

AMENDED IN ASSEMBLY APRIL 6, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 836**

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**Introduced by Assembly Members Rendon and Low**

February 26, 2015

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

LEGISLATIVE COUNSEL'S DIGEST

AB 836, as amended, 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~~, *California Travel and Tourism Commission*, as ~~specified~~ *specified, with certain exceptions*. 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~~, *commission*, 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~~, *commission*. *The bill would also authorize local governments to establish local tour guide certification programs and require the commission to certify applicants licensed through those programs.*



- 1 (a) “Approved school” or “approved tour guide school” means  
2 a facility that is approved by the ~~council~~ *commission* and meets  
3 minimum standards for training and curriculum in California tour  
4 guiding and related subjects and meets any of the following  
5 requirements:
- 6 (1) Approval by the Bureau for Private Postsecondary Education.
  - 7 (2) Approval by the Department of Consumer Affairs.
  - 8 (3) Accreditation by the Accrediting Commission for Senior  
9 Colleges and Universities or the Accrediting Commission for  
10 Community and Junior Colleges of the Western Association of  
11 Schools and Colleges and that is any of the following:
    - 12 (A) A public institution.
    - 13 (B) An institution incorporated and lawfully operating as a  
14 nonprofit public benefit corporation pursuant to Part 2  
15 (commencing with Section 5110) of Division 2 of Title 1 of the  
16 Corporations Code, and that is not managed by any entity for profit.
    - 17 (C) A for-profit institution.
    - 18 (4) A college or university of the state higher education system,  
19 as defined in Section 100850 of the Education Code.
    - 20 (5) A school requiring equal or greater training than the  
21 requirements established by this chapter and is recognized by the  
22 corresponding agency in another state or accredited by an agency  
23 recognized by the United States Department of Education.
  - 24 (b) “Certificate” means a valid certificate issued by the ~~council~~  
25 *commission* pursuant to this chapter.
  - 26 (c) “*Commission*” means the *California Travel and Tourism*  
27 *Commission established pursuant to Section 13995.40 of the*  
28 *Government Code*.
  - 29 (e)
  - 30 (d) “Compensation” means anything of value, including, but  
31 not limited to, a payment, loan, advance, donation, contribution,  
32 deposit, or gift of money.
  - 33 (d) ~~“Council” means the California Tour Guide Council created~~  
34 ~~pursuant to this chapter, which shall be a nonprofit organization~~  
35 ~~exempt from taxation under Section 501(c)(3) of Title 26 of the~~  
36 ~~United States Code, and may commence activities pursuant to this~~  
37 ~~chapter once the council has submitted a request to the Internal~~  
38 ~~Revenue Service seeking this exemption.~~
  - 39 (e) “Tour guide business” means a business or establishment  
40 that provides tour guides in California for compensation.

1 (f) “Tour guide professional” or “tour guide” means a person  
2 who is certified by the council *commission* pursuant to this chapter  
3 and who practices tour guiding for compensation.

4 ~~9402. (a) The California Tour Guide Council shall be created~~  
5 ~~and shall have the responsibilities and duties set forth in this~~  
6 ~~chapter. The council may take any reasonable actions necessary~~  
7 ~~to carry out the duties and responsibilities set forth in this chapter,~~  
8 ~~including, but not limited to, hiring staff and entering into contracts.~~

9 (b) ~~The council shall be governed by a board of directors~~  
10 ~~comprised of the following members:~~

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

14 (A) ~~Is comprised of tour guide professionals.~~

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

17 (C) ~~Has bylaws that requires members to comply with a code~~  
18 ~~of ethics.~~

19 (2) ~~One member collectively selected by each statewide~~  
20 ~~association of private postsecondary schools that chooses to~~  
21 ~~participate in the council and has member schools that have~~  
22 ~~together had at least 500 graduates in each of the previous three~~  
23 ~~years from tour guide programs that meet the approval standards~~  
24 ~~set forth in subdivision (a) of Section 9401.~~

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

27 (4) ~~One member selected by the California State Association~~  
28 ~~of Counties, unless the association chooses not to exercise this~~  
29 ~~right of selection.~~

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

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

36 (7) ~~The council’s bylaws shall establish a process for appointing~~  
37 ~~other professional directors as determined by the board.~~

38 (e) ~~Board member terms shall be for four years.~~

39 (d) (1) ~~The initial board of directors shall establish the council,~~  
40 ~~initiate the request for tax-exempt status from the Internal Revenue~~

1 Service, and solicit input from the tour guide community  
2 concerning the operations of the council.

3 (2) The initial board of directors, in its discretion, may  
4 immediately undertake to issue the certificates authorized by this  
5 chapter after adopting the necessary bylaws or other rules, or may  
6 establish by adoption of bylaws the permanent governing structure  
7 prior to issuing certificates.

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

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

16 9402. *The commission shall establish a tour guide certification  
17 program pursuant to this chapter, and shall provide for the  
18 promotion of certified tour guides to persons or organizations  
19 seeking to hire tour guides in California. The commission may  
20 collect fees not to exceed the reasonable cost of the commission's  
21 certification of tour guides and approval of tour guide schools  
22 pursuant to this chapter.*

23 9404. *The council commission shall issue a certificate to an  
24 individual applicant who satisfies the requirements of this chapter  
25 or holds a current and valid registration, certification, or license  
26 to work as a tour guide from any other state whose licensure  
27 requirements meet or exceed those defined within this chapter.  
28 city, county, or city and county in California. The commission may  
29 issue a certificate to an individual applicant who holds a current  
30 and valid registration, certification, or license from another state,  
31 and who demonstrates knowledge of tour group safety and  
32 California geography, history, and culture, as defined by the  
33 commission. If an applicant has received education at a school that  
34 is not an approved school, the council commission shall have the  
35 discretion to give credit for comparable academic work completed  
36 by an applicant in a program outside of California.*

37 9406. In order to obtain certification as a tour guide  
38 professional, an applicant shall submit a written application and  
39 provide the council commission with satisfactory evidence that he  
40 or she or meets all of the following requirements:

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

2 (b) The applicant has successfully completed ~~the curricula a~~  
3 *curriculum* in California tour guiding and related subjects totaling  
4 a minimum of 24 hours that includes all of the following: *subjects,*  
5 *as defined by the commission. The curriculum shall include*  
6 *information on tour guide safety and California geography, history,*  
7 *and culture.*

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

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

12 (c) The applicant has passed a California tour guide competency  
13 assessment examination that meets generally recognized principles  
14 and standards and that is approved by the ~~board.~~ *commission.* The  
15 successful completion of this examination may have been  
16 accomplished before the date the ~~council~~ *commission* is authorized  
17 by this chapter to begin issuing certificates.

18 (d) All fees required by the ~~council~~ *commission* have been paid.  
19 9408. A certificate issued pursuant to this chapter shall expire  
20 after two years unless renewed in a manner prescribed by the  
21 ~~council.~~ *commission.* The ~~council~~ *commission* may provide for the  
22 late renewal of a certificate.

23 9410. (a) The ~~council~~ *commission* shall have the responsibility  
24 to determine whether the school from which an applicant has  
25 obtained the education required by this chapter meets the  
26 requirements of this chapter. If the ~~council~~ *commission* has any  
27 reason to question whether or not the applicant received the  
28 education that is required by this chapter from the school or schools  
29 that the applicant is claiming, the ~~council~~ *commission* shall  
30 investigate the facts to determine whether the applicant received  
31 the required education prior to issuing a certificate.

32 (b) For purposes of this section and any other provision of this  
33 chapter that authorizes the ~~council~~ *commission* to receive factual  
34 information as a condition of taking action, the ~~council~~ *commission*  
35 may conduct oral interviews of the applicant and others or conduct  
36 any investigation the ~~council~~ *commission* deems necessary to  
37 establish that the information received is accurate and satisfies the  
38 criteria established by this chapter.

39 9412. (a) Before issuing a certificate to an applicant, or  
40 designating a custodian of records, the ~~council~~ *commission* shall

1 require the applicant or the custodian of records candidate to submit  
2 fingerprint images as directed by the ~~council~~ *commission* and in a  
3 form consistent with the requirements of this section.

4 (b) The ~~council~~ *commission* shall submit the fingerprint images  
5 and related information to the Department of Justice for the purpose  
6 of obtaining information as to the existence and nature of a record  
7 of state and federal level convictions and of state and federal level  
8 arrests for which the Department of Justice establishes that the  
9 applicant or candidate was released on bail or on his or her own  
10 recognizance pending trial.

11 (c) Requests for federal level criminal offender record  
12 information received by the Department of Justice pursuant to this  
13 section shall be forwarded to the Federal Bureau of Investigation  
14 by the Department of Justice. The Department of Justice shall  
15 review the information returned from the Federal Bureau of  
16 Investigation, and shall compile and disseminate a fitness  
17 determination regarding the applicant or candidate to the ~~council~~  
18 *commission*. The Department of Justice shall provide information  
19 to the ~~council~~ *commission* pursuant to subdivision (p) of Section  
20 11105 of the Penal Code.

21 (d) The Department of Justice and the ~~council~~ *commission* shall  
22 charge a fee not to exceed the reasonable cost of processing the  
23 request for state and federal level criminal offender record  
24 information.

25 ~~(e) The council shall request subsequent arrest notification~~  
26 ~~service from the Department of Justice, as provided under Section~~  
27 ~~11105.2 of the Penal Code, for all applicants for certification or~~  
28 ~~eustodian of records candidates for whom fingerprint images and~~  
29 ~~related information are submitted to conduct a search for state and~~  
30 ~~federal level criminal offender record information.~~

31 9413. The ~~council~~ *commission* may require ~~all its~~ employees,  
32 volunteers, and ~~board~~ members to undergo the background  
33 investigation process described in Section 9412.

34 9415. It is a violation of this chapter and grounds for discipline  
35 or denial of an application for a certificate for a certificate holder  
36 or applicant to commit any of the following acts:

37 (a) Unprofessional conduct.

38 (b) Procuring a certificate by fraud, misrepresentation, or  
39 mistake.

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

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

6 (e) Violating or attempting to violate, directly or indirectly, or  
7 assisting in or abetting the violation of, or conspiring to violate,  
8 any provision of this chapter or any rule or bylaw adopted by the  
9 ~~council~~ *commission*.

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

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

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

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

26 9416. (a) The ~~council~~ *commission* may discipline a certificate  
27 holder by any, or a combination, of the following methods:

28 (1) Placing the certificate holder on probation.

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

31 (3) Revoking the certificate.

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

34 (5) Taking other action as the ~~council~~ *commission* deems proper,  
35 as authorized by this chapter or the ~~council's~~ *commission's* bylaws.

36 (b) The ~~council~~ *commission* may issue an initial certificate on  
37 probation, with specific terms and conditions, to any applicant.

38 ~~(e) (1) Notwithstanding any other law, if the council receives~~  
39 ~~notice that a certificate holder has been arrested and charges have~~  
40 ~~been filed by the appropriate prosecuting agency against the~~



1 certificate holder alleging a violation of subdivision (b) of Section  
2 647 of the Penal Code or any other offense described in subdivision  
3 (g) of Section 9415, the council shall take all of the following  
4 actions:

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

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

10 (C) Within 10 business days, notify any business that the  
11 council's records list as employing the certificate holder that the  
12 certificate has been suspended.

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

22 (3) Upon notice that the charges described in paragraph (1) have  
23 resulted in an acquittal or have otherwise been dismissed prior to  
24 conviction, the council shall immediately reinstate the certificate  
25 and notify the certificate holder and any business that received  
26 notice pursuant to subparagraph (C) of paragraph (1) of the  
27 reinstatement within 10 business days.

28 9417. (a) An applicant for a certificate shall not be denied a  
29 certificate, and a certificate holder shall not be disciplined pursuant  
30 to this chapter, except according to procedures that satisfy the  
31 requirements of this section. Denial or discipline that is not in  
32 accord with this section or subdivision (e) of Section 9416 shall  
33 be void and without effect.

34 (b) Any denial or discipline shall be decided upon and imposed  
35 in good faith and in a fair and reasonable manner. Any procedure  
36 that conforms to the requirements of subdivision (c) is fair and  
37 reasonable, but a court may also find other procedures to be fair  
38 and reasonable when the full circumstances of the denial or  
39 discipline are considered.

1 (c) A procedure is fair and reasonable ~~if the procedures specified~~  
2 ~~in subdivision (c) of Section 9416 are followed or~~ if all of the  
3 following apply:

4 (1) The provisions of the procedure are set forth in the articles  
5 or bylaws of the ~~council~~ *commission* or copies of those provisions  
6 are annually sent to all of the members of the ~~council~~ *commission*.

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

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

14 (d) (1) Any notice required under this section may be given by  
15 any method reasonably calculated to provide actual notice. Any  
16 notice given by mail shall be given by first-class or certified mail  
17 sent to the last address of the applicant or certificate holder shown  
18 on the ~~council's~~ *commission's* records.

19 (2) It is the responsibility of the certificate holder or applicant  
20 to notify the ~~council~~ *commission* of his or her home address, as  
21 well as the address of any business establishment where he or she  
22 regularly works as a tour guide professional, whether as an  
23 employee or as an independent contractor.

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

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

34 (g) This section governs only the procedures for denial or  
35 discipline decision and not the substantive grounds for the denial  
36 or discipline. Denial or discipline based upon substantive grounds  
37 that violates contractual or other rights of the applicant or certificate  
38 holder, or is otherwise unlawful, is not made valid by compliance  
39 with this section.

1 9419. (a) Upon the request of any law enforcement agency or  
2 any other representative of a local government agency with  
3 responsibility for regulating or administering a local ordinance  
4 relating to California tour guide businesses, the ~~council~~ *commission*  
5 shall provide information concerning a certificate holder, including,  
6 but not limited to, any of the following:

- 7 (1) The current status of a certificate.
- 8 (2) Any history of disciplinary actions taken against the  
9 certificate holder.
- 10 (3) The home and work addresses of the certificate holder.
- 11 (4) Any other information in the ~~council's~~ *commission's*  
12 possession that is necessary to verify facts relevant to administering  
13 the local ordinance.

14 (b) The ~~council~~ *commission* shall accept information provided  
15 by any law enforcement agency or any other representative of a  
16 local government agency with responsibility for regulating or  
17 administering a local ordinance relating to California tour guide  
18 businesses. The ~~council~~ *commission* shall have the responsibility  
19 to review any information received and take any actions authorized  
20 by this chapter that are warranted by that information.

21 ~~9421. It is an unfair business practice for a person to hold  
22 himself or herself out or to use the title of "certified tour guide"  
23 or "tour guide professional," or any other term, such as "licensed,"  
24 "registered," or "CTG" that implies or suggests that the person is  
25 certified as a tour guide professional, unless that person currently  
26 holds an active and valid certificate issued by the council pursuant  
27 to this chapter.~~

28 ~~9423. It is an unfair business practice for a tour guide business  
29 to provide tour guiding in California that is not performed by a  
30 tour guide professional to a group of nine or more consumers.~~

31 ~~9425. The superior court of a county where a person acts as a  
32 tour guide professional in violation of this chapter may, upon a  
33 petition by any person, issue an injunction or other appropriate  
34 order restraining the conduct. A proceeding under this section shall  
35 be governed by Chapter 3 (commencing with Section 525) of Title  
36 7 of Part 2 of the Code of Civil Procedure.~~

37 *9421. (a) The commission shall maintain an accurate list of  
38 certified tour guides and shall provide the list to tour guide  
39 businesses and other persons or organizations seeking to hire tour  
40 guides in California.*

1     ***(b) A person who is not certified pursuant to this chapter shall***  
2     ***not lead a tour group in a state park or other state facility for***  
3     ***compensation as part of a multisite tour.***

4     9423. *This chapter does not interfere with a person's exercise*  
5     *of his or her right to freedom of speech provided by the First*  
6     *Amendment to the Constitution of the United States.*

7     9425. *This chapter only applies to tour guides who offer*  
8     *themselves for hire to take travelers on multisite tours in*  
9     *California. This chapter does not apply to tour guides who work*  
10    *for a museum, amusement park, or other organization that invites*  
11    *tourists to visit its facility.*

12    9427. (a) Except as otherwise provided in this section, a  
13    certificate holder has the right, consistent with this chapter and the  
14    qualifications established by his or her certification, to perform  
15    tour guides in any city, county, or city and county in the state and  
16    shall not be required to obtain any other license, permit, or other  
17    authorization to engage in that practice.

18    ~~(b) Notwithstanding any other law, a city, county, or city and~~  
19    ~~county shall not enact or enforce an ordinance that requires a~~  
20    ~~certificate holder to obtain any other license, permit, or other~~  
21    ~~authorization to perform tour guides consistent with the~~  
22    ~~qualifications established by the certificate holder's certification.~~

23    ***(b) A city, county, or city and county may establish a tour guide***  
24    ***certification program that applies only to the jurisdiction of that***  
25    ***city, county, or city and county, and may seek the commission's***  
26    ***recognition of its program in order for its certified tour guides to***  
27    ***obtain statewide certification, as provided by the commission.***

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

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

36    (e) This section does not prohibit a city, county, or city and  
37    county from adopting land use and zoning requirements applicable  
38    to tour guide businesses or establishments unless those  
39    requirements differ from requirements uniformly applied to other  
40    professional or personal services businesses.

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

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

6 (2) Making reasonable investigations into that information.

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

9 (g) An owner or operator of a tour guide business or  
10 establishment subject to subdivision (f) shall be responsible for  
11 the conduct of all of the employees or independent contractors  
12 working on the premises of the business.

13 (h) This section does not preclude a city, county, or city and  
14 county from authorizing the suspension, revocation, or other  
15 restriction of a license or permit issued to a tour guide  
16 establishment or business if violations of this chapter or a local  
17 ordinance occur on the premises of that establishment or business.

18 9429. This chapter does not restrict or limit in any way the  
19 authority of a city, county, or city and county to adopt a local  
20 ordinance governing any person who is not certified pursuant to  
21 this chapter.

22 9431. This chapter does not affect the rights of any person  
23 licensed by the state to practice or perform any functions or services  
24 pursuant to that license.

25 ~~9433. The Legislature finds and declares that due to important~~  
26 ~~health, safety, and welfare concerns that affect the entire state,~~  
27 ~~establishing a uniform standard of certification for tour guides~~  
28 ~~upon which consumers may rely to identify individuals who have~~  
29 ~~achieved specified levels of education, training, and skill is a matter~~  
30 ~~of statewide concern and not a municipal affair, as that term is~~  
31 ~~used in Section 5 of Article XI of the California Constitution.~~  
32 ~~Therefore, this chapter shall apply to all cities, counties, and cities~~  
33 ~~and counties, including charter cities and charter counties.~~

34 9440. This chapter shall remain in effect only until January 1,  
35 2018, and as of that date is repealed.

O