

ASSEMBLY BILL

No. 836

Introduced by Assembly Members Rendon and Low

February 26, 2015

An act to add and repeal Chapter 18 (commencing with Section 9400) of Division 3 of the Business and Professions Code, relating to tour guides.

LEGISLATIVE COUNSEL'S DIGEST

AB 836, as introduced, Rendon. Tour guides: regulation.

Existing law provides for the licensure and regulation of various professionals, including, but not limited to, advertisers, attorneys, interior designers, barbers, and cosmetologists.

This bill would provide for the licensure and regulation of tour guides by the California Tour Guide Council and provide for the creation of the council as a nonprofit organization, as specified. The bill would require applicants for certification, among other things, to be 21 years of age or older, meet specified educational criteria, pay fees required by the council, and provide fingerprints for submission to the Department of Justice for a criminal background check. The act would require the department to review specified information and provide fitness determinations and other specified information to the council.

This bill would allow the organization to take disciplinary action against certificate holders or applicants, as specified. The bill would make it an unfair business practice for an uncertified person to state, advertise, or represent that he or she is a certified tour guide, among other things, or for a tour guide business to provide tour guiding in California that is not performed by a tour guide professional to a group of nine or more consumers.

This bill would prohibit a city, county, or city and county from enacting certain ordinances regulating the practice of tour guiding by a certificate holder, as specified.

The bill would repeal these provisions on January 1, 2018.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

1 SECTION 1. It is the intent of the Legislature that this act
2 create a voluntary certification for the tour guide profession that
3 will enable consumers to easily identify credible, certified tour
4 guides, assure that those certified tour guides have completed
5 sufficient training and education at approved schools, phase in
6 increased education and training standards consistent with other
7 states, assure that the profession of tour guides and practice of tour
8 guiding cannot be used as a subterfuge for disorderly conduct, and
9 provide for a self-funded nonprofit oversight body to approve
10 certification and education requirements for tour guide
11 professionals.

12 SEC. 2. Chapter 18 (commencing with Section 9400) is added
13 to Division 3 of the Business and Professions Code, to read:

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16

CHAPTER 18. CALIFORNIA TOUR GUIDE ACT

17 9400. This chapter shall be known and may be cited as the
18 California Tour Guide Act.

19 9401. For purposes of this chapter, the following terms have
20 the following meanings:

21 (a) "Approved school" or "approved tour guide school" means
22 a facility that is approved by the council and meets minimum
23 standards for training and curriculum in California tour guiding
24 and related subjects and meets any of the following requirements:

- 25 (1) Approval by the Bureau for Private Postsecondary Education.
- 26 (2) Approval by the Department of Consumer Affairs.
- 27 (3) Accreditation by the Accrediting Commission for Senior
28 Colleges and Universities or the Accrediting Commission for
29 Community and Junior Colleges of the Western Association of
30 Schools and Colleges and that is any of the following:

31 (A) A public institution.

1 (B) An institution incorporated and lawfully operating as a
2 nonprofit public benefit corporation pursuant to Part 2
3 (commencing with Section 5110) of Division 2 of Title 1 of the
4 Corporations Code, and that is not managed by any entity for profit.

5 (C) A for-profit institution.

6 (4) A college or university of the state higher education system,
7 as defined in Section 100850 of the Education Code.

8 (5) A school requiring equal or greater training than the
9 requirements established by this chapter and is recognized by the
10 corresponding agency in another state or accredited by an agency
11 recognized by the United States Department of Education.

12 (b) "Certificate" means a valid certificate issued by the council
13 pursuant to this chapter.

14 (c) "Compensation" means anything of value, including, but
15 not limited to, a payment, loan, advance, donation, contribution,
16 deposit, or gift of money.

17 (d) "Council" means the California Tour Guide Council created
18 pursuant to this chapter, which shall be a nonprofit organization
19 exempt from taxation under Section 501(c)(3) of Title 26 of the
20 United States Code, and may commence activities pursuant to this
21 chapter once the council has submitted a request to the Internal
22 Revenue Service seeking this exemption.

23 (e) "Tour guide business" means a business or establishment
24 that provides tour guides in California for compensation.

25 (f) "Tour guide professional" or "tour guide" means a person
26 who is certified by the council pursuant to this chapter and who
27 practices tour guiding for compensation.

28 9402. (a) The California Tour Guide Council shall be created
29 and shall have the responsibilities and duties set forth in this
30 chapter. The council may take any reasonable actions necessary
31 to carry out the duties and responsibilities set forth in this chapter,
32 including, but not limited to, hiring staff and entering into contracts.

33 (b) The council shall be governed by a board of directors
34 comprised of the following members:

35 (1) Two members collectively selected by each professional
36 society, association, or other entity that chooses to participate in
37 the council and meets all of the following criteria:

38 (A) Is comprised of tour guide professionals.

39 (B) Has sustained a membership of at least 200 dues-paying
40 individuals in California for the last three years.

1 (C) Has bylaws that requires members to comply with a code
2 of ethics.

3 (2) One member collectively selected by each statewide
4 association of private postsecondary schools that chooses to
5 participate in the council and has member schools that have
6 together had at least 500 graduates in each of the previous three
7 years from tour guide programs that meet the approval standards
8 set forth in subdivision (a) of Section 9401.

9 (3) One member selected by the League of California Cities,
10 unless the league chooses not to exercise this right of selection.

11 (4) One member selected by the California State Association
12 of Counties, unless the association chooses not to exercise this
13 right of selection.

14 (5) One member selected by the Director of Consumer Affairs,
15 unless the department chooses not to exercise this right of selection.

16 (6) One member appointed by the Office of the Chancellor of
17 the California Community Colleges, unless that entity chooses not
18 to exercise this right of selection. The person appointed, if any,
19 shall not be part of any tour guide certificate or degree program.

20 (7) The council's bylaws shall establish a process for appointing
21 other professional directors as determined by the board.

22 (c) Board member terms shall be for four years.

23 (d) (1) The initial board of directors shall establish the council,
24 initiate the request for tax-exempt status from the Internal Revenue
25 Service, and solicit input from the tour guide community
26 concerning the operations of the council.

27 (2) The initial board of directors, in its discretion, may
28 immediately undertake to issue the certificates authorized by this
29 chapter after adopting the necessary bylaws or other rules, or may
30 establish by adoption of bylaws the permanent governing structure
31 prior to issuing certificates.

32 (e) The board of directors shall establish fees not to exceed the
33 reasonable cost of providing services and carrying out the board's
34 ongoing duties and responsibilities pursuant to this chapter, and
35 annually establish the initial and renewal fees for certificates.

36 (f) The meetings of the council shall be subject to the rules of
37 the Bagley-Keene Open Meeting Act (Article 9 (commencing with
38 Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of
39 the Government Code).

1 9404. The council shall issue a certificate to an individual
2 applicant who satisfies the requirements of this chapter or holds a
3 current and valid registration, certification, or license from any
4 other state whose licensure requirements meet or exceed those
5 defined within this chapter. If an applicant has received education
6 at a school that is not an approved school, the council shall have
7 the discretion to give credit for comparable academic work
8 completed by an applicant in a program outside of California.

9 9406. In order to obtain certification as a tour guide
10 professional, an applicant shall submit a written application and
11 provide the council with satisfactory evidence that he or she or
12 meets all of the following requirements:

13 (a) The applicant is 21 years of age or older.

14 (b) The applicant has successfully completed the curricula in
15 California tour guiding and related subjects totaling a minimum
16 of 24 hours that includes all of the following:

17 (1) A minimum of 8 hours as an intern actively engaging in the
18 field in California through a tour guide business approved by the
19 council.

20 (2) A minimum of 16 hours from approved schools.

21 (c) The applicant has passed a California tour guide competency
22 assessment examination that meets generally recognized principles
23 and standards and that is approved by the board. The successful
24 completion of this examination may have been accomplished before
25 the date the council is authorized by this chapter to begin issuing
26 certificates.

27 (d) All fees required by the council have been paid.

28 9408. A certificate issued pursuant to this chapter shall expire
29 after two years unless renewed in a manner prescribed by the
30 council. The council may provide for the late renewal of a
31 certificate.

32 9410. (a) The council shall have the responsibility to determine
33 whether the school from which an applicant has obtained the
34 education required by this chapter meets the requirements of this
35 chapter. If the council has any reason to question whether or not
36 the applicant received the education that is required by this chapter
37 from the school or schools that the applicant is claiming, the
38 council shall investigate the facts to determine whether the
39 applicant received the required education prior to issuing a
40 certificate.

1 (b) For purposes of this section and any other provision of this
2 chapter that authorizes the council to receive factual information
3 as a condition of taking action, the council may conduct oral
4 interviews of the applicant and others or conduct any investigation
5 the council deems necessary to establish that the information
6 received is accurate and satisfies the criteria established by this
7 chapter.

8 9412. (a) Before issuing a certificate to an applicant, or
9 designating a custodian of records, the council shall require the
10 applicant or the custodian of records candidate to submit fingerprint
11 images as directed by the council and in a form consistent with
12 the requirements of this section.

13 (b) The council shall submit the fingerprint images and related
14 information to the Department of Justice for the purpose of
15 obtaining information as to the existence and nature of a record of
16 state and federal level convictions and of state and federal level
17 arrests for which the Department of Justice establishes that the
18 applicant or candidate was released on bail or on his or her own
19 recognizance pending trial.

20 (c) Requests for federal level criminal offender record
21 information received by the Department of Justice pursuant to this
22 section shall be forwarded to the Federal Bureau of Investigation
23 by the Department of Justice. The Department of Justice shall
24 review the information returned from the Federal Bureau of
25 Investigation, and shall compile and disseminate a fitness
26 determination regarding the applicant or candidate to the council.
27 The Department of Justice shall provide information to the council
28 pursuant to subdivision (p) of Section 11105 of the Penal Code.

29 (d) The Department of Justice and the council shall charge a
30 fee not to exceed the reasonable cost of processing the request for
31 state and federal level criminal offender record information.

32 (e) The council shall request subsequent arrest notification
33 service from the Department of Justice, as provided under Section
34 11105.2 of the Penal Code, for all applicants for certification or
35 custodian of records candidates for whom fingerprint images and
36 related information are submitted to conduct a search for state and
37 federal level criminal offender record information.

38 9413. The council may require all employees, volunteers, and
39 board members to undergo the background investigation process
40 described in Section 9412.

1 9415. It is a violation of this chapter and grounds for discipline
2 or denial of an application for a certificate for a certificate holder
3 or applicant to commit any of the following acts:

4 (a) Unprofessional conduct.

5 (b) Procuring a certificate by fraud, misrepresentation, or
6 mistake.

7 (c) Impersonating an applicant or acting as a proxy for an
8 applicant in any examination referred to in this chapter for the
9 issuance of a certificate.

10 (d) Impersonating a certificate holder, or permitting or allowing
11 a noncertified person to use a certificate.

12 (e) Violating or attempting to violate, directly or indirectly, or
13 assisting in or abetting the violation of, or conspiring to violate,
14 any provision of this chapter or any rule or bylaw adopted by the
15 council.

16 (f) Committing any fraudulent, dishonest, or corrupt act that is
17 substantially related to the qualifications or duties of a certificate
18 holder.

19 (g) Committing any act punishable as a sexually related crime.

20 (h) Committing any act that results in denial of licensure,
21 revocation, suspension, restriction, citation, or any other
22 disciplinary action against an applicant or certificate holder by
23 another state or territory of the United States, by any other
24 government agency, or by another California health care
25 professional licensing board. A certified copy of the decision,
26 order, judgment, or citation shall be conclusive evidence of these
27 actions.

28 (i) Being convicted of any felony or misdemeanor that is
29 substantially related to the qualifications, functions, or duties of a
30 certificate holder. A record of the conviction shall be conclusive
31 evidence of the crime.

32 9416. (a) The council may discipline a certificate holder by
33 any, or a combination, of the following methods:

34 (1) Placing the certificate holder on probation.

35 (2) Suspending the certificate and the rights conferred by this
36 chapter on a certificate holder for a period not to exceed one year.

37 (3) Revoking the certificate.

38 (4) Suspending or staying the disciplinary order, or portions of
39 it, with or without conditions.

1 (5) Taking other action as the council deems proper, as
2 authorized by this chapter or the council’s bylaws.

3 (b) The council may issue an initial certificate on probation,
4 with specific terms and conditions, to any applicant.

5 (c) (1) Notwithstanding any other law, if the council receives
6 notice that a certificate holder has been arrested and charges have
7 been filed by the appropriate prosecuting agency against the
8 certificate holder alleging a violation of subdivision (b) of Section
9 647 of the Penal Code or any other offense described in subdivision
10 (g) of Section 9415, the council shall take all of the following
11 actions:

12 (A) Immediately suspend, on an interim basis, the certificate of
13 that certificate holder.

14 (B) Within 10 business days, notify the certificate holder at the
15 address last filed with the council that the certificate has been
16 suspended and the reason for the suspension.

17 (C) Within 10 business days, notify any business that the
18 council’s records list as employing the certificate holder that the
19 certificate has been suspended.

20 (2) Upon notice to the council that the charges described in
21 paragraph (1) have resulted in a conviction, the suspended
22 certificate shall become subject to permanent revocation. The
23 council shall provide notice to the certificate holder within 10
24 business days that it has evidence of a valid record of conviction
25 and that the certificate will be revoked unless the certificate holder
26 provides evidence within 15 days from the mailing date of the
27 notice that the conviction is either invalid or that the information
28 is otherwise erroneous.

29 (3) Upon notice that the charges described in paragraph (1) have
30 resulted in an acquittal or have otherwise been dismissed prior to
31 conviction, the council shall immediately reinstate the certificate
32 and notify the certificate holder and any business that received
33 notice pursuant to subparagraph (C) of paragraph (1) of the
34 reinstatement within 10 business days.

35 9417. (a) An applicant for a certificate shall not be denied a
36 certificate, and a certificate holder shall not be disciplined pursuant
37 to this chapter, except according to procedures that satisfy the
38 requirements of this section. Denial or discipline that is not in
39 accord with this section or subdivision (c) of Section 9416 shall
40 be void and without effect.

1 (b) Any denial or discipline shall be decided upon and imposed
2 in good faith and in a fair and reasonable manner. Any procedure
3 that conforms to the requirements of subdivision (c) is fair and
4 reasonable, but a court may also find other procedures to be fair
5 and reasonable when the full circumstances of the denial or
6 discipline are considered.

7 (c) A procedure is fair and reasonable if the procedures specified
8 in subdivision (c) of Section 9416 are followed or if all of the
9 following apply:

10 (1) The provisions of the procedure are set forth in the articles
11 or bylaws of the council or copies of those provisions are annually
12 sent to all of the members of the council.

13 (2) The procedure provides 15 business days prior notice of the
14 denial or discipline and the reasons for the denial or discipline.

15 (3) The procedure provides an opportunity for the applicant or
16 certificate holder to be heard, orally or in writing, not less than
17 five days before the effective date of the denial or discipline, by
18 a person or body authorized to decide whether the proposed denial
19 or discipline should go into effect.

20 (d) (1) Any notice required under this section may be given by
21 any method reasonably calculated to provide actual notice. Any
22 notice given by mail shall be given by first-class or certified mail
23 sent to the last address of the applicant or certificate holder shown
24 on the council's records.

25 (2) It is the responsibility of the certificate holder or applicant
26 to notify the council of his or her home address, as well as the
27 address of any business establishment where he or she regularly
28 works as a tour guide professional, whether as an employee or as
29 an independent contractor.

30 (e) A certificate holder or applicant who is denied or disciplined
31 shall be liable for any charges, dues, assessments, and fees incurred
32 by, services or benefits actually rendered to, and obligations arising
33 from contract or otherwise of, the certificate holder or applicant
34 before the denial or discipline.

35 (f) Any action challenging a denial or discipline, including any
36 claim alleging defective notice, shall be commenced within one
37 year after the effective date of the denial or discipline. If the action
38 is successful, the court may order any relief, including
39 reinstatement, that it finds equitable under the circumstances.

1 (g) This section governs only the procedures for denial or
2 discipline decision and not the substantive grounds for the denial
3 or discipline. Denial or discipline based upon substantive grounds
4 that violates contractual or other rights of the applicant or certificate
5 holder, or is otherwise unlawful, is not made valid by compliance
6 with this section.

7 9419. (a) Upon the request of any law enforcement agency or
8 any other representative of a local government agency with
9 responsibility for regulating or administering a local ordinance
10 relating to California tour guide businesses, the council shall
11 provide information concerning a certificate holder, including, but
12 not limited to, any of the following:

- 13 (1) The current status of a certificate.
- 14 (2) Any history of disciplinary actions taken against the
15 certificate holder.
- 16 (3) The home and work addresses of the certificate holder.
- 17 (4) Any other information in the council’s possession that is
18 necessary to verify facts relevant to administering the local
19 ordinance.

20 (b) The council shall accept information provided by any law
21 enforcement agency or any other representative of a local
22 government agency with responsibility for regulating or
23 administering a local ordinance relating to California tour guide
24 businesses. The council shall have the responsibility to review any
25 information received and take any actions authorized by this
26 chapter that are warranted by that information.

27 9421. It is an unfair business practice for a person to hold
28 himself or herself out or to use the title of “certified tour guide”
29 or “tour guide professional,” or any other term, such as “licensed,”
30 “registered,” or “CTG” that implies or suggests that the person is
31 certified as a tour guide professional, unless that person currently
32 holds an active and valid certificate issued by the council pursuant
33 to this chapter.

34 9423. It is an unfair business practice for a tour guide business
35 to provide tour guiding in California that is not performed by a
36 tour guide professional to a group of nine or more consumers.

37 9425. The superior court of a county where a person acts as a
38 tour guide professional in violation of this chapter may, upon a
39 petition by any person, issue an injunction or other appropriate
40 order restraining the conduct. A proceeding under this section shall

1 be governed by Chapter 3 (commencing with Section 525) of Title
2 7 of Part 2 of the Code of Civil Procedure.

3 9427. (a) Except as otherwise provided in this section, a
4 certificate holder has the right, consistent with this chapter and the
5 qualifications established by his or her certification, to perform
6 tour guides in any city, county, or city and county in the state and
7 shall not be required to obtain any other license, permit, or other
8 authorization to engage in that practice.

9 (b) Notwithstanding any other law, a city, county, or city and
10 county shall not enact or enforce an ordinance that requires a
11 certificate holder to obtain any other license, permit, or other
12 authorization to perform tour guides consistent with the
13 qualifications established by the certificate holder's certification.

14 (c) This section does not preclude a city, county, or city and
15 county from requiring a tour guide business or establishment to
16 file copies or provide other evidence of a certificate held by a
17 person providing tour guide services at the business.

18 (d) A city, county, or city and county may charge a tour guide
19 business or establishment a business licensing fee sufficient to
20 cover the costs of the business licensing activities established by
21 a local ordinance pursuant to this section.

22 (e) This section does not prohibit a city, county, or city and
23 county from adopting land use and zoning requirements applicable
24 to tour guide businesses or establishments unless those
25 requirements differ from requirements uniformly applied to other
26 professional or personal services businesses.

27 (f) This section does not preclude a city, county, or city and
28 county from doing any of the following:

29 (1) Requiring an applicant for a business license to operate a
30 tour guide business or establishment to fill out an application that
31 requests relevant information.

32 (2) Making reasonable investigations into that information.

33 (3) Denying or restricting a business license if the applicant
34 provides materially false information.

35 (g) An owner or operator of a tour guide business or
36 establishment subject to subdivision (f) shall be responsible for
37 the conduct of all of the employees or independent contractors
38 working on the premises of the business.

39 (h) This section does not preclude a city, county, or city and
40 county from authorizing the suspension, revocation, or other

1 restriction of a license or permit issued to a tour guide
2 establishment or business if violations of this chapter or a local
3 ordinance occur on the premises of that establishment or business.

4 9429. This chapter does not restrict or limit in any way the
5 authority of a city, county, or city and county to adopt a local
6 ordinance governing any person who is not certified pursuant to
7 this chapter.

8 9431. This chapter does not affect the rights of any person
9 licensed by the state to practice or perform any functions or services
10 pursuant to that license.

11 9433. The Legislature finds and declares that due to important
12 health, safety, and welfare concerns that affect the entire state,
13 establishing a uniform standard of certification for tour guides
14 upon which consumers may rely to identify individuals who have
15 achieved specified levels of education, training, and skill is a matter
16 of statewide concern and not a municipal affair, as that term is
17 used in Section 5 of Article XI of the California Constitution.
18 Therefore, this chapter shall apply to all cities, counties, and cities
19 and counties, including charter cities and charter counties.

20 9440. This chapter shall remain in effect only until January 1,
21 2018, and as of that date is repealed.