a public employee from liability:

- (1) If he acted or failed to act because of actual fraud, corruption, or actual malice.
- (2) For injuries inflicted as a result of his own negligent or wrongful act or omission on an escaping or escaped mental patient in recapturing him. Leg. H. (amended by Stats. 1970, Ch. 1099.)

**856.4. [Injury Resulting From Failure to Admit Person to Public Medical Facility.]**

Except as provided in Section 815.6, neither a public entity nor a public employee acting in the scope of his employment is liable for an injury resulting from the failure to admit a person to a public medical facility. Leg. H. (added by Stats. 1963, Ch. 1681.)

**856.6. [Injury Resulting From Act or Omission by Public Entity, Employee, or Volunteer Participating in National Influenza Program of 1976; "Community Program," "Volunteer," Defined.]**

- (a) A public entity, public employee, or volunteer, participating in the National Influenza Program of 1976, shall not be liable for an injury caused by an act or omission in the promotion of a community program or the administration of vaccine in a community program, including the residual effects of the vaccine, unless the act or omission constitutes willful misconduct.
- (b) All promotions of a community program and oral and written information provided for purposes of consent to a person requesting inoculation shall contain notice of the provisions of subdivision (a) of this section. In the event the person to be inoculated is a minor, the parents or legal guardian of said minor must be informed orally or in writing of the provisions of subdivision (a) of this section and said parents or legal guardian must consent in writing to the inoculation of said minor person. The State Department of Health shall prescribe a form to be used in community programs which notifies a person of the provisions of subdivision (a) and contains a provision by which the person acknowledges that he has been so notified and understands the legal effect of the subdivision.
- (c) As used in the section:
  - (1) "Community program" means a public program conducted by a state, city, county, or district health agency under the National Influenza Program of 1976 or a public or private organization which has entered into a contract with a state, city, county, or district health agency, with the approval of the State Department of Health, to provide services pursuant to the National Influenza Program of 1976.
  - (2) "Volunteer" means a licensed health professional, licensed health facility, organization, or individual participating in a community program.
- (d) Notwithstanding any other provision of law, an individual authorized by the State Department of Health may administer influenza vaccine under the supervision of a

licensed health professional in a community program using a jet injection apparatus. Leg. H. (added by Stats. 1976, Ch. 427.)

**860. ["Tax," Defined.]**

As used in this chapter, "tax" includes a tax, assessment, fee or charge. Leg. H. (added by Stats. 1963, Ch. 1681.)

**860.2. [Injury Caused by Proceeding for Assessment or Collection of Tax, Act or Omission in Interpretation or Application of Tax Law.]**

Neither a public entity nor a public employee is liable for an injury caused by:

- (a) Instituting any judicial or administrative proceeding or action for or incidental to the assessment or collection of a tax.
- (b) An act or omission in the interpretation or application of any law relating to a tax. Leg. H. (added by Stats. 1963, Ch. 1681.)

**860.4. [Law Relating to Refund, Rebate, Exemption, Cancellation, Amendment or Adjustment of Taxes Not Affected by Chapter.]**

Nothing in this chapter affects any law relating to refund, rebate, exemption, cancellation, amendment or adjustment of taxes. Leg. H. (added by Stats. 1963, Ch. 1681.)

**862. [Use of Pesticides; "Pesticide," "Economic Poison," "Injurious Material," Defined.]**

- (a) As used in this section, "pesticide" means:
  - (1) An "economic poison" as defined in Section 12753 of the Agricultural Code;
  - (2) An "injurious material" the use of which is regulated or prohibited under Chapter 3 (commencing with Section 14001) of Division 7 of the Agricultural Code; or
  - (3) Any material used for the same purpose as material referred to in paragraphs (1) and (2).
- (b) A public entity is liable for injuries caused by its use of a pesticide to the same extent as a private person except that no presumption of negligence arises from the failure of a public entity or a public employee to comply with a provision of a statute or regulation relating to the use of a pesticide if the statute or regulation by its terms is made inapplicable to the public entity or the public employee.

- (c) Sections 11761 to 11765 of the Agricultural Code, relating to reports of loss or damages from the use of pesticides, apply in an action against a public entity under this section. Leg. H. (added by Stats. 1970, Ch. 1099.)

**865. [Legislative Findings and Declarations.]**

The Legislature hereby finds and declares that:

- (a) The gradual movement of land, such as in prehistoric slide areas, or as a result of subsidence due to the depletion of underground or subterranean supporting substances, such as minerals, petroleum sources, water, and similar substances, can result in danger to persons or property. Although the movement is gradual and expressed in terms of numbers of inches, feet or meters per day, week or year, at some point the forces that are exerted by the movement will sever underground utilities, such as water, sewer, gas, electricity or telephone services and can cause the destruction of aboveground structures whose foundations become undermined or where support is denied altogether. Unlike an earthquake or rapid rockslide or landslide, these gradual earth movements permit possible intervention to arrest the movement and avoid harm which is posed to persons or property. If there is an adequate manifestation of the problem before actual harm to persons or property, it is possible to make some determinations as to a method of remedial action which can abate the hazard. However, any undertaking to arrest the earth movement may not be successful or may have within it the potential for hastening the movement and the damages resulting from such movement. Regardless of how slight that potential for aggravating the damages, local public entities are unwilling to undertake action to alleviate the hazard if such undertaking may invite potential liability.
- (b) It is the intent of the Legislature in enacting this chapter to create an incentive for local public entities, upon learning of the particular earth movement which will result in possible damage to substantial areas of property and constitute a threat of injury to persons, to undertake remedial action to abate the earth movement or protect against the danger there from without fear of incurring liability as a result of undertaking such action. Leg. H. (added by Stats. 1979, Ch. 1119.)

**866. [Liability of Public Entity for Injury Resulting From Impending Peril or Attempt to Abate Impending Peril; Gradual Earth Movements, "Local Public Entity," Defined.]**

- (a) Subject to the provisions of subdivisions (b) and (c), in the event of public necessity and to avoid impending peril to persons or property as a result of gradual earth movement, a local public entity is not liable for damages for injury to persons or property resulting from such impending peril or from any action taken to abate such peril providing the legislative body of the local public entity has, on the basis of expert opinion or other reasonable basis, done all of the following:
  - (1) On the basis of adequate evidence such as expert opinion or otherwise, found the existence of such impending peril.

- (2) Determined appropriate remedial action to halt, stabilize, or abate such impending peril.
- (3) Undertaken to implement such remedial action.

As used in this chapter, "gradual earth movements" includes, but is not limited to, perceptible changes in the earth either in a subterranean area or at the surface, or both, which if not arrested or contained will over a gradual period of time result in damage to or destruction of underground or aboveground property or harm to persons. However, "gradual earth movement" does not include movement which is caused by activity undertaken by a local public entity for purposes other than the abatement of peril caused by gradual earth movement.

As used in this chapter, "local public entity" has the meaning set forth in Section 900.4.

- (b) If the local public entity is unable to complete the steps described in paragraphs (1) to (3), inclusive, of subdivision (a) because of the cessation of the hazard or because such actions cannot be completed before the occurrence of the hazard sought to be avoided, or because such legislative body of such entity shall reasonably determine that such remedial action will not abate such danger, the immunity provided herein shall nevertheless apply to such actions by such local public entity.
- (c) The immunity provided herein is in addition to any other immunity of the local public entity provided by law or statute, including this part, and any claim of liability based upon the impending peril or any action of the local public entity is subject to such immunities and any defenses that would be available to the local public entity if it were a private person. Leg. H. (added by Stats. 1979, Ch. 1119.)

**867. [No Liability of Employee of Local Public Entity for Damages for Injury Resulting From Impending Peril or Abatement of Peril.]**

An employee of a local public entity is not liable for damages for injury to persons or property resulting from an impending peril or from any action taken to abate such peril pursuant to Section 866. Leg. H. (added by Stats. 1979, Ch. 1119.)

**895. ["Agreement," Defined.]**

As used in this chapter "agreement" means a joint powers agreement entered into pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code, an agreement to transfer the functions of a public entity or an employee thereof to another public entity pursuant to Part 2 (commencing with Section 51300) of Division 1 of Title 5 of the Government Code, and any other agreement under which a public entity undertakes to perform any function, service or act with or for any other public entity or employee thereof with its consent, whether such agreement is expressed by resolution, contract, ordinance or in any other manner provided by law; but "agreement" does not include an agreement between public entities which is designed to implement the disbursement or subvention of public funds from one of the public entities to the other, whether or not it provides standards or controls governing the expenditure of such funds. Leg. H. (added by Stats. 1963, Ch. 1681.)

#### **895.2. [Joint and Several Liability; Time Limit for Presenting Claim for Injury.]**

Whenever any public entities enter into an agreement, they are jointly and severally liable upon any liability which is imposed by any law other than this chapter upon any one of the entities or upon any entity created by the agreement for injury caused by a negligent or wrongful act or omission occurring in the performance of such agreement.

Notwithstanding any other law, if a judgment is recovered against a public entity for injury caused in the performance of an agreement, the time within which a claim for such injury may be presented or an action commenced against any other public entity that is subject to the liability determined by the judgment under the provisions of this section begins to run when the judgment is rendered. Leg. H. (added by Stats. 1963, Ch. 1681.)

#### **895.4. [Provision for Contribution, Indemnification by Public Entities Party to Agreement.]**

As part of any agreement, the public entities may provide for contribution or indemnification by any or all of the public entities that are parties to the agreement upon any liability arising out of the performance of the agreement. Leg. H. (added by Stats. 1963, Ch. 1681.)

#### **895.6. [Pro Rata Share of Judgment.]**

Unless the public entities that are parties to an agreement otherwise provide in the agreement, if a public entity is held liable upon any judgment for damages caused by a negligent or wrongful act or omission occurring in the performance of the agreement and pays in excess of its pro rata share in satisfaction of such judgment, such public entity is entitled to contribution from each of the other public entities that are parties to the agreement. The pro rata share of each public entity is determined by dividing the total amount of the judgment by the number of public entities that are parties to the agreement. The right of contribution is limited to the amount paid in satisfaction of the judgment in excess of the pro rata share of the public entity so paying. No public entity may be compelled to make contribution beyond its own pro rata share of the entire judgment. Leg. H. (added by Stats. 1963, Ch. 1681.)

#### **910.4 [Public Entity Must Provide Its Own Claim Form]**

(a) The board shall provide forms specifying the information to be contained in claims against the public entity. The person presenting a claim shall use the form in order that his or her claim is deemed in conformity with Sections 910 and 910.2. A claim may be returned to the person if it was not presented using the form. Any claim returned to a person may be resubmitted using the appropriate form

## CALIFORNIA HEALTH & SAFETY CODE

### 115800. [Skateboard Parks; Skateboarding; Hazardous Recreational Activity; Conditions]

- (a) No operator of a skateboard park shall permit any person to ride a skateboard therein, unless that person is wearing a helmet, elbow pads, and kneepads.
- (b) With respect to any facility, owned or operated by a local public agency, that is designed and maintained for the purpose of recreational skateboard use, and that is not supervised on a regular basis, the requirements of subdivision (a) may be satisfied by compliance with the following:
  - (1) Adoption by the local public agency of an ordinance requiring any person riding a skateboard at the facility to wear a helmet, elbow pads, and knee pads.
  - (2) The posting of signs at the facility affording reasonable notice that any person riding a skateboard in the facility must wear a helmet, elbow pads, and knee pads and that any person failing to do so will be subject to citation under the ordinance required by paragraph (1).
- (c) "Local public agency" for purposes of this section includes, but is not limited to, a city, county, or city and county.
- (d) (1) Skateboarding at any facility or park owned or operated by a public entity as a public skateboard park, as provided in paragraph (3), shall be deemed a hazardous recreational activity within the meaning of Section 831.7 of the Government Code if all of the following conditions are met:
  - (A) The person skateboarding is 14 years of age or older.
  - (B) The skateboarding activity that caused the injury was stunt, trick, or luge skateboarding.
  - (C) The skateboard park is on public property that complies with subdivision (a) or (b).
- (2) In addition to the provisions of subdivision (c) of Section 831.7 of the Government Code, nothing in this section is intended to limit the liability of a public entity with respect to any other duty imposed pursuant to existing law, including the duty to protect against dangerous conditions of public property pursuant to Chapter 2 (commencing with Section 830) of Part 2 of Division 3.6 of Title 1 of the Government Code.
- (3) For public skateboard parks that were constructed on or before January 1, 1998, this subdivision shall apply to hazardous recreational activity injuries incurred on or after January 1, 1998, and before January 1, 2001. For public skateboard parks that are constructed after January 1, 1998, this

subdivision shall apply to hazardous recreational activity injuries incurred on or after January 1, 1998, and before January 1, 2003. For purposes of this subdivision, any skateboard facility that is a movable facility shall be deemed constructed on the first date it is initially made available for use at any location by the local public agency.

- (4) The appropriate local public agency shall maintain a record of all known or reported injuries incurred by a skateboarder in a public skateboard park or facility. The local public agency shall also maintain a record of all claims, paid and not paid, including any lawsuits and their results, arising from those incidents that were filed against the public agency. Beginning in 1999, copies of these records shall be filed annually, no later than January 30 each year, with the Judicial Council, which shall submit a report to the Legislature on or before March 31, 2000, on the incidences of injuries incurred, claims asserted, and the results of any lawsuit filed, by persons injured while skateboarding in public skateboard parks or facilities.
- (5) This subdivision shall not apply on or after January 1, 2001, to public skateboard parks that were constructed on or before January 1, 1998, but shall continue to apply to public skateboard parks that are constructed after January 1, 1998.
- (e) This section shall remain in effect until January 1, 2003, and as of that date is repealed, unless a later enacted statute, enacted before January 1, 2003, deletes or extends that date. Leg. H. (added Stats. 1997, Ch. 573.)

**115800.1. [In-line Skating; Hazardous Recreational Activity; Conditions]**

- (a) In-line skating by an adult shall be deemed a hazardous recreational activity within the meaning of Section 831.7 of the Government Code if all of the following conditions are met:
  - (1) The local public agency has, by legislative action, designated specific public property as a recreational area, boardwalk, or park in which in-line skating is permitted.
  - (2) The designated area, boardwalk, or park is adequately posted with notices advising the public that in-line skating in the designated area by adults is deemed to be a hazardous recreational activity and that the public entity may not be liable for injuries incurred by persons participating in the hazardous recreational activity in the designated area, boardwalk, or park.
- (b) Nothing in Section 831.7 of the Government Code or this section shall be deemed to limit the duty of a public entity to maintain public property or premises in a safe manner.

- (c) The appropriate local public agency shall maintain a record of all known or reported injuries incurred by an in-line skater on designated public property and other public property. The local public agency shall also maintain a record of all claims, paid and not paid, including any lawsuits and their results, arising from those incidents that were filed against the public agency. Beginning in 1999, copies of these records shall be filed annually, no later than January 30 each year, with the Judicial Council, which shall submit a report to the Legislature on or before March 31, 2000, on the incidences of injuries incurred, claims asserted, and the results of any lawsuit filed by persons injured while in-line skating on designated public property and other public property.
- (d) This section shall remain in effect only until January 1, 2001, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2001, deletes or extends that date. Leg. H. (added Stats. 1997, Ch. 805.)

## CALIFORNIA PENAL CODE

### **834. [Who May Make and Acts Constituting.]**

An arrest is taking a person into custody, in a case and in the manner authorized by law. An arrest may be made by a peace officer or by a private person. Leg. H. 1872.

### **834a. [Duty to Refrain From Resisting Arrest.]**

If a person has knowledge, or by the exercise of reasonable care, should have knowledge, that he is being arrested by a peace officer, it is the duty of such person to refrain from using force or any weapon to resist such arrest. Leg. H. 1957 ch. 2147.

### **835. [Restraint Limited to Necessity.]**

An arrest is made by an actual restraint of the person, or by submission to the custody of an officer. The person arrested may be subjected to such restraint as is reasonable for his arrest and detention. Leg. H. 1872, 1957 ch. 2147.

### **835a. [Use of Reasonable Force to Effect Arrest.]**

Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance.

A peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance. Leg. H. 1957 ch. 2147.

### **836. [Arrest by Peace Officer; Good-Faith Effort to Explain Citizen's Arrest; Arrest of Person Violating Protective Order.]**

- (a) A peace officer may arrest a person in obedience to a warrant, or, pursuant to the authority granted to him or her by Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, without a warrant, may arrest a person whenever any of the following circumstances occur:
  - (1) The officer has probable cause to believe that the person to be arrested has committed a public offense in the officer's presence.
  - (2) The person arrested has committed a felony, although not in the officer's presence.
  - (3) The officer has probable cause to believe that the person to be arrested has committed a felony, whether or not a felony, in fact, has been committed.

- (b) Any time a peace officer is called out on a domestic call, it shall be mandatory that the officer make a good faith effort to inform the victim of his or her right to make a citizen's arrest. This information shall include advising the victim how to safely execute the arrest.
- (c)
  - (1) When a peace officer is responding to a call alleging a violation of a domestic violence protective or restraining order issued under the Family Code, Section 527.6 of the Code of Civil Procedure, Section 213.5 of the Welfare and Institutions Code, Section 136.2 of this code, or paragraph (2) of subdivision (a) of Section 1203.097 of this code, or of a domestic violence protective or restraining order issued by the court of another state, tribe, or territory and the peace officer has probable cause to believe that the person against whom the order is issued has notice of the order and has committed an act in violation of the order, the officer shall, consistent with subdivision (b) of Section 13701, make a lawful arrest of the person without a warrant and take that person into custody whether or not the violation occurred in the presence of the arresting officer. The officer shall, as soon as possible after the arrest, confirm with the appropriate authorities or the Domestic Violence Protection Order Registry maintained pursuant to Section 6380 of the Family Code that a true copy of the protective order has been registered, unless the victim provides the officer with a copy of the protective order.
  - (2) The person against whom a protective order has been issued shall be deemed to have notice of the order if the victim presents to the officer proof of service of the order, the officer confirms with the appropriate authorities that a true copy of the proof of service is on file, or the person against whom the protective order was issued was present at the protective order hearing or was informed by a peace officer of the contents of the protective order.
  - (3) In situations where mutual protective orders have been issued under Division 10 (commencing with Section 6200) of the Family Code, liability for arrest under this subdivision applies only to those persons who are reasonably believed to have been the primary aggressor. In those situations, prior to making an arrest under this subdivision, the peace officer shall make reasonable efforts to identify, and may arrest, the primary aggressor involved in the incident. The primary aggressor is the person determined to be the most significant, rather than the first, aggressor. In identifying the primary aggressor, an officer shall consider (A) the intent of the law to protect victims of domestic violence from continuing abuse, (B) the threats creating fear of physical injury, (C) the history of domestic violence between the persons involved, and (D) whether either person involved acted in self-defense.
- (d) Notwithstanding paragraph (1) of subdivision (a), if a suspect commits an assault or battery upon a current or former spouse, fiancé, fiancée, a current or former cohabitant as defined in Section 6209 of the Family Code, a person with whom the suspect currently is having or has previously had an engagement or dating relationship, as defined in paragraph (10) of subdivision (f) of Section 243, a person with whom the suspect has parented a child, or is presumed to have parented a child pursuant to the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12 of the Family Code), a child of the suspect, a child whose parentage by the suspect is the subject of an

action under the Uniform Parentage Act, a child of a person in one of the above categories, or any other person related to the suspect by consanguinity or affinity within the second degree, a peace officer may arrest the suspect without a warrant where both of the following circumstances apply:

(1) The peace officer has probable cause to believe that the person to be arrested has committed the assault or battery, whether or not it has in fact been committed.

(2) The peace officer makes the arrest as soon as probable cause arises to believe that the person to be arrested has committed the assault or battery, whether or not it has in fact been committed.

(e) In addition to the authority to make an arrest without a warrant pursuant to paragraphs (1) and (3) of subdivision (a), a peace officer may, without a warrant, arrest a person for a violation of Section 12025 when all of the following apply:

(1) The officer has reasonable cause to believe that the person to be arrested has committed the violation of Section 12025.

(2) The violation of Section 12025 occurred within an airport, as defined in Section 21013 of the Public Utilities Code, in an area to which access is controlled by the inspection of persons and property.

(3) The peace officer makes the arrest as soon as reasonable cause arises to believe that the person to be arrested has committed the violation of Section 12025. (Leg. H. 1872, Stats. 1957, Ch. 2147; Stats.1968, Ch. 1222; Stats. 1992, Ch. 555; Stats. 1993, Ch. 995; Stats. 1994, Ch. 1269; Stats. 1999, Ch. 661 and Ch. 662.)

### **836.3 [ Arrest by Peace Officer; Warrant; Escapee]**

A peace officer may make an arrest in obedience to a warrant delivered to him, or may, without a warrant, arrest a person who, while charged with or convicted of a misdemeanor, has escaped from any county or city jail, prison, industrial farm or industrial road camp or from the custody of the officer or person in charge of him while engaged on any county road or other county work or going to or returning from such county road or other county work or from the custody of any officer or person in whose lawful custody he is in when such escape is not by force or violence.

### **836.5. [Arrest by Public Officer or Employee.]**

(a) A public officer or employee, when authorized by ordinance, may arrest a person without a warrant whenever he has reasonable cause to believe that the person to be arrested has committed a misdemeanor in the presence of the officer or employee that is a violation of a statute or ordinance which the officer or employee has the duty to enforce.

(b) There shall be no civil liability on the part of, and no cause of action shall arise against, any public officer or employee acting pursuant to subdivision (a) and within the scope of his authority for false arrest or false imprisonment arising out of any arrest which is

lawful or which the public officer or employee, at the time of the arrest, had reasonable cause to believe was lawful. No such officer or employee shall be deemed an aggressor or lose his or her right to self-defense by the use of reasonable force to effect the arrest, prevent escape, or overcome resistance.

- (c) In any case in which a person is arrested pursuant to subdivision (a) and the person arrested does not demand to be taken before a magistrate, the public officer or employee making the arrest shall prepare a written notice to appear and release the person on his promise to appear, as prescribed by Chapter 5C (commencing with Section 853.5). The provisions of that chapter shall thereafter apply with reference to any proceeding based upon the issuance of a written notice to appear pursuant to this authority.
- (d) The governing body of a local agency, by ordinance, may authorize its officers and employees who have the duty to enforce a statute or ordinance to arrest persons for violations of such statute or ordinance as provided in subdivision (a).
- (e) For the purpose of this section, "ordinance" includes an order, rule, or regulation of any air pollution control district.
- (f) For purposes of this section, a "public officer or employee" includes an officer or employee of a nonprofit transit corporation wholly owned by a local agency and formed to carry out the purposes of the local agency. Leg. H. 1969 ch. 1205, 1970 ch. 114, 1982 ch. 1235.

**837. [Arrest by Private Person.]**

A private person may arrest another:

1. For a public offense committed or attempted in his presence.
2. When the person arrested has committed a felony, although not in his presence.
3. When a felony has been in fact committed, and he has reasonable cause for believing the person arrested to have committed it. Leg. H. 1872.

**839. [Summoning Assistance.]**

Any person making an arrest may orally summon as many persons as he deems necessary to aid him therein. Leg. H. 1872.

**841. [Notice of Authority and Intent to Arrest.]**

The person making the arrest must inform the person to be arrested of the intention to arrest him, of the cause of the arrest, and the authority to make it, except when the person making the arrest has reasonable cause to believe that the person to be arrested is actually engaged in the commission of or an attempt to commit an offense, or the person to be arrested is pursued immediately after its commission, or after an escape.

The person making the arrest must, on request of the person he is arresting, inform the latter of the offense for which he is being arrested. Leg. H. 1872, 1957 ch. 2147, 1961 ch. 1863.

**842. [Arrest by a Peace Officer – Warrant not in Officer’s Possession]**

An arrest by a peace officer acting under a warrant is lawful even though the officer does not have the warrant in his possession at the time of the arrest, but if the person arrested so requests it, the warrant shall be shown to him as soon as practicable.

**843. [Use of Necessary Means to Effect Arrest on a Warrant]**

When the arrest is being made by an officer under the authority of a warrant, after information of the intention to make the arrest, if the person to be arrested either flees or forcibly resists, the officer may use all necessary means to effect the arrest.

**844. [Breaking Doors or Windows to Make Arrest.]**

To make an arrest, a private person, if the offense is a felony, and in all cases a peace officer, may break open the door or window of the house in which the person to be arrested is, or in which they have reasonable grounds for believing the person to be, after having demanded admittance and explained the purpose for which admittance is desired. Leg. H. 1872 p. 196, 1874 p. 435, 1989 ch. 1360.

**845. [Breaking Doors or Windows to Liberate Officer or Person Aiding in Arrest]**

Any person who has lawfully entered a house for the purpose of making an arrest, may break open the door or window thereof if detained therein, when necessary for the purpose of liberating himself, and an officer may do the same, when necessary for the purpose of liberating a person who, acting in his aid, lawfully entered for the purpose of making an arrest, and is detained therein.

**846. [Removal of Weapons Upon Arrest]**

Any person making an arrest may take from the person arrested all offensive weapons which he may have about his person, and must deliver them to the magistrate before whom he is taken.

**847. [Duty of Private Person to Deliver Arrested Person to Magistrate or Peace Officer; Limitations on Liability of Peace Officer, Federal Criminal Investigator, or Law Enforcement Officer for False Arrest or Imprisonment.]**

A private person who has arrested another for the commission of a public offense must, without unnecessary delay, take the person arrested before a magistrate, or deliver him or her to a peace officer. There shall be no civil liability on the part of, and no cause of action shall arise against, any peace officer or federal criminal investigator or law enforcement officer described in subdivision (a) or (d) of Section 830.8, acting within the scope of his or her authority, for false arrest or false imprisonment arising out of any arrest when any one of the following circumstances exist:

- (a) [1] The arrest was lawful or when [2] the peace officer, at the time of [3] the arrest had reasonable cause to believe [4] the arrest was lawful [5].
- (b) When [6] the arrest was made pursuant to a charge made, upon reasonable cause, of the commission of a felony by the person to be arrested [7].
- (c) When [8] the arrest was made pursuant to the requirements of [9] Section 142, 838, or 839. Leg. H. 1872, 1957 ch. 2147, 1994 ch. 424.

**848. [Officer to Proceed as Warrant Directs.]**

An officer making an arrest, in obedience to a warrant, must proceed with the person arrested as commanded by the warrant, or as provided by law. Leg. H. 1872.

**849. [Duty of Officer to Take Accused Before Magistrate-Release From Custody.]**

- (a) When an arrest is made without a warrant by a peace officer or private person, the person arrested, if not otherwise released, shall, without unnecessary delay, be taken before the nearest or most accessible magistrate in the county in which the offense is triable, and a complaint stating the charge against the arrested person shall be laid before such magistrate.
- (b) Any peace officer may release from custody, instead of taking such person before a magistrate, any person arrested without a warrant whenever:
  - (1) He or she is satisfied that there are insufficient grounds for making a criminal complaint against the person arrested.
  - (2) The person arrested was arrested for intoxication only, and no further proceedings are desirable.
  - (3) The person was arrested only for being under the influence of a controlled substance or drug and such person is delivered to a facility or hospital for treatment and no further proceedings are desirable.
- (c) Any record of arrest of a person released pursuant to paragraphs (1) and (3) of subdivision (b) shall include a record of release. Thereafter, such arrest shall not be deemed an arrest, but a detention only. Leg. H. 1872, 1935 ch. 817, 1957 ch. 2147, 1969 ch. 1259, 1970 ch. 1603, 1971 ch. 438, 1984 ch. 1635.

**1531. [Breaking Doors or Windows to Execute Warrant.]**

The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute the warrant, if, after notice of his authority and purpose, he is refused admittance. Leg. H. 1872.

## CALIFORNIA VEHICLE CODE

### **17000. [Definitions.]**

As used in this chapter:

- (a) "Employee" includes an officer, employee, or servant, whether or not compensated, but does not include an independent contractor.
- (b) "Employment" includes office or employment.
- (c) "Public entity" includes the state, the Regents of the University of California, a county, city, district, public authority, public agency, and any other political subdivision or public corporation in the state. Leg. H. (amended by Stats. 1965, Ch. 1527.)

### **17001. [Liability of Public Entity.]**

A public entity is liable for death or injury to person or property proximately caused by a negligent or wrongful act or omission in the operation of any motor vehicle by an employee of the public entity acting within the scope of his employment. Leg. H. (amended by Stats. 1965, Ch. 1527.)

### **17002. [Extent of Public Liability.]**

Subject to Article 4 (commencing with Section 825) of Chapter 1 of Part 2 of Division 3.6 of Title 1 of the Government Code, a public entity is liable for death or injury to person or property to the same extent as a private person under the provisions of Article 2 (commencing with Section 17150) of this chapter. Leg. H. (repealed and added by Stats. 1965, Ch. 1527.)

### **17004. [Liability of Public Employee While Responding to Emergency Call.]**

A public employee is not liable for civil damages on account of personal injury to or death of any person or damage to property resulting from the operation, in the line of duty, of an authorized emergency vehicle while responding to an emergency call or when in the immediate pursuit of an actual or suspected violator of the law, or when responding to but not upon returning from a fire alarm or other emergency call. Leg. H. (amended by Stats. 1965, Ch. 1527.)

### **17004.5. [Private Fire Department-Same Immunity From Liability as Public Entity.]**

Any private firm or corporation, or employee thereof, which maintains a fire department and has entered into a mutual aid agreement pursuant to Section 13855, 14095, or 14455.5 of the Health and Safety Code shall have the same immunity from liability for civil damages on account of personal injury to or death of any person or damage to property resulting from the operation of an authorized emergency vehicle while responding to, but not upon returning from, a fire alarm or other emergency call as is provided by law for the district and its employees with which the firm or corporation has entered into a mutual aid agreement, except when the act or omission

causing the personal injury to or death of any person or damage to property occurs on property under the control of such firm or corporation. Leg. H. (added by Stats. 1961, Ch. 1880.)

**17004.7. [Liability in Conduct of Vehicular Pursuit; Standards for Conduct.]**

- (a) The immunity provided by this section is in addition to any other immunity provided by law. The adoption of a policy by a public agency pursuant to this section is discretionary.
- (b) A public agency employing peace officers which adopts a written policy on vehicular pursuits complying with subdivision (c) is immune from liability for civil damages for personal injury to or death of any person or damage to property resulting from the collision of a vehicle being operated by an actual or suspected violator of the law who is being, has been, or believes he or she is being or has been, pursued by a peace officer employed by the public entity in a motor vehicle.
- (c) If the public entity has adopted a policy for the safe conduct of vehicular pursuits by peace officers, it shall meet all of the following minimum standards:
  - (1) It provides that, if available, there be supervisory control of the pursuit.
  - (2) It provides procedures for designating the primary pursuit vehicle and for determining the total number of vehicles to be permitted to participate at one time in the pursuit.
  - (3) It provides procedures for coordinating operations with other jurisdictions.
  - (4) It provides guidelines for determining when the interests of public safety and effective law enforcement justify a vehicular pursuit and when a vehicular pursuit should not be initiated or should be terminated.
- (d) A determination of whether a policy adopted pursuant to subdivision (c) complies with that subdivision is a question of law for the court. Leg. H. (added by Stats. 1987, Ch. 1205, Sec. 1.)

**21055. [Authorized Emergency Vehicles.]**

The driver of an authorized emergency vehicle is exempt from Chapter 2 (commencing with Section 21350), Chapter 3 (commencing with Section 21650), Chapter 4 (commencing with Section 21800), Chapter 5 (commencing with Section 21950), Chapter 6 (commencing with 22100), Chapter 7 (commencing with Section 22348), Chapter 8 (commencing with Section 22450), Chapter 9 (commencing with Section 22500), and Chapter 10 (commencing with Section 22650) of this division, and Article 3 (commencing with Section 38305) and Article 4 (commencing with Section 38312) of Chapter 5 of Division 16.5, under all of the following conditions:

- (a) If the vehicle is being driven in response to an emergency call or while engaged in rescue operations or is being used in the immediate pursuit of an actual or suspected violator of the law or is responding to, but not returning from, a fire alarm, except that fire

department vehicles are exempt whether directly responding to an emergency call or operated from one place to another as rendered desirable or necessary by reason of an emergency call and operated to the scene of the emergency or operated from one fire station to another or to some other location by reason of the emergency call.

- (b) If the driver of the vehicle sounds a siren as may be reasonably necessary and the vehicle displays a lighted red lamp visible from the front as a warning to other drivers and pedestrians.

A siren shall not be sounded by an authorized emergency vehicle except when required under this section. Leg. H. (amended by Stats. 1977, Ch. 1017.)

**21056. [Duty of Authorized Emergency Vehicle Driver.]**

Section 21055 does not relieve the driver of a vehicle from the duty to drive with due regard for the safety of all persons using the highway, nor protect him from the consequences of an arbitrary exercise of the privileges granted in that section. Leg. H. (enacted by Stats. 1959, Ch. 3.)

**21057. [Prohibition Against Use of Siren or Illegal Speed by Police or Traffic Officer; Exceptions.]**

Every police and traffic officer is hereby expressly prohibited from using a siren or driving at an illegal speed when serving as an escort of any vehicle, except when the escort or conveyance is furnished for the preservation of life or when expediting movements of supplies and personnel for any federal, state, or local governmental agency during a national emergency, or state of war emergency, or state of emergency, or local emergency as defined in Section 8558 of the Government Code. Leg. H. (amended by Stats. 1971, Ch. 131.)

**21058. [Physician's Emergency Exemption From Speed Laws.]**

A physician traveling in response to an emergency call shall be exempt from the provisions of Sections 22351 and 22352 if the vehicle so used by him displays an insignia approved by the department indicating that the vehicle is owned by a licensed physician. The provisions of this section do not relieve the driver of the vehicle from the duty to drive with due regard for the safety of all persons using the highway, nor protect the driver from the consequences of an arbitrary exercise of the privileges of this section. Leg. H. (Amended by Stats. 1959, Ch. 1996.)

**21059. [Garbage Trucks; Exemptions From Passing and Parking Laws.]**

Sections 21211, 21650, 21660, 22502, 22504, and subdivision (h) of Section 22500 do not apply to the operation of a rubbish or garbage truck while actually engaged in the collection of rubbish or garbage within a business or residence district, if the front turn signal lamps at each side of the vehicle are being flashed simultaneously and the rear turn signal lamps at each side of the vehicle are being flashed simultaneously.

This provision shall not apply when the vehicle is being driven to and from such work, nor does it relieve the driver of such a vehicle from the duty to drive with due regard for the safety of all

persons using the highway or protect him or her from the consequences of an arbitrary exercise of the privilege granted. Leg. H. (added by Stats. 1965, Ch. 490.)

**21060. [Street Sweeping and Watering Vehicles; Exemptions.]**

Between the hours of 1 a.m. and 5 a.m., Sections 21650, 21660, 22502, 22504, and subdivision (h) of Section 22500 do not apply to the operation of a street sweeper vehicle or watering vehicle, operated by a local authority, while the vehicle is actually sweeping streets or watering landscaping or vegetation within a business or residence district. The exemption is not applicable unless the turn signal lamps at each side of the front and rear of the street sweeper vehicle or watering vehicle are being flashed simultaneously.

This provision shall not apply when the vehicle is being driven to and from such work, nor does it relieve the driver of such a vehicle from the duty to drive with due regard for the safety of all persons using the highway or protect the driver from the consequences of an arbitrary exercise of the privilege granted. Leg. H. (added by Stats. 1979, Ch. 469.)

**21806. [Yielding Right-of-Way to Authorized Emergency Vehicles.]**

Upon the immediate approach of an authorized emergency vehicle which is sounding a siren and which has at least one lighted lamp exhibiting red light that is visible, under normal atmospheric conditions, from a distance of 1,000 feet to the front of the vehicle, the surrounding traffic shall, except as otherwise directed by a traffic officer, do the following:

- (a)
  - (1) Except as required under paragraph (2), the driver of every other vehicle shall yield the right-of-way and shall immediately drive to the right-hand edge or curb of the highway, clear of any intersection, and thereupon shall stop and remain stopped until the authorized emergency vehicle has passed.
  - (2) A person driving a vehicle in an exclusive or preferential use lane shall exit that lane immediately upon determining that the exit can be accomplished with reasonable safety.
- (b) The operator of every streetcar shall immediately stop the streetcar, clear of any intersection, and remain stopped until the authorized emergency vehicle has passed.
- (c) All pedestrians upon the highway shall proceed to the nearest curb or place of safety and remain there until the authorized emergency vehicle has passed. Leg. H. (amended by Stats. 1988, Ch. 623, Sec. 7; Stats. 1996, Ch. 1154.)

**21807. [Authorized Emergency Vehicle Driver's Duty of Care.]**

The provisions of Section 21806 shall not operate to relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons and property. Leg. H. (added by Stats. 1961, Ch. 653.)

## CALIFORNIA CIVIL CODE

### **846. [Owner's Liability to Recreational Users.]**

An owner of any estate or any other interest in real property, whether possessory or nonpossessory, owes no duty of care to keep the premises safe for entry or use by others for any recreational purpose or to give any warning of hazardous conditions, uses of, structures, or activities on such premises to persons entering for such purpose, except as provided in this section.

A "recreational purpose," as used in this section, includes such activities as fishing, hunting, camping, water sports, hiking, spelunking, sport parachuting, riding, including animal riding, snowmobiling, and all other types of vehicular riding, rock collecting, sightseeing, picnicking, nature study, nature contacting, recreational gardening, gleaning, hang gliding, winter sports, and viewing or enjoying historical, archaeological, scenic, natural, or scientific sites.

An owner of any estate or any other interest in real property, whether possessory or nonpossessory, who gives permission to another for entry or use for the above purpose upon the premises does not thereby (a) extend any assurance that the premises are safe for such purpose, or (b) constitute the person to whom permission has been granted the legal status of an invitee or licensee to whom a duty of care is owed, or (c) assume responsibility for or incur liability for any injury to person or property caused by any act of such person to whom permission has been granted except as provided in this section.

This section does not limit the liability which otherwise exists (a) for willful or malicious failure to guard or warn against a dangerous condition, use, structure or activity; or (b) for injury suffered in any case where permission to enter for the above purpose was granted for a consideration other than the consideration, if any, paid to said landowner by the state, or where consideration has been received from others for the same purpose; or (c) to any persons who are expressly invited rather than merely permitted to come upon the premises by the landowner.

Nothing in this section creates a duty of care or ground of liability for injury to person or property. Leg. H. 1963 ch. 1759, 1970 ch. 807, 1971 ch. 1028, 1972 ch. 1200, 1976 ch. 1303, 1978 ch. 86, 1979 ch. 150, 1980 ch. 408, 1988 ch. 129.

#### **846.1 [Public Entry for Recreational Purposes; Injury or Damage; Owner or Public Entity as Defendant; Claim for Reasonable Attorney's Fees.]**

- (a) Except as provided in subdivision (c), an owner of any estate or interest in real property, whether possessory or nonpossessory, who gives permission to the public for entry on or use of the real property pursuant to an agreement with a public or nonprofit agency for purposes of recreational trail use, and is a defendant in a civil action brought by, or on behalf of, a person who is allegedly injured or allegedly suffers damages on the real property, may present a claim to the State Board of Control for reasonable attorney's fees incurred in this civil action if any of the following occurs:

- (1) The court has dismissed the civil action upon a demurrer or motion for summary judgment made by the owner or upon its own motion for lack of prosecution.
  - (2) The action was dismissed by the plaintiff without any payment from the owner.
  - (3) The owner prevails in the civil action.
- (b) Except as provided in subdivision (c), a public entity, as defined in Section 831.5 of the Government Code, that gives permission to the public for entry on or use of real property for a recreational purpose, as defined in Section 846, and is a defendant in a civil action brought by, or on behalf of, a person who is allegedly injured or allegedly suffers damages on the real property, may present a claim to the State Board of Control for reasonable attorney's fees incurred in this civil action if any of the following occurs:
- (1) The court has dismissed the civil action upon a demurrer or motion for summary judgment made by this public entity or upon its own motion for lack of prosecution.
  - (2) The action was dismissed by the plaintiff without any payment from the public entity.
  - (3) The public entity prevails in the civil action.
- (c) An owner of any estate or interest in real property, whether possessory or nonpossessory, or a public entity, as defined in Section 831.5 of the Government Code, that gives permission to the public for entry on, or use of, the real property for a recreational purpose, as defined in Section 846, pursuant to an agreement with a public or nonprofit agency, and is a defendant in a civil action brought by, or on behalf of, a person who seeks to restrict, prevent, or delay public use of that property, may present a claim to the State Board of Control for reasonable attorney's fees incurred in the civil action if any of the following occurs:
- (1) The court has dismissed the civil action upon a demurrer or motion for summary judgment made by the owner or public entity or upon its own motion for lack of prosecution.
  - (2) The action was dismissed by the plaintiff without any payment from the owner or public entity.
  - (3) The owner or public entity prevails in the civil action.
- (d) The State Board of Control shall allow the claim if the requirements of this section are met. The claim shall be paid from an appropriation to be made for that purpose. Reasonable attorneys' fees, for purposes of this section, may not exceed an hourly rate greater than the rate charged by the Attorney General at the time the award is made, and may not exceed an aggregate amount of twenty-five thousand dollars (\$25,000). This subdivision shall not apply if a public entity has provided for the defense of this civil action pursuant to Section 995 of the Government Code. This subdivision shall also not

apply if an owner or public entity has been provided a legal defense by the state pursuant to any contract or other legal obligation.

- (e) The total of claims allowed by the board pursuant to this section shall not exceed two hundred thousand dollars (\$200,000) per fiscal year. Leg H. (added Stats. 1996, Ch. 932; amended Stats. 1999, Ch. 775.)

**847. [Immunity of Property Owner From Liability to Person Killed or Injured on Property While Committing Felony.]**

- (a) An owner, including, but not limited to, a public entity, as defined in Section 811.2 of the Government Code, of any estate or any other interest in real property, whether possessory or nonpossessory, shall not be liable to any person for any injury or death that occurs upon that property during the course of or after the commission of any of the felonies set forth in subdivision (b) by the injured or deceased person.
- (b) The felonies to which the provisions of this section apply are the following: (1) Murder or voluntary manslaughter; (2) mayhem; (3) rape; (4) sodomy by force, violence, duress, menace, or threat of great bodily harm; (5) oral copulation by force, violence, duress, menace, or threat of great bodily harm; (6) lewd acts on a child under the age of 14 years; (7) any felony punishable by death or imprisonment in the state prison for life; (8) any other felony in which the defendant inflicts great bodily injury on any person, other than an accomplice, or any felony in which the defendant uses a firearm; (9) attempted murder; (10) assault with intent to commit rape or robbery; (11) assault with a deadly weapon or instrument on a peace officer; (12) assault by a life prisoner on a non-inmate; (13) assault with a deadly weapon by an inmate; (14) arson; (15) exploding a destructive device or any explosive with intent to injure; (16) exploding a destructive device or any explosive causing great bodily injury; (17) exploding a destructive device or any explosive with intent to murder; (18) burglary; (19) robbery; (20) kidnapping; (21) taking of a hostage by an inmate of a state prison; (22) any felony in which the defendant personally used a dangerous or deadly weapon; (23) selling, furnishing, administering, or providing heroin, cocaine, or phencyclidine (PCP) to a minor; (24) grand theft as defined in Sections 487 and 487a of the Penal Code; and (25) any attempt to commit a crime listed in this subdivision other than an assault.
- (c) The limitation on liability conferred by this section arises at the moment the injured or deceased person commences the felony or attempted felony and extends to the moment the injured or deceased person is no longer upon the property.
- (d) The limitation on liability conferred by this section applies only when the injured or deceased person's conduct in furtherance of the commission of a felony specified in subdivision (b) proximately or legally causes the injury or death.
- (e) The limitation on liability conferred by this section arises only upon the charge of a felony listed in subdivision (b) and the subsequent conviction of that felony or a lesser included felony or misdemeanor arising from a charge of a felony listed in subdivision (b). During the pendency of any such criminal action, a civil action alleging this liability shall be abated and the statute of limitations on the civil cause of action shall be tolled.

- (f) This section does not limit the liability of an owner or an owner's agent which otherwise exists for willful, wanton, or criminal conduct, or for willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity.
- (g) The limitation on liability provided by this section shall be in addition to any other available defense. Leg. H. 1985 ch. 1541.

**1714. [Liability for Negligence or Tort-Injuries as Result of Furnishing Alcoholic Beverages.]**

- (a) Every one is responsible, not only for the result of his willful acts, but also for an injury occasioned to another by his want of ordinary care or skill in the management of his property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself. The extent of liability in such cases is defined by the Title on Compensatory Relief.
- (b) It is the intent of the Legislature to abrogate the holdings in cases such as VESELY V. SAGER (5 Cal. 3d 153), BERNHARD V. HARRAH'S CLUB (16 Cal. 3d 313), and COULTER V. SUPERIOR COURT (21 Cal.3d 144) and to reinstate the prior judicial interpretation of this section as it relates to proximate cause for injuries incurred as a result of furnishing alcoholic beverages to an intoxicated person, namely that the furnishing of alcoholic beverages is not the proximate cause of injuries resulting from intoxication, but rather the consumption of alcoholic beverages is the proximate cause of injuries inflicted upon another by an intoxicated person.
- (c) No social host who furnishes alcoholic beverages to any person shall be held legally accountable for damages suffered by such person, or for injury to the person or property of, or death of, any third person, resulting from the consumption of such beverages. Leg. H. 1872, 1978 ch. 929.

**1714.1. [Liability of Parent or Guardian for Torts of Minor.]**

- (a) Any act of willful misconduct of a minor which results in injury or death to another person or in any injury to the property of another shall be imputed to the parent or guardian having custody and control of the minor for all purposes of civil damages, and the parent or guardian having custody and control shall be jointly and severally liable with the minor for any damages resulting from the willful misconduct.

Subject to the provisions of subdivision (c), the joint and several liability of the parent or guardian having custody and control of a minor under this subdivision shall not exceed [1] twenty-five thousand dollars [2] (\$25,000) for each tort of the minor, and in the case of injury to a person, imputed liability shall be further limited to medical, dental and hospital expenses incurred by the injured person, not to exceed [3] twenty-five thousand dollars [4] (\$25,000). The liability imposed by this section is in addition to any liability now imposed by law.

- (b) Any act of willful misconduct of a minor which results in the defacement of property of another with paint or a similar substance shall be imputed to the parent or guardian having custody and control of the minor for all purposes of civil damages, including court costs, and attorney's fees, to the prevailing party, and the parent or guardian having custody and control shall be jointly and severally liable with the minor for any damages resulting from the willful misconduct, not to exceed [5] twenty-five thousand dollars [6] (\$25,000), except as provided in subdivision (c), for each tort of the minor.
- (c) The amounts listed in subdivisions (a) and (b) shall be adjusted every two years by the Judicial Council to reflect any increases in the cost of living in California, as indicated by the annual average of the California Consumer Price Index. The Judicial Council shall round this adjusted amount up or down to the nearest hundred dollars. On or before January 1, 1997, and on or before January 1 of each odd-numbered year thereafter, the Judicial Council shall compute and publish the amounts listed in subdivisions (a) and (b), as adjusted according to this subdivision.
- (d) The maximum liability imposed by this section is the maximum liability authorized under this section at the time that the act of willful misconduct by a minor was committed.
- (e) Nothing in this section shall impose liability on an insurer for a loss caused by the willful act of the insured for purposes of Section 533 of the Insurance Code. An insurer shall not be liable for the conduct imputed to a parent or guardian by this section for any amount in excess of ten thousand dollars (\$10,000). Leg. H. 1955 ch. 820, 1965 ch. 407, 1970 ch. 640, 1972 ch. 442, 1974 ch. 340, 1979 ch. 127, 1983 ch. 981, 1994 chs. 568, 909.

**1714.2. [Liability of Person Rendering Cardiopulmonary Resuscitation.]**

- (a) In order to encourage citizens to participate in emergency medical services training programs and to render emergency medical services to fellow citizens, no person who has completed a basic cardiopulmonary resuscitation course which complies with the standards adopted by the American Heart Association or the American Red Cross for cardiopulmonary resuscitation and emergency cardiac care, and who, in good faith, renders emergency cardiopulmonary resuscitation at the scene of an emergency, shall be liable for any civil damages as a result of any acts or omissions by such person rendering the emergency care.
- (b) This section shall not be construed to grant immunity from civil damages to any person whose conduct in rendering such emergency care constitutes gross negligence.
- (c) In order to encourage local agencies and other organizations to train citizens in cardiopulmonary resuscitation techniques, no local agency, entity of state or local government, or other public or private organization which sponsors, authorizes, supports, finances, or supervises the training of citizens in cardiopulmonary resuscitation shall be liable for any civil damages alleged to result from such training programs.
- (d) In order to encourage qualified individuals to instruct citizens in cardiopulmonary resuscitation, no person who is certified to instruct in cardiopulmonary resuscitation by either the American Heart Association or the American Red Cross shall be liable for any

civil damages alleged to result from the acts or omissions of an individual who received instruction on cardiopulmonary resuscitation by that certified instructor.

- (e) This section shall not be construed to grant immunity from civil damages to any person who renders such emergency care to an individual with the expectation of receiving compensation from the individual for providing the emergency care. Leg. H. 1977 ch. 595.

#### **1714.21 [Liability of Person Using a Defibrillator.]**

- (a) For purposes of this section, the following definitions shall apply:
  - (1) "AED" or "defibrillator" means an automated or automatic external defibrillator.
  - (2) "CPR" means cardiopulmonary resuscitation.
- (b) A person who has completed a basic CPR and AED use course that complies with regulations adopted by the Emergency Medical Services (EMS) Authority and the standards of the American Heart Association or the American Red Cross for CPR and AED use, and who, in good faith and not for compensation, renders emergency care or treatment by the use of an AED at the scene of an emergency shall not be liable for any civil damages resulting from any acts or omissions in rendering the emergency care.
- (c) A person or entity who provides CPR and AED training to a person who renders emergency care pursuant to subdivision (b) shall not be liable for any civil damages resulting from any acts or omissions of the person rendering the emergency care.
- (d) A physician who is involved with the placement of an AED and any person or entity responsible for the site where an AED is located shall not be liable for any civil damages resulting from any acts or omissions of a person who renders emergency care pursuant to subdivision (b) if that physician, person, or entity has complied with all requirements of Section 1797.196 of the Health and Safety Code that apply to that physician, person, or entity.
- (e) The protections specified in this section shall not apply in the case of personal injury or wrongful death that results from the gross negligence or willful or wanton misconduct of the person who renders emergency care or treatment by the use of an AED.
- (f) Nothing in this section shall relieve a manufacturer, designer, developer, distributor, installer, or supplier of an AED or defibrillator of any liability under any applicable statute or rule of law. Leg. H. (added Stat. 1999, Ch. 163.)

#### **1714.3. [Liability of Parent for Injury Caused by Discharge of Firearm by Minor Under 18 Years.]**

Civil liability for any injury to the person or property of another proximately caused by the discharge of a firearm by a minor under the age of 18 years shall be imputed to a parent or guardian having custody and control of the minor for all purposes of civil damages, and such

parent or guardian shall be jointly and severally liable with such minor for any damages resulting from such act, if such parent or guardian either permitted the minor to have the firearm or left the firearm in a place accessible to the minor.

The liability imposed by this section is in addition to any liability otherwise imposed by law. However, no person, or group of persons collectively, shall incur liability under this section in any amount exceeding thirty thousand dollars (\$30,000) for injury to or death of one person as a result of any one occurrence or, subject to the limit as to one person, exceeding sixty thousand dollars (\$60,000) for injury to or death of all persons as a result of any one such occurrence. Leg. H. 1970 ch. 843, 1977 ch. 87, 1986 ch. 1099.

#### **1714.5. [Liability for Injuries Sustained in Emergency Facilities.]**

There shall be no liability on the part of one, including the State of California, county, city and county, city or any other political subdivision of the State of California, who owns or maintains any building or premises which have been designated as a shelter from destructive operations or attacks by enemies of the United States by any disaster council or any public office, body, or officer of this state or of the United States, or which have been designated or are used as mass care centers, first aid stations, temporary hospital annexes, or as other necessary facilities for mitigating the effects of a natural, manmade, or war-caused emergency, for any injuries arising out of the use thereof for such purposes sustained by any person while in or upon said building or premises as a result of the condition of said building or premises or as a result of any act or omission, or in any way arising from the designation of such premises as a shelter, or the designation or use thereof as a mass care center, first aid station, temporary hospital annex, or other necessary facility for emergency purposes, except a willful act, of such owner or occupant or his servants, agents or employees when such person has entered or gone upon or into said building or premises for the purpose of seeking refuge, treatment, care, or assistance therein during destructive operations or attacks by enemies of the United States or during tests ordered by lawful authority or during a natural or manmade emergency.

No disaster service worker who is performing disaster services ordered by lawful authority during a state of war emergency, a state of emergency, or a local emergency, as such emergencies are defined in Section 8558 of the Government Code, shall be liable for civil damages on account of personal injury to or death of any person or damage to property resulting from any act or omission in the line of duty, except one that is willful. Leg. H. 1943 ch. 463, effective May 15, 1943, 1951 ch. 247, effective May 3, 1951, 1955 ch. 1777, 1971 ch. 38, 1974 ch. 1158.

## **CALIFORNIA CODE OF CIVIL PROCEDURE**

### **335 [2 year Statute of Limitations]**

The periods prescribed for the commencement of actions other than for the recovery of real property, are as follows:

#### **335.1**

Within two years: An action for assault, battery, or injury to, or for the death of, an individual caused by the wrongful act or neglect of another.