

AMENDED IN ASSEMBLY APRIL 15, 2015

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 Chapter 18 (commencing with Section 9400) 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 Travel and Tourism Commission, as specified, with certain exceptions. The bill would require applicants for certification, among other things, to be ~~21~~ 18 years of age or older, meet specified educational criteria, pay fees required by the 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 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.

This bill would allow the commission to take disciplinary action against certificate holders or applicants, as specified. The bill would

prohibit unlicensed persons from leading tour groups into state parks or other state facilities for compensation as part of a multisite tour.

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

3  
4 CHAPTER 18. CALIFORNIA TOUR GUIDE ACT  
5

6 9400. This chapter shall be known and may be cited as the  
7 California Tour Guide Act.

8 9401. For purposes of this chapter, the following terms have  
9 the following meanings:

10 (a) "Approved school" or "approved tour guide school" means  
11 a facility that is approved by the commission and meets minimum  
12 standards for training and curriculum in California tour guiding  
13 and related subjects and meets any of the following requirements:

14 (1) Approval by the Bureau for Private Postsecondary Education.  
15 (2) Approval by the Department of Consumer Affairs.

16 (3) Accreditation by the Accrediting Commission for Senior  
17 Colleges and Universities or the Accrediting Commission for  
18 Community and Junior Colleges of the Western Association of  
19 Schools and Colleges and that is any of the following:

20 (A) A public institution.  
21 (B) An institution incorporated and lawfully operating as a

22 nonprofit public benefit corporation pursuant to Part 2  
23 (commencing with Section 5110) of Division 2 of Title 1 of the  
24 Corporations Code, and that is not managed by any entity for profit.

25 (C) A for-profit institution.  
26 (4) A college or university of the state higher education system,

27 as defined in Section 100850 of the Education Code.

28 (5) A school requiring equal or greater training than the  
29 requirements established by this chapter and recognized by the  
30 corresponding agency in another state or accredited by an agency  
31 recognized by the United States Department of Education.

32 (b) "Certificate" means a valid certificate issued by the  
33 commission pursuant to this chapter.

1 (c) “Commission” means the California Travel and Tourism  
2 Commission established pursuant to Section 13995.40 of the  
3 Government Code.

4 (d) “Compensation” means anything of value, including, but  
5 not limited to, a payment, loan, advance, donation, contribution,  
6 deposit, or gift of money.

7 (e) “Tour guide business” means a business ~~or establishment~~  
8 that provides tour guides in California for compensation.

9 (f) “Tour guide professional” or “tour guide” means a person  
10 who is certified by the commission pursuant to this chapter and  
11 who practices tour guiding for compensation.

12 9402. The commission shall establish a tour guide certification  
13 program pursuant to this chapter, and shall provide for the  
14 promotion of certified tour guides to persons or organizations  
15 seeking to hire tour guides in California. The commission may  
16 collect fees not to exceed the reasonable cost of the commission’s  
17 certification of tour guides and approval of tour guide schools  
18 pursuant to this chapter.

19 9404. The commission shall issue a certificate to an individual  
20 applicant who satisfies the requirements of this chapter or holds a  
21 current and valid registration, certification, or license to work as  
22 a tour guide from any city, county, or city and county in California.  
23 The commission may issue a certificate to an individual applicant  
24 who holds a current and valid registration, certification, or license  
25 from another state, and who demonstrates knowledge of tour group  
26 safety and California geography, history, and culture, as defined  
27 by the commission. If an applicant has received education at a  
28 school that is not an approved school, the commission shall have  
29 the discretion to give credit for comparable academic work  
30 completed by an applicant in a program outside of California.

31 9406. In order to obtain certification as a tour guide  
32 professional, an applicant shall submit a written application and  
33 provide the commission with satisfactory evidence that he or she  
34 or meets all of the following requirements:

35 (a) The applicant is ~~21~~ 18 years of age or older.

36 (b) The applicant has successfully completed a curriculum in  
37 California tour guiding and related subjects, as defined by the  
38 commission. The curriculum shall include information on tour  
39 guide safety and California geography, history, and culture.

1 *Successful completion of a program from an approved school shall*  
2 *be deemed to satisfy this requirement.*

3 (c) The applicant has passed a California tour guide competency  
4 assessment examination that meets generally recognized principles  
5 and standards and that is approved by the commission. The  
6 successful completion of this examination may have been  
7 accomplished before the date the commission is authorized by this  
8 chapter to begin issuing certificates.

9 (d) All fees required by the commission have been paid.

10 9408. A certificate issued pursuant to this chapter shall expire  
11 after two years unless renewed in a manner prescribed by the  
12 commission. The commission may provide for the late renewal of  
13 a certificate.

14 9410. (a) The commission shall have the responsibility to  
15 determine whether the school from which an applicant has obtained  
16 the education required by this chapter meets the requirements of  
17 this chapter. If the commission has any reason to question whether  
18 or not the applicant received the education that is required by this  
19 chapter from the school or schools that the applicant is claiming,  
20 the commission shall investigate the facts to determine whether  
21 the applicant received the required education prior to issuing a  
22 certificate.

23 (b) For purposes of this section and any other provision of this  
24 chapter that authorizes the commission to receive factual  
25 information as a condition of taking action, the commission may  
26 conduct oral interviews of the applicant and others or conduct any  
27 investigation the commission deems necessary to establish that  
28 the information received is accurate and satisfies the criteria  
29 established by this chapter.

30 9412. (a) Before issuing a certificate to an applicant, or  
31 designating a custodian of records, the commission shall require  
32 the applicant or the custodian of records candidate to submit  
33 fingerprint images as directed by the commission and in a form  
34 consistent with the requirements of this section.

35 (b) The commission shall submit the fingerprint images and  
36 related information to the Department of Justice for the purpose  
37 of obtaining information as to the existence and nature of a record  
38 of state and federal level convictions and of state and federal level  
39 arrests for which the Department of Justice establishes that the

1 applicant or candidate was released on bail or on his or her own  
2 recognizance pending trial.

3 (c) Requests for federal level criminal offender record  
4 information received by the Department of Justice pursuant to this  
5 section shall be forwarded to the Federal Bureau of Investigation  
6 by the Department of Justice. The Department of Justice shall  
7 review the information returned from the Federal Bureau of  
8 Investigation, and shall compile and disseminate a fitness  
9 determination regarding the applicant or candidate to the  
10 commission. The Department of Justice shall provide information  
11 to the commission pursuant to subdivision (p) of Section 11105  
12 of the Penal Code.

13 (d) The Department of Justice and the commission shall charge  
14 a fee not to exceed the reasonable cost of processing the request  
15 for state and federal level criminal offender record information.

16 9413. The commission may require its employees, volunteers,  
17 and members to undergo the background investigation process  
18 described in Section 9412.

19 9415. It is a violation of this chapter and grounds for discipline  
20 or denial of an application for a certificate for a certificate holder  
21 or applicant to commit any of the following acts:

22 (a) Unprofessional conduct.

23 (b) Procuring a certificate by fraud, misrepresentation, or  
24 mistake.

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

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

30 (e) Violating or attempting to violate, directly or indirectly, or  
31 assisting in or abetting the violation of, or conspiring to violate,  
32 any provision of this chapter or any rule or bylaw adopted by the  
33 commission.

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

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

38 (h) Committing any act that results in denial of licensure,  
39 revocation, suspension, restriction, citation, or any other  
40 disciplinary action against an applicant or certificate holder by

1 ~~another a~~ state or territory of the United States, ~~by any other~~  
2 ~~government agency, or by another California health care~~  
3 ~~professional licensing board.~~ *States.* A certified copy of the  
4 decision, order, judgment, or citation shall be conclusive evidence  
5 of these actions.

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

10 9416. (a) The commission may discipline a certificate holder  
11 by any, or a combination, of the following methods:

12 (1) Placing the certificate holder on probation.

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

15 (3) Revoking the certificate.

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

18 (5) Taking other action as the commission deems proper, as  
19 authorized by this chapter or the commission's bylaws.

20 (b) The commission may issue an initial certificate on probation,  
21 with specific terms and conditions, to any applicant.

22 9417. (a) An applicant for a certificate shall not be denied a  
23 certificate, and a certificate holder shall not be disciplined pursuant  
24 to this chapter, except according to procedures that satisfy the  
25 requirements of this section. Denial or discipline that is not in  
26 accord with this section shall be void and without effect.

27 (b) Any denial or discipline shall be decided upon and imposed  
28 in good faith and in a fair and reasonable manner. Any procedure  
29 that conforms to the requirements of subdivision (c) is fair and  
30 reasonable, but a court may also find other procedures to be fair  
31 and reasonable when the full circumstances of the denial or  
32 discipline are considered.

33 (c) A procedure is fair and reasonable if all of the following  
34 apply:

35 (1) The provisions of the procedure are set forth in the articles  
36 or bylaws of the commission or copies of those provisions are  
37 annually sent to all of the members of the commission.

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

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

6 (d) (1) Any notice required under this section may be given by  
7 any method reasonably calculated to provide actual notice. Any  
8 notice given by mail shall be given by first-class or certified mail  
9 sent to the last address of the applicant or certificate holder shown  
10 on the commission's records.

11 (2) It is the responsibility of the certificate holder or applicant  
12 to notify the commission of his or her home address, as well as  
13 the address of any business establishment where he or she regularly  
14 works as a tour guide professional, whether as an employee or as  
15 an independent contractor.

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

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

26 (g) This section governs only the procedures for denial or  
27 discipline decision and not the substantive grounds for the denial  
28 or discipline. Denial or discipline based upon substantive grounds  
29 that violates contractual or other rights of the applicant or certificate  
30 holder, or is otherwise unlawful, is not made valid by compliance  
31 with this section.

32 9419. (a) Upon the request of any law enforcement agency or  
33 any other representative of a local government agency with  
34 responsibility for regulating or administering a local ordinance  
35 relating to California tour guide businesses, the commission shall  
36 provide information concerning a certificate holder, including, but  
37 not limited to, any of the following:

38 (1) The current status of a certificate.

39 (2) Any history of disciplinary actions taken against the  
40 certificate holder.

1 (3) The home and work addresses of the certificate holder.

2 (4) Any other information in the commission’s possession that  
3 is necessary to verify facts relevant to administering the local  
4 ordinance.

5 (b) The commission shall accept information provided by any  
6 law enforcement agency or any other representative of a local  
7 government agency with responsibility for regulating or  
8 administering a local ordinance relating to California tour guide  
9 businesses. The commission shall have the responsibility to review  
10 any information received and take any actions authorized by this  
11 chapter that are warranted by that information.

12 9421. (a) The commission shall maintain an accurate list of  
13 certified tour guides and shall provide the list to tour guide  
14 businesses and other persons or organizations seeking to hire tour  
15 guides in California.

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

19 9423. This chapter does not interfere with a person’s exercise  
20 of his or her right to freedom of speech provided by the First  
21 Amendment to the Constitution of the United States.

22 9425. This chapter only applies to tour guides who offer  
23 themselves for hire to take travelers on multisite tours in California.  
24 This chapter does not apply to tour guides who work for a museum,  
25 amusement park, or other organization that invites tourists to visit  
26 its facility.

27 9427. (a) Except as otherwise provided in this section, a  
28 certificate holder has the right, consistent with this chapter and the  
29 qualifications established by his or her certification, to perform  
30 tour guides in any city, county, or city and county in the state and  
31 shall not be required to obtain any other license, permit, or other  
32 authorization to engage in that practice.

33 (b) A city, county, or city and county may establish a tour guide  
34 certification program that applies only to the jurisdiction of that  
35 city, county, or city and county, and may seek the commission’s  
36 recognition of its program in order for its certified tour guides to  
37 obtain statewide certification, as provided by the commission.

38 (c) This section does not preclude a city, county, or city and  
39 county from requiring a tour guide business or establishment to



1 file copies or provide other evidence of a certificate held by a  
2 person providing tour guide services at the business.

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

7 (e) This section does not prohibit a city, county, or city and  
8 county from adopting land use and zoning requirements applicable  
9 to tour guide businesses or establishments unless those  
10 requirements differ from requirements uniformly applied to other  
11 professional or personal services businesses.

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

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

17 (2) Making reasonable investigations into that information.

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

20 (g) An owner or operator of a tour guide business or  
21 establishment subject to subdivision (f) shall be responsible for  
22 the conduct of all of the employees or independent contractors  
23 working on the premises of the business.

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

29 9429. This chapter does not restrict or limit in any way the  
30 authority of a city, county, or city and county to adopt a local  
31 ordinance governing any person who is not certified pursuant to  
32 this chapter.

33 9431. This chapter does not affect the rights of any person  
34 licensed by the state to practice or perform any functions or services  
35 pursuant to that license.