

Introduced by Committee on Business, Professions and Economic Development (Negrete McLeod (chair), Aanestad, Corbett, Correa, Florez, Oropeza, Romero, Walters, Wyland, and Yee)

March 10, 2009

An act to amend Sections 139, 146, 1632.5, 1634.2, 2493, 4200.3, 4200.4, 4938, 5016, 5021, 5022, 5023, 5651, 7028.7, 7044, 7159, 7159.5, 7159.14, 7303.2, 7606, 7616, 7641, 7643, 7646, 7647, 7662, 7665, 7666, 7671, 7725.5, 7729, 9884.2, 9884.7, 9884.12, and 10146 of, to add Section 7044.01 to, and to repeal and add Section 7108.5 of, the Business and Professions Code, and to amend Section 44017.3 of the Health and Safety Code, relating to consumer affairs.

LEGISLATIVE COUNSEL'S DIGEST

SB 820, as introduced, Committee on Business, Professions and Economic Development. Consumer affairs: professions and vocations.

Existing law provides for the licensure and regulation of various professions and vocations by boards and bureaus within the Department of Consumer Affairs. Existing law requires that certain examinations for licensure be developed by or in consultation with the Office of Examination Resources in the department, as specified.

This bill would rename that office the Office of Professional Examination Resources.

Existing law prohibits a person from holding himself or herself out to the public as a professional fiduciary without a license. Existing law specifies that a violation of certain requirements to be registered, licensed, or certified to engage in certain businesses is punishable as an infraction subject to specified procedures and fines.

This bill would make a violation of the professional fiduciary licensure requirement punishable as an infraction, thereby imposing a state-mandated local program.

Existing law, the Bagley-Keene Open Meeting Act, requires a state body, as defined, to provide prescribed notice of its meetings to any person who requests the notice in writing. Existing law provides for the licensure and regulation of accountants by the California Board of Accountancy and requires the executive officer of the board to give at least 7 days' notice of board meetings. Existing law authorizes the board to appoint an administrative committee and an advisory committee for certain purposes and requires members of the administrative committee to hold office for one year.

This bill would designate the advisory committee as the qualifications committee and would require members of that committee and the administrative committee to hold office for 2 years. The bill would require notice of each meeting of the board to be given in accordance with the Bagley-Keene Open Meeting Act.

Existing law provides for the licensure and regulation of landscape architects by the California Architects Board. Existing law requires the board to ascertain the qualifications of applicants for a license by means of written examination. Under existing law, the board may waive the written examination for a person licensed out of state, as specified, if the person has passed an equivalent examination and a supplemental examination, as specified.

This bill would also require an out-of-state licensee to submit proof of job experience equivalent to that required of California applicants in order to waive the written examination.

Existing law, the Contractors' State License Law, provides for the licensure and regulation of contractors by the Contractors' State License Board. Existing law imposes specified requirements on home improvement contracts and service and repair contracts and requires contractors to pay subcontractors within a specified period of time. Existing law makes it a misdemeanor for a person to engage in the business or act in the capacity of a contractor without a license and provides certain exemptions from that licensure requirement, including exemptions for owner-builders, as specified. Existing law authorizes the Registrar of Contractors to issue citations for violations of that licensure requirement, as specified.

This bill would make various technical, nonsubstantive changes to those provisions.

Under existing law, a person who violates the law by engaging in work as an owner-builder without a contractor's license or an exemption from licensure is prohibited from obtaining a contractor's license for a period of one year following the violation.

This bill would delete that prohibition.

Existing law, the Funeral Directors and Embalmers Law, provides for the licensure and regulation of embalmers and funeral directors by the Cemetery and Funeral Bureau. Existing law requires an applicant for an embalmer's license to, among other things, have successfully completed a course of instruction in a specified embalming school and to either furnish proof of completion of a high school course or evidence of licensure and practice for a certain period of time prior to application.

This bill would instead require the applicant to have graduated from a specified mortuary science program and to furnish official transcripts from that program. The bill would make other conforming changes.

Existing law requires the applicant to pass an examination including specified subjects and requires the bureau to examine applicants at least once annually.

This bill would require the applicant to pass the funeral services sciences section of a specified national examination and an examination on the state's laws and the rules and regulations of the bureau and would delete the requirement that the board examine applicants at least once annually. The bill would, until June 30, 2010, authorize an applicant who failed the examination previously administered by the bureau to retake that examination.

Existing law, the Real Estate Law, provides for the licensure and regulation of real estate brokers and salespersons by the Real Estate Commissioner. Existing law authorizes the commissioner to issue rules and regulations he or she deems necessary to regulate the method of accounting and to accomplish certain purposes related to advance fees, as specified.

This bill would make certain nonsubstantive, technical changes to those provisions.

Existing law, the Automotive Repair Act, provides for the registration and regulation of automotive repair dealers by the Bureau of Automotive Repair in the Department of Consumer Affairs and requires the Director of Consumer Affairs to validate a registration upon receipt of a specified form and fee. Existing law authorizes the director to refuse to validate or invalidate a registration for specified acts.

This bill would instead require the director to issue a registration upon receipt of a specified form and fee and would authorize the director to deny, suspend, revoke, or place on probation a registration for specified acts.

Existing law establishes the vehicle inspection and maintenance (smog check) program, administered by the Department of Consumer Affairs and prescribes certain cost limits for repairs under the program. Existing law requires a smog check station where smog check inspections are performed to post a sign advising customers of those cost limits.

This bill would instead require the department to provide licensed smog check stations with a sign informing customers about their options when a vehicle fails a smog check inspection, as specified.

The bill would make other technical, nonsubstantive changes.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

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

- 1 SECTION 1. Section 139 of the Business and Professions Code
- 2 is amended to read:
- 3 139. (a) The Legislature finds and declares that occupational
- 4 analyses and examination validation studies are fundamental
- 5 components of licensure programs. It is the intent of the Legislature
- 6 that the policy developed by the department pursuant to subdivision
- 7 (b) be used by the fiscal, policy, and sunset review committees of
- 8 the Legislature in their annual reviews of these boards, programs,
- 9 and bureaus.
- 10 (b) Notwithstanding any other provision of law, the department
- 11 shall develop, in consultation with the boards, programs, bureaus,
- 12 and divisions under its jurisdiction, and the Osteopathic Medical
- 13 Board of California and the State Board of Chiropractic Examiners,
- 14 a policy regarding examination development and validation, and
- 15 occupational analysis. The department shall finalize and distribute
- 16 this policy by September 30, 1999, to each of the boards, programs,

bureaus, and divisions under its jurisdiction and to the Osteopathic Medical Board of California and the State Board of Chiropractic Examiners. This policy shall be submitted in draft form at least 30 days prior to that date to the appropriate fiscal, policy, and sunset review committees of the Legislature for review. This policy shall address, but shall not be limited to, the following issues:

(1) An appropriate schedule for examination validation and occupational analyses, and circumstances under which more frequent reviews are appropriate.

(2) Minimum requirements for psychometrically sound examination validation, examination development, and occupational analyses, including standards for sufficient number of test items.

(3) Standards for review of state and national examinations.

(4) Setting of passing standards.

(5) Appropriate funding sources for examination validations and occupational analyses.

(6) Conditions under which boards, programs, and bureaus should use internal and external entities to conduct these reviews.

(7) Standards for determining appropriate costs of reviews of different types of examinations, measured in terms of hours required.

(8) Conditions under which it is appropriate to fund permanent and limited term positions within a board, program, or bureau to manage these reviews.

(c) Every regulatory board and bureau, as defined in Section 22, and every program and bureau administered by the department, the Osteopathic Medical Board of California, and the State Board of Chiropractic Examiners, shall submit to the director on or before December 1, 1999, and on or before December 1 of each subsequent year, its method for ensuring that every licensing examination administered by or pursuant to contract with the board is subject to periodic evaluation. The evaluation shall include (1) a description of the occupational analysis serving as the basis for the examination; (2) sufficient item analysis data to permit a psychometric evaluation of the items; (3) an assessment of the appropriateness of prerequisites for admittance to the examination; and (4) an estimate of the costs and personnel required to perform these functions. The evaluation shall be revised and a new evaluation submitted to the director whenever, in the judgment of

1 the board, program, or bureau, there is a substantial change in the
2 examination or the prerequisites for admittance to the examination.

3 (d) The evaluation may be conducted by the board, program,
4 or bureau, the Office of *Professional* Examination Resources of
5 the department, the Osteopathic Medical Board of California, or
6 the State Board of Chiropractic Examiners or pursuant to a contract
7 with a qualified private testing firm. A board, program, or bureau
8 that provides for development or administration of a licensing
9 examination pursuant to contract with a public or private entity
10 may rely on an occupational analysis or item analysis conducted
11 by that entity. The department shall compile this information, along
12 with a schedule specifying when examination validations and
13 occupational analyses shall be performed, and submit it to the
14 appropriate fiscal, policy, and sunset review committees of the
15 Legislature by September 30 of each year. It is the intent of the
16 Legislature that the method specified in this report be consistent
17 with the policy developed by the department pursuant to
18 subdivision (b).

19 SEC. 2. Section 146 of the Business and Professions Code is
20 amended to read:

21 146. (a) Notwithstanding any other provision of law, a
22 violation of any code section listed in subdivision (c) or (d) is an
23 infraction subject to the procedures described in Sections 19.6 and
24 19.7 of the Penal Code when:

25 (1) A complaint or a written notice to appear in court pursuant
26 to Chapter 5c (commencing with Section 853.5) of Title 3 of Part
27 2 of the Penal Code is filed in court charging the offense as an
28 infraction unless the defendant, at the time he or she is arraigned,
29 after being advised of his or her rights, elects to have the case
30 proceed as a misdemeanor, or

31 (2) The court, with the consent of the defendant and the
32 prosecution, determines that the offense is an infraction in which
33 event the case shall proceed as if the defendant has been arraigned
34 on an infraction complaint.

35 (b) Subdivision (a) does not apply to a violation of the code
36 sections listed in subdivisions (c) and (d) if the defendant has had
37 his or her license, registration, or certificate previously revoked
38 or suspended.

(c) The following sections require registration, licensure, certification, or other authorization in order to engage in certain businesses or professions regulated by this code:

- (1) Sections 2052 and 2054.
- (2) Section 2630.
- (3) Section 2903.
- (4) Section 3660.
- (5) Sections 3760 and 3761.
- (6) Section 4080.
- (7) Section 4825.
- (8) Section 4935.
- (9) Section 4980.
- (10) Section 4996.
- (11) Section 5536.
- (12) *Section 6530.*
- ~~(12)~~
- (13) Section 6704.
- ~~(13)~~
- (14) Section 6980.10.
- ~~(14)~~
- (15) Section 7317.
- ~~(15)~~
- (16) Section 7502 or 7592.
- ~~(16)~~
- (17) Section 7520.
- ~~(17)~~
- (18) Section 7617 or 7641.
- ~~(18)~~
- (19) Subdivision (a) of Section 7872.
- ~~(19)~~
- (20) Section 8016.
- ~~(20)~~
- (21) Section 8505.
- ~~(21)~~
- (22) Section 8725.
- ~~(22)~~
- (23) Section 9681.
- ~~(23)~~
- (24) Section 9840.
- ~~(24)~~

1 (25) Subdivision (c) of Section 9891.24.

2 ~~(25)~~

3 (26) Section 19049.

4 (d) Institutions that are required to register with the Bureau for
5 Private Postsecondary and Vocational Education pursuant to
6 Section 94931 of the Education Code.

7 (e) Notwithstanding any other provision of law, a violation of
8 any of the sections listed in subdivision (c) or (d), which is an
9 infraction, is punishable by a fine of not less than two hundred
10 fifty dollars (\$250) and not more than one thousand dollars
11 (\$1,000). No portion of the minimum fine may be suspended by
12 the court unless as a condition of that suspension the defendant is
13 required to submit proof of a current valid license, registration, or
14 certificate for the profession or vocation which was the basis for
15 his or her conviction.

16 SEC. 3. Section 1632.5 of the Business and Professions Code
17 is amended to read:

18 1632.5. (a) Prior to implementation of paragraph (2) of
19 subdivision (c) of Section 1632, the department's Office of
20 *Professional* Examination Resources shall review the Western
21 Regional Examining Board examination to assure compliance with
22 the requirements of Section 139 and to certify that the examination
23 process meets those standards. If the department determines that
24 the examination process fails to meet those standards, paragraph
25 (2) of subdivision (c) of Section 1632 shall not be implemented.
26 The review of the Western Regional Examining Board examination
27 shall be conducted during or after the Dental Board of California's
28 occupational analysis scheduled for the 2004–05 fiscal year, but
29 not later than September 30, 2005. However, an applicant who
30 successfully completes the Western Regional Examining Board
31 examination on or after January 1, 2005, shall be deemed to have
32 met the requirements of subdivision (c) of Section 1632 if the
33 department certifies that the Western Regional Examining Board
34 examination meets the standards set forth in this subdivision.

35 (b) The Western Regional Examining Board examination
36 process shall be regularly reviewed by the department pursuant to
37 Section 139.

38 (c) The Western Regional Examining Board examination shall
39 meet the mandates of subdivision (a) of Section 12944 of the
40 Government Code.

1 (d) As part of its next scheduled review by the Joint Committee
2 on Boards, Commissions, and Consumer Protection, the Dental
3 Board of California shall report to that committee and the
4 department on the pass rates of applicants who sat for the Western
5 Regional Examining Board examination, compared with the pass
6 rates of applicants who sat for the state clinical and written
7 examination administered by the Dental Board of California. This
8 report shall be a component of the evaluation of the examination
9 process that is based on psychometrically sound principles for
10 establishing minimum qualifications and levels of competency.

11 SEC. 4. Section 1634.2 of the Business and Professions Code
12 is amended to read:

13 1634.2. (a) An advanced education program's compliance
14 with subdivision (c) of Section 1634.1 shall be regularly reviewed
15 by the department pursuant to Section 139.

16 (b) An advanced education program described in subdivision
17 (c) of Section 1634.1 shall meet the requirements of subdivision
18 (a) of Section 12944 of the Government Code.

19 (c) The clinical residency program completion certification
20 required by subdivision (c) of Section 1634.1 shall include a list
21 of core competencies commensurate to those found in the board's
22 examinations. The board, together with the department's Office
23 of *Professional* Examination Resources, shall ensure the alignment
24 of the competencies stated in the clinical residency program
25 completion certification with the board's current occupational
26 analysis. The board shall implement use of the clinical residency
27 program completion certification form and use of the core
28 competency list through the adoption of emergency regulations
29 by January 1, 2008.

30 (d) As part of its next scheduled review after January 1, 2007,
31 by the Joint Committee on Boards, Commissions and Consumer
32 Protection, the board shall report to that committee and to the
33 department the number of complaints received for those dentists
34 who have obtained licensure by passing the state clinical
35 examination and for those dentists who have obtained licensure
36 through an advanced education program. The report shall also
37 contain tracking information on these complaints and their
38 disposition. This report shall be a component of the evaluation of
39 the examination process that is based on psychometrically sound

1 principles for establishing minimum qualifications and levels of
2 competency.

3 SEC. 5. Section 2493 of the Business and Professions Code is
4 amended to read:

5 2493. (a) An applicant for a certificate to practice podiatric
6 medicine shall pass an examination in the subjects required by
7 Section 2483 in order to ensure a minimum of entry-level
8 competence.

9 (b) The board shall require a passing score on the National Board
10 of Podiatric Medical Examiners Part III examination that is
11 consistent with the postgraduate training requirement in Section
12 2484. The board, as of July 1, 2005, shall require a passing score
13 one standard error of measurement higher than the national passing
14 scale score until such time as the National Board of Podiatric
15 Medical Examiners recommends a higher passing score consistent
16 with Section 2484. In consultation with the Office of *Professional*
17 Examination Resources of the Department of Consumer Affairs,
18 the board shall ensure that the part III examination adequately
19 evaluates the full scope of practice established by Section 2472,
20 including amputation and other foot and ankle surgical procedures,
21 pursuant to Section 139.

22 SEC. 6. Section 4200.3 of the Business and Professions Code
23 is amended to read:

24 4200.3. (a) The examination process shall be regularly
25 reviewed pursuant to Section 139.

26 (b) The examination process shall meet the standards and
27 guidelines set forth in the Standards for Educational and
28 Psychological Testing and the Federal Uniform Guidelines for
29 Employee Selection Procedures. The board shall work with the
30 Office of *Professional* Examination Resources of the department
31 or with an equivalent organization who shall certify at minimum
32 once every five years that the examination process meets these
33 national testing standards. If the department determines that the
34 examination process fails to meet these standards, the board shall
35 terminate its use of the North American Pharmacy Licensure
36 Examination and shall use only the written and practical
37 examination developed by the board.

38 (c) The examination shall meet the mandates of subdivision (a)
39 of Section 12944 of the Government Code.

1 (d) The board shall work with the Office of *Professional*
2 Examination Resources or with an equivalent organization to
3 develop the state jurisprudence examination to ensure that
4 applicants for licensure are evaluated on their knowledge of
5 applicable state laws and regulations.

6 (e) The board shall annually publish the pass and fail rates for
7 the pharmacist's licensure examination administered pursuant to
8 Section 4200, including a comparison of historical pass and fail
9 rates before utilization of the North American Pharmacist Licensure
10 Examination.

11 (f) The board shall report to the Joint Committee on Boards,
12 Commissions, and Consumer Protection and the department as
13 part of its next scheduled review, the pass rates of applicants who
14 sat for the national examination compared with the pass rates of
15 applicants who sat for the prior state examination. This report shall
16 be a component of the evaluation of the examination process that
17 is based on psychometrically sound principles for establishing
18 minimum qualifications and levels of competency.

19 SEC. 7. Section 4200.4 of the Business and Professions Code
20 is amended to read:

21 4200.4. An applicant who fails the national examination may
22 not retake the examination for at least 90 days or for a period
23 established by regulations adopted by the board in consultation
24 with the Office of *Professional* Examination Resources of the
25 department.

26 SEC. 8. Section 4938 of the Business and Professions Code is
27 amended to read:

28 4938. The board shall issue a license to practice acupuncture
29 to any person who makes an application and meets the following
30 requirements:

31 (a) Is at least 18 years of age.

32 (b) Furnishes satisfactory evidence of completion of one of the
33 following:

34 (1) An educational and training program approved by the board
35 pursuant to Section 4939.

36 (2) Satisfactory completion of a tutorial program in the practice
37 of an acupuncturist which is approved by the board.

38 (3) In the case of an applicant who has completed education
39 and training outside the United States and Canada, documented

1 educational training and clinical experience which meets the
2 standards established pursuant to Sections 4939 and 4941.

3 (c) Passes a written examination administered by the board that
4 tests the applicant's ability, competency, and knowledge in the
5 practice of an acupuncturist. The written examination shall be
6 developed by the Office of *Professional* Examination Resources
7 of the Department of Consumer Affairs.

8 (d) Is not subject to denial pursuant to Division 1.5 (commencing
9 with Section 475).

10 (e) Completes a clinical internship training program approved
11 by the board. The clinical internship training program shall not
12 exceed nine months in duration and shall be located in a clinic in
13 this state, which is approved by the board pursuant to Section 4939.
14 The length of the clinical internship shall depend upon the grades
15 received in the examination and the clinical training already
16 satisfactorily completed by the individual prior to taking the
17 examination. On and after January 1, 1987, individuals with 800
18 or more hours of documented clinical training shall be deemed to
19 have met this requirement. The purpose of the clinical internship
20 training program shall be to assure a minimum level of clinical
21 competence.

22 Each applicant who qualifies for a license shall pay, as a
23 condition precedent to its issuance and in addition to other fees
24 required, the initial licensure fee.

25 SEC. 9. Section 5016 of the Business and Professions Code is
26 amended to read:

27 5016. A majority of the board shall constitute a quorum for
28 the transaction of any business at any meeting of the board ~~for~~
29 ~~which a notice of at least seven days is given by the president or~~
30 ~~executive officer. Notice of meetings may be waived in writing~~
31 ~~either before or after the meeting by unanimous consent of all~~
32 ~~members.~~ *Notice of each meeting of the board shall be given in*
33 *accordance with the Bagley-Keene Open Meeting Act (Article 9*
34 *(commencing with Section 11120) of Chapter 1 of Part 1 of*
35 *Division 3 of Title 2 of the Government Code).* The board shall
36 meet at the call of the president and executive officer, but not less
37 than twice each year. Any two members of the board may request
38 the executive officer to call a special meeting, and the executive
39 officer, upon receiving that notice, shall call a meeting pursuant
40 to the procedure prescribed herein.

SEC. 10. Section 5021 of the Business and Professions Code is amended to read:

5021. The members of the administrative-committee and qualifications committees shall hold office for ~~one year~~ two years.

SEC. 11. Section 5022 of the Business and Professions Code is amended to read:

5022. The qualifications committee shall make recommendations and forward its report to the board for action on any matter on which it is authorized to act. ~~Any~~ An applicant for registration as a certified public accountant who is aggrieved by any action taken by the committee with respect to his or her qualifications may appeal to the board in accordance with rules or regulations prescribed by the board. The board on the appeal may give an oral or written examination as an aid in determining whether the applicant is qualified under the terms of this chapter.

SEC. 12. Section 5023 of the Business and Professions Code is amended to read:

5023. The board may establish ~~an advisory~~ a qualifications committee of its own certified public accountant members or other certified public accountants of the state in good standing, to perform ~~either of~~ the following advisory duties:

(a) To examine *the qualifications of* all applicants for the license of certified public accountant.

(b) To recommend to the board applicants for the certified public accountant license who fulfill the requirements of this chapter.

SEC. 13. Section 5651 of the Business and Professions Code is amended to read:

5651. (a) The board shall by means of examination, ascertain the professional qualifications of all applicants for licenses to practice landscape architecture in this state and shall issue a license to every person whom it finds to be qualified on payment of the initial license fee prescribed by this chapter.

(b) The examination shall consist of a written examination. The written examination may be waived by the board if the applicant ~~(1) is meets both of the following requirements:~~

(1) Is currently licensed by a United States jurisdiction, Canadian province, or Puerto Rico ~~and~~, has passed a written examination equivalent to that which is required in California at the time of application, and ~~(2) has submitted proof of job experience~~

1 *equivalent to that required of California applicants at the time of*
2 *application.*

3 (2) *Has passed the California supplemental examination if, at*
4 *the time of application, it is required of all California applicants.*

5 SEC. 14. Section 7028.7 of the Business and Professions Code
6 is amended to read:

7 7028.7. (a) *If upon inspection or investigation, either upon*
8 *complaint or otherwise, the registrar has probable cause to believe*
9 *that a person is acting in the capacity of or engaging in the business*
10 *of a contractor or salesperson within this state without having a*
11 *license or registration in good standing to so act or engage, and*
12 *the person is not otherwise exempted from this chapter, the registrar*
13 *shall issue a citation to that person.* ~~Within~~

14 (b) *Within 72 hours of receiving notice that a public entity is*
15 *intending to award, or has awarded, a contract to an unlicensed*
16 *contractor, the registrar shall give written notice to the public entity*
17 *that a citation may be issued if a contract is awarded to an*
18 *unlicensed contractor. If after receiving the written notice from*
19 *the registrar that the public entity has awarded or awards the*
20 *contract to an unlicensed contractor, the registrar may issue a*
21 *citation to the responsible officer or employee of the public entity*
22 *as specified in Section 7028.15.* ~~Each~~

23 (c) *Each citation authorized under this section shall be in writing*
24 *and shall describe with particularity the basis of the citation. Each*
25 *citation shall contain an order of abatement and an assessment of*
26 *a civil penalty in an amount not less than two hundred dollars*
27 *(\$200) ~~nor~~ or more than fifteen thousand dollars (\$15,000).* ~~With~~

28 (d) *With the approval of the Contractors' State License Board,*
29 *the registrar shall prescribe procedures for the issuance of a citation*
30 *authorized under this section. The Contractors' State License Board*
31 *shall adopt regulations covering the assessment of a civil penalty*
32 *that shall give due consideration to the gravity of the violation,*
33 *and any history of previous violations.* ~~The~~

34 (e) *The sanctions authorized under this section shall be separate*
35 *from, and in addition to, all other remedies either civil or criminal.*

36 SEC. 15. Section 7044 of the Business and Professions Code
37 is amended to read:

38 7044. (a) *This chapter does not apply to any of the following:*

39 ~~(a) An owner of property, building or improving structures~~
40 ~~thereon, or appurtenances thereto, who does the work himself or~~

1 herself or through his or her own employees with wages as their
2 sole compensation, provided none of the structures, with or without
3 the appurtenances thereto, are intended or offered for sale.

4 (b) ~~An owner of property, building or improving structures~~
5 ~~thereon, or appurtenances thereto, who contracts for such a project~~
6 ~~with a subcontractor or subcontractors licensed pursuant to this~~
7 ~~chapter.~~

8 ~~However, this exemption shall apply to the construction of~~
9 ~~single-family residential structures only if four or fewer of these~~
10 ~~structures are intended or offered for sale in a calendar year. This~~
11 ~~limitation shall not apply if the owner of property contracts with~~
12 ~~a general contractor for the construction.~~

13 (1) *An owner who builds or improves a structure on his or her*
14 *property, provided that both of the following conditions are met:*

15 (A) *None of the improvements are intended or offered for sale.*

16 (B) *The property owner personally performs all of the work or*
17 *any work not performed by the owner is performed by the owner's*
18 *employees with wages as their sole compensation.*

19 (2) *An owner who builds or improves a structure on his or her*
20 *property, provided that both of the following conditions are met:*

21 (A) *The owner directly contracts with licensees who are duly*
22 *licensed to contract for the work of the respective trades involved*
23 *in completing the project.*

24 (B) *For projects involving single-family residential structures,*
25 *no more than four of these structures are intended or offered for*
26 *sale in a calendar year. This subparagraph shall not apply if the*
27 *owner contracts with a general contractor for the construction.*

28 (c)

29 (3) *A homeowner improving his or her principal place of*
30 *residence or appurtenances thereto, provided that all of the*
31 *following conditions exist:*

32 (1)

33 (A) *The work is performed prior to sale.*

34 (2)

35 (B) *The homeowner has actually resided in the residence for*
36 *the 12 months prior to completion of the work.*

37 (3)

38 (C) *The homeowner has not availed himself or herself of the*
39 *exemption in this—subdivision paragraph on more than two*
40 *structures more than once during any three-year period.*

1 ~~In~~
2 (b) *In all actions brought under this chapter, ~~proof both of the~~*
3 *following shall apply:*

4 (1) *Except as provided in paragraph (2), proof of the sale or*
5 *offering for sale of ~~any such a~~ structure by or for the owner-builder*
6 *within one year after completion of ~~same the~~ structure constitutes*
7 *a rebuttable presumption affecting the burden of proof that ~~such~~*
8 *the structure was undertaken for purposes of sale. ~~Except as~~*
9 *otherwise provided in this section, proof*

10 (2) *Proof of the sale or offering for sale of five or more*
11 *structures by the owner-builder within one year after completion*
12 *constitutes a conclusive presumption that the structures were*
13 *undertaken for purposes of sale.*

14 ~~In addition to all other remedies, any (1) licensed contractor, or~~
15 ~~association of contractors, (2) labor organization, (3) consumer~~
16 ~~affected by the violation, (4) district attorney, or (5) the Attorney~~
17 ~~General, shall be entitled to seek injunctive relief prohibiting any~~
18 ~~violation of this chapter by an owner-builder who is neither~~
19 ~~licensed nor exempted from licensure by this section or any other~~
20 ~~section according to the provisions specified in Section 7028.3 or~~
21 ~~Section 7028.4. The plaintiff in any such action shall not be~~
22 ~~required to prove irreparable injury and shall be entitled to~~
23 ~~attorneys' fees and all costs incurred in the prosecution of such~~
24 ~~action, provided the plaintiff is the prevailing party. The defendant~~
25 ~~in any such action, shall be entitled to attorneys' fees and all costs~~
26 ~~incurred in the defense against such action, provided the defendant~~
27 ~~is the prevailing party.~~

28 ~~The registrar pursuant to Section 7090 may take disciplinary~~
29 ~~action as provided in this chapter against any person whenever the~~
30 ~~grounds or cause for disciplinary action arose upon any project~~
31 ~~undertaken by him or her as a licensee licensed pursuant to this~~
32 ~~chapter.~~

33 ~~Any person, firm, or corporation which has violated Section~~
34 ~~7028 by engaging in contracting work as an owner-builder without~~
35 ~~having a license or an exemption from licensure under this section~~
36 ~~or any other section shall not be entitled to become a licensee under~~
37 ~~this chapter for a period of one year following the violation.~~

38 SEC. 16. Section 7044.01 is added to the Business and
39 Professions Code, to read:

1 7044.01. In addition to all other remedies, any (a) licensed
2 contractor or association of contractors, (b) labor organization, (c)
3 consumer affected by the violation, (d) district attorney, or (e) the
4 Attorney General shall be entitled to seek injunctive relief
5 prohibiting any violation of this chapter by an owner-builder who
6 is neither licensed nor exempted from licensure under this chapter.
7 The plaintiff in that action shall not be required to prove irreparable
8 injury and shall be entitled to attorney's fees and all costs incurred
9 in the prosecution of the action, provided the plaintiff is the
10 prevailing party. The defendant in that action shall be entitled to
11 attorney's fees and all costs incurred in the defense against the
12 action, provided the defendant is the prevailing party.

13 SEC. 17. Section 7108.5 of the Business and Professions Code
14 is repealed.

15 ~~7108.5. A prime contractor or subcontractor shall pay to any~~
16 ~~subcontractor, not later than 10 days of receipt of each progress~~
17 ~~payment, unless otherwise agreed to in writing, the respective~~
18 ~~amounts allowed the contractor on account of the work performed~~
19 ~~by the subcontractors, to the extent of each subcontractor's interest~~
20 ~~therein. In the event that there is a good faith dispute over all or~~
21 ~~any portion of the amount due on a progress payment from the~~
22 ~~prime contractor or subcontractor to a subcontractor, then the prime~~
23 ~~contractor or subcontractor may withhold no more than 150 percent~~
24 ~~of the disputed amount.~~

25 ~~Any violation of this section shall constitute a cause for~~
26 ~~disciplinary action and shall subject the licensee to a penalty,~~
27 ~~payable to the subcontractor, of 2 percent of the amount due per~~
28 ~~month for every month that payment is not made. In any action~~
29 ~~for the collection of funds wrongfully withheld, the prevailing~~
30 ~~party shall be entitled to his or her attorney's fees and costs.~~

31 ~~The sanctions authorized under this section shall be separate~~
32 ~~from, and in addition to, all other remedies either civil,~~
33 ~~administrative, or criminal.~~

34 ~~This section applies to all private works of improvement and to~~
35 ~~all public works of improvement, except where Section 10262 of~~
36 ~~the Public Contract Code applies.~~

37 SEC. 18. Section 7108.5 is added to the Business and
38 Professions Code, to read:

1 7108.5. (a) This section applies to all private works of
2 improvement and to all public works of improvement, except where
3 Section 10262 of the Public Contract Code applies.

4 (b) Except as provided in subdivision (c), a prime contractor or
5 subcontractor shall pay to any subcontractor, not later than 10 days
6 of receipt of each progress payment, unless otherwise agreed to
7 in writing, the respective amounts allowed the contractor on
8 account of the work performed by the subcontractors, to the extent
9 of each subcontractor's interest therein. A prime contractor or
10 subcontractor that fails to comply with this subdivision shall be
11 subject to a penalty, payable to the subcontractor, of 2 percent of
12 the amount due per month for every month that payment is not
13 made as required under this subdivision.

14 (c) If there is a good faith dispute over all or any portion of the
15 amount due on a progress payment from the prime contractor or
16 subcontractor to a subcontractor, the prime contractor or
17 subcontractor may withhold no more than 150 percent of the
18 disputed amount.

19 (d) A violation of this section shall constitute a cause for
20 disciplinary action.

21 (e) In any action for the collection of funds wrongfully withheld,
22 the prevailing party shall be entitled to his or her attorney's fees
23 and costs.

24 (f) The sanctions authorized under this section shall be separate
25 from, and in addition to, all other remedies, either civil,
26 administrative, or criminal.

27 SEC. 19. Section 7159 of the Business and Professions Code
28 is amended to read:

29 7159. (a) (1) This section identifies the projects for which a
30 home improvement contract is required, outlines the contract
31 requirements, and lists the items that shall be included in the
32 contract, or may be provided as an attachment.

33 (2) This section does not apply to service and repair contracts
34 that are subject to Section 7159.10, if the contract for the applicable
35 services complies with Sections 7159.10 to 7159.14, inclusive.

36 (3) This section does not apply to the sale, installation, and
37 servicing of a fire alarm sold in conjunction with an alarm system,
38 as defined in subdivision (n) of Section 7590.1, if all costs
39 attributable to making the fire alarm system operable, including
40 sale and installation costs, do not exceed five hundred dollars

1 (\$500), and the licensee complies with the requirements set forth
2 in Section 7159.9.

3 (4) This section does not apply to any costs associated with
4 monitoring a burglar or fire alarm system.

5 (5) Failure by the licensee, his or her agent or salesperson, or
6 by a person subject to be licensed under this chapter, to provide
7 the specified information, notices, and disclosures in the contract,
8 or to otherwise fail to comply with any provision of this section,
9 is cause for discipline.

10 (b) For purposes of this section, “home improvement contract”
11 means an agreement, whether oral or written, or contained in one
12 or more documents, between a contractor and an owner or between
13 a contractor and a tenant, regardless of the number of residence
14 or dwelling units contained in the building in which the tenant
15 resides, if the work is to be performed in, to, or upon the residence
16 or dwelling unit of the tenant, for the performance of a home
17 improvement, as defined in Section 7151, and includes all labor,
18 services, and materials to be furnished and performed thereunder,
19 if the aggregate contract price specified in one or more
20 improvement contracts, including all labor, services, and materials
21 to be furnished by the contractor, exceeds five hundred dollars
22 (\$500). “Home improvement contract” also means an agreement,
23 whether oral or written, or contained in one or more documents,
24 between a salesperson, whether or not he or she is a home
25 improvement salesperson, and an owner or a tenant, regardless of
26 the number of residence or dwelling units contained in the building
27 in which the tenant resides, which provides for the sale, installation,
28 or furnishing of home improvement goods or services.

29 (c) In addition to the specific requirements listed under this
30 section, every home improvement contract and any person subject
31 to licensure under this chapter or his or her agent or salesperson
32 shall comply with all of the following:

33 (1) The writing shall be legible.

34 (2) Any printed form shall be readable. Unless a larger typeface
35 is specified in this article, text in any printed form shall be in at
36 least 10-point typeface and the headings shall be in at least 10-point
37 boldface type.

38 (3) (A) Before any work is started, the contractor shall give the
39 buyer a copy of the contract signed and dated by both the contractor
40 and the buyer. The buyer’s receipt of the copy of the contract

initiates the buyer's rights to cancel the contract pursuant to Sections 1689.5 to 1689.14, inclusive, of the Civil Code.

(B) The contract shall contain on the first page, in a typeface no smaller than that generally used in the body of the document, both of the following:

(i) The date the buyer signed the contract.

(ii) The name and address of the contractor to which the applicable "Notice of Cancellation" is to be mailed, immediately preceded by a statement advising the buyer that the "Notice of Cancellation" may be sent to the contractor at the address noted on the contract.

(4) ~~A~~ *The contract shall include a statement that, upon satisfactory payment being made for any portion of the work performed, the contractor, prior to any further payment being made, shall furnish to the person contracting for the home improvement or swimming pool work a full and unconditional release from any potential lien claimant claim or mechanic's lien authorized pursuant to Section-3114 3110 of the Civil Code for that portion of the work for which payment has been made.*

(5) A change-order form for changes or extra work shall be incorporated into the contract and shall become part of the contract only if it is in writing and signed by the parties prior to the commencement of any work covered by a change order.

(6) The contract shall contain, in close proximity to the signatures of the owner and contractor, a notice stating that the owner or tenant has the right to require the contractor to have a performance and payment bond.

(7) If the contract provides for a contractor to furnish joint control, the contractor shall not have any financial or other interest in the joint control.

(8) The provisions of this section are not exclusive and do not relieve the contractor from compliance with any other applicable provision of law.

(d) A home improvement contract and any changes to the contract shall be in writing and signed by the parties to the contract prior to the commencement of work covered by the contract or an applicable change order and, except as provided in paragraph (8) of subdivision (a) of Section 7159.5, shall include or comply with all of the following:

1 (1) The name, business address, and license number of the
2 contractor.

3 (2) If applicable, the name and registration number of the home
4 improvement salesperson that solicited or negotiated the contract.

5 (3) The following heading on the contract form that identifies
6 the type of contract in at least 10-point boldface type: “Home
7 Improvement.”

8 (4) The following statement in at least 12-point boldface type:
9 “You are entitled to a completely filled in copy of this agreement,
10 signed by both you and the contractor, before any work may be
11 started.”

12 (5) The heading: “Contract Price,” followed by the amount of
13 the contract in dollars and cents.

14 (6) If a finance charge will be charged, the heading: “Finance
15 Charge,” followed by the amount in dollars and cents. The finance
16 charge is to be set out separately from the contract amount.

17 (7) The heading: “Description of the Project and Description
18 of the Significant Materials to be Used and Equipment to be
19 Installed,” followed by a description of the project and a description
20 of the significant materials to be used and equipment to be installed.
21 For swimming pools, the project description required under this
22 paragraph also shall include a plan and scale drawing showing the
23 shape, size, dimensions, and the construction and equipment
24 specifications.

25 (8) If a downpayment will be charged, the details of the
26 downpayment shall be expressed in substantially the following
27 form, and shall include the text of the notice as specified in
28 subparagraph (C):

29 (A) The heading: “Downpayment.”

30 (B) A space where the actual downpayment appears.

31 (C) The following statement in at least 12-point boldface type:

32
33 “THE DOWNPAYMENT MAY NOT EXCEED \$1,000 OR 10
34 PERCENT OF THE CONTRACT PRICE, WHICHEVER IS
35 LESS.”

36 (9) If payments, other than the downpayment, are to be made
37 before the project is completed, the details of these payments,
38 known as progress payments, shall be expressed in substantially
39 the following form, and shall include the text of the statement as
40 specified in subparagraph (C):

1 (A) A schedule of progress payments shall be preceded by the
2 heading: “Schedule of Progress Payments.”

3
4 (B) Each progress payment shall be stated in dollars and cents
5 and specifically reference the amount of work or services to be
6 performed and materials and equipment to be supplied.

7 (C) The section of the contract reserved for the progress
8 payments shall include the following statement in at least 12-point
9 boldface type:

10
11 “The schedule of progress payments must specifically describe
12 each phase of work, including the type and amount of work or
13 services scheduled to be supplied in each phase, along with the
14 amount of each proposed progress payment. IT IS AGAINST THE
15 LAW FOR A CONTRACTOR TO COLLECT PAYMENT FOR
16 WORK NOT YET COMPLETED, OR FOR MATERIALS NOT
17 YET DELIVERED. HOWEVER, A CONTRACTOR MAY
18 REQUIRE A DOWNPAYMENT.”

19
20 (10) The contract shall address the commencement of work to
21 be performed in substantially the following form:

22 (A) A statement that describes what constitutes substantial
23 commencement of work under the contract.

24 (B) The heading: “Approximate Start Date.”

25 (C) The approximate date on which work will be commenced.

26 (11) The estimated completion date of the work shall be
27 referenced in the contract in substantially the following form:

28 (A) The heading: “Approximate Completion Date.”

29 (B) The approximate date of completion.

30 (12) If applicable, the heading: “List of Documents to be
31 Incorporated into the Contract,” followed by the list of documents
32 incorporated into the contract.

33 (13) The heading: “Note about Extra Work and Change Orders,”
34 followed by the following statement:

35
36 “Extra Work and Change Orders become part of the contract
37 once the order is prepared in writing and signed by the parties prior
38 to the commencement of work covered by the new change order.
39 The order must describe the scope of the extra work or change,

1 the cost to be added or subtracted from the contract, and the effect
2 the order will have on the schedule of progress payments.”
3

4 (e) Except as provided in paragraph (8) of subdivision (a) of
5 Section 7159.5, all of the following notices shall be provided to
6 the owner as part of the contract form as specified or, if otherwise
7 authorized under this subdivision, may be provided as an
8 attachment to the contract:

9 (1) A notice concerning commercial general liability insurance.
10 This notice may be provided as an attachment to the contract if
11 the contract includes the following statement: “A notice concerning
12 commercial general liability insurance is attached to this contract.”
13 The notice shall include the heading “Commercial General Liability
14 Insurance (CGL),” followed by whichever of the following
15 statements is both relevant and correct:

16 (A) “(The name on the license or ‘This contractor’) does not
17 carry commercial general liability insurance.”

18 (B) “(The name on the license or ‘This contractor’) carries
19 commercial general liability insurance written by (the insurance
20 company). You may call (the insurance company) at _____
21 to check the contractor’s insurance coverage.”

22 (C) “(The name on the license or ‘This contractor’) is
23 self-insured.”

24 (2) A notice concerning workers’ compensation insurance. This
25 notice may be provided as an attachment to the contract if the
26 contract includes the statement: “A notice concerning workers’
27 compensation insurance is attached to this contract.” The notice
28 shall include the heading “Workers’ Compensation Insurance”
29 followed by whichever of the following statements is correct:

30 (A) “(The name on the license or ‘This contractor’) has no
31 employees and is exempt from workers’ compensation
32 requirements.”

33 (B) “(The name on the license or ‘This contractor’) carries
34 workers’ compensation insurance for all employees.”

35 (3) A notice that provides the buyer with the following
36 information about the performance of extra or change-order work:

37 (A) A statement that the buyer may not require a contractor to
38 perform extra or change-order work without providing written
39 authorization prior to the commencement of work covered by the
40 new change order.

1 (B) A statement informing the buyer that extra work or a change
2 order is not enforceable against a buyer unless the change order
3 also identifies all of the following in writing prior to the
4 commencement of work covered by the new change order:

- 5 (i) The scope of work encompassed by the order.
- 6 (ii) The amount to be added or subtracted from the contract.
- 7 (iii) The effect the order will make in the progress payments or
8 the completion date.

9 (C) A statement informing the buyer that the contractor's failure
10 to comply with the requirements of this paragraph does not
11 preclude the recovery of compensation for work performed based
12 upon legal or equitable remedies designed to prevent unjust
13 enrichment.

14 (4) A notice with the heading "Mechanics' Lien Warning"
15 written as follows:

16
17 "MECHANICS' LIEN WARNING:

18 Anyone who helps improve your property, but who is not paid,
19 may record what is called a mechanics' lien on your property. A
20 mechanics' lien is a claim, like a mortgage or home equity loan,
21 made against your property and recorded with the county recorder.

22 Even if you pay your contractor in full, unpaid subcontractors,
23 suppliers, and laborers who helped to improve your property may
24 record mechanics' liens and sue you in court to foreclose the lien.
25 If a court finds the lien is valid, you could be forced to pay twice
26 or have a court officer sell your home to pay the lien. Liens can
27 also affect your credit.

28 To preserve their right to record a lien, each subcontractor and
29 material supplier must provide you with a document called a
30 '20-day Preliminary Notice.' This notice is not a lien. The purpose
31 of the notice is to let you know that the person who sends you the
32 notice has the right to record a lien on your property if he or she
33 is not paid.

34 BE CAREFUL. The Preliminary Notice can be sent up to 20
35 days after the subcontractor starts work or the supplier provides
36 material. This can be a big problem if you pay your contractor
37 before you have received the Preliminary Notices.

38 You will not get Preliminary Notices from your prime contractor
39 or from laborers who work on your project. The law assumes that
40 you already know they are improving your property.

1 PROTECT YOURSELF FROM LIENS. You can protect
2 yourself from liens by getting a list from your contractor of all the
3 subcontractors and material suppliers that work on your project.
4 Find out from your contractor when these subcontractors started
5 work and when these suppliers delivered goods or materials. Then
6 wait 20 days, paying attention to the Preliminary Notices you
7 receive.

8 PAY WITH JOINT CHECKS. One way to protect yourself is
9 to pay with a joint check. When your contractor tells you it is time
10 to pay for the work of a subcontractor or supplier who has provided
11 you with a Preliminary Notice, write a joint check payable to both
12 the contractor and the subcontractor or material supplier.

13 For other ways to prevent liens, visit CSLB's Internet Web site
14 at www.cslb.ca.gov or call CSLB at 800-321-CSLB (2752).

15 REMEMBER, IF YOU DO NOTHING, YOU RISK HAVING
16 A LIEN PLACED ON YOUR HOME. This can mean that you
17 may have to pay twice, or face the forced sale of your home to pay
18 what you owe.”

19
20 (5) The following notice shall be provided in at least 12-point
21 typeface:

22
23 “Information about the Contractors’ State License Board (CSLB):
24 CSLB is the state consumer protection agency that licenses and
25 regulates construction contractors.

26 Contact CSLB for information about the licensed contractor you
27 are considering, including information about disclosable
28 complaints, disciplinary actions, and civil judgments that are
29 reported to CSLB.

30 Use only licensed contractors. If you file a complaint against a
31 licensed contractor within the legal deadline (usually four years),
32 CSLB has authority to investigate the complaint. If you use an
33 unlicensed contractor, CSLB may not be able to help you resolve
34 your complaint. Your only remedy may be in civil court, and you
35 may be liable for damages arising out of any injuries to the
36 unlicensed contractor or the unlicensed contractor’s employees.

37 For more information:

38 Visit CSLB’s Internet Web site at www.cslb.ca.gov

39 Call CSLB at 800-321-CSLB (2752)

40 Write CSLB at P.O. Box 26000, Sacramento, CA 95826.”

1
2 (6) (A) The notice set forth in subparagraph (B) and entitled
3 “Three-Day Right to Cancel,” shall be provided to the buyer unless
4 the contract is:

5 (i) Negotiated at the contractor’s place of business.

6 (ii) Subject to the “Seven-Day Right to Cancel,” as set forth in
7 paragraph (7).

8 (iii) Subject to licensure under the Alarm Company Act (Chapter
9 11.6 (commencing with Section 7590)), provided the alarm
10 company licensee complies with Sections 1689.5, 1689.6, and
11 1689.7 of the Civil Code, as applicable.

12 (B) “Three-Day Right to Cancel
13

14 You, the buyer, have the right to cancel this contract within three
15 business days. You may cancel by e-mailing, mailing, faxing, or
16 delivering a written notice to the contractor at the contractor’s
17 place of business by midnight of the third business day after you
18 received a signed and dated copy of the contract that includes this
19 notice. Include your name, your address, and the date you received
20 the signed copy of the contract and this notice.

21 If you cancel, the contractor must return to you anything you
22 paid within 10 days of receiving the notice of cancellation. For
23 your part, you must make available to the contractor at your
24 residence, in substantially as good condition as you received them,
25 goods delivered to you under this contract or sale. Or, you may,
26 if you wish, comply with the contractor’s instructions on how to
27 return the goods at the contractor’s expense and risk. If you do
28 make the goods available to the contractor and the contractor does
29 not pick them up within 20 days of the date of your notice of
30 cancellation, you may keep them without any further obligation.
31 If you fail to make the goods available to the contractor, or if you
32 agree to return the goods to the contractor and fail to do so, then
33 you remain liable for performance of all obligations under the
34 contract.”

35
36 (C) The “Three-Day Right to Cancel” notice required by this
37 paragraph shall comply with all of the following:

38 (i) The text of the notice is at least 12-point boldface type.

39 (ii) The notice is in immediate proximity to a space reserved
40 for the owner’s signature.

(iii) The owner acknowledges receipt of the notice by signing and dating the notice form in the signature space.

(iv) The notice is written in the same language, e.g., Spanish, as that principally used in any oral sales presentation.

(v) The notice may be attached to the contract if the contract includes, in at least 12-point boldface type, a checkbox with the following statement: “The law requires that the contractor give you a notice explaining your right to cancel. Initial the checkbox if the contractor has given you a ‘Notice of the Three-Day Right to Cancel.’”

(vi) The notice shall be accompanied by a completed form in duplicate, captioned “Notice of Cancellation,” which also shall be attached to the agreement or offer to purchase and be easily detachable, and which shall contain the following statement written in the same language, e.g., Spanish, as used in the contract:

“Notice of Cancellation”

/enter date of transaction/

(Date)

“You may cancel this transaction, without any penalty or obligation, within three business days from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within 10 days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale, or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller’s expense and risk.

If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to

do so, then you remain liable for performance of all obligations under the contract.”

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, or send a telegram to _____,
/name of seller/
at _____
/address of seller’s place of business/
not later than midnight of _____.

(Date)

I hereby cancel this transaction. _____
(Date)

(Buyer’s signature)

(7) (A) The following notice entitled “Seven-Day Right to Cancel” shall be provided to the buyer for any contract that is written for the repair or restoration of residential premises damaged by any sudden or catastrophic event for which a state of emergency has been declared by the President of the United States or the Governor, or for which a local emergency has been declared by the executive officer or governing body of any city, county, or city and county:

“Seven-Day Right to Cancel

You, the buyer, have the right to cancel this contract within seven business days. You may cancel by e-mailing, mailing, faxing, or delivering a written notice to the contractor at the contractor’s place of business by midnight of the seventh business day after you received a signed and dated copy of the contract that includes this notice. Include your name, your address, and the date you received the signed copy of the contract and this notice.

If you cancel, the contractor must return to you anything you paid within 10 days of receiving the notice of cancellation. For your part, you must make available to the contractor at your residence, in substantially as good condition as you received them, goods delivered to you under this contract or sale. Or, you may, if you wish, comply with the contractor’s instructions on how to

1 return the goods at the contractor's expense and risk. If you do
2 make the goods available to the contractor and the contractor does
3 not pick them up within 20 days of the date of your notice of
4 cancellation, you may keep them without any further obligation.
5 If you fail to make the goods available to the contractor, or if you
6 agree to return the goods to the contractor and fail to do so, then
7 you remain liable for performance of all obligations under the
8 contract.”
9

10 (B) The “Seven-Day Right to Cancel” notice required by this
11 subdivision shall comply with all of the following:

- 12 (i) The text of the notice is at least 12-point boldface type.
13 (ii) The notice is in immediate proximity to a space reserved
14 for the owner's signature.
15 (iii) The owner acknowledges receipt of the notice by signing
16 and dating the notice form in the signature space.
17 (iv) The notice is written in the same language, e.g., Spanish,
18 as that principally used in any oral sales presentation.
19 (v) The notice may be attached to the contract if the contract
20 includes, in at least 12-point boldface type, a checkbox with the
21 following statement: “The law requires that the contractor give
22 you a notice explaining your right to cancel. Initial the checkbox
23 if the contractor has given you a ‘Notice of the Seven-Day Right
24 to Cancel.’”
25 (vi) The notice shall be accompanied by a completed form in
26 duplicate, captioned “Notice of Cancellation,” which shall also be
27 attached to the agreement or offer to purchase and be easily
28 detachable, and which shall contain the following statement written
29 in the same language, e.g., Spanish, as used in the contract:
30

31 “Notice of Cancellation”

32 /enter date of transaction/
33

34 _____
35 (Date)
36

37 “You may cancel this transaction, without any penalty or
38 obligation, within seven business days from the above date.

39 If you cancel, any property traded in, any payments made by
40 you under the contract or sale, and any negotiable instrument

1 executed by you will be returned within 10 days following receipt
2 by the seller of your cancellation notice, and any security interest
3 arising out of the transaction will be canceled.

4 If you cancel, you must make available to the seller at your
5 residence, in substantially as good condition as when received,
6 any goods delivered to you under this contract or sale, or you may,
7 if you wish, comply with the instructions of the seller regarding
8 the return shipment of the goods at the seller's expense and risk.

9 If you do make the goods available to the seller and the seller
10 does not pick them up within 20 days of the date of your notice of
11 cancellation, you may retain or dispose of the goods without any
12 further obligation. If you fail to make the goods available to the
13 seller, or if you agree to return the goods to the seller and fail to
14 do so, then you remain liable for performance of all obligations
15 under the contract.”

16
17
18 To cancel this transaction, mail or deliver a signed and dated copy of this
19 cancellation notice, or any other written notice, or send a telegram
20 to _____,

21 /name of seller/

22 at _____

23 /address of seller's place of business/

24 not later than midnight of _____.

25 (Date)

26 I hereby cancel this transaction. _____

27 (Date)

28 _____
29 (Buyer's signature)
30

31 SEC. 20. Section 7159.5 of the Business and Professions Code
32 is amended to read:

33 7159.5. This section applies to all home improvement contracts,
34 as defined in Section 7151.2, between an owner or tenant and a
35 contractor, whether a general contractor or a specialty contractor,
36 who is licensed or subject to be licensed pursuant to this chapter
37 with regard to the transaction.

38 (a) Failure by the licensee or a person subject to be licensed
39 under this chapter, or by his or her agent or salesperson, to comply
40 with the following provisions is cause for discipline:

1 (1) The contract shall be in writing and shall include the agreed
2 contract amount in dollars and cents. The contract amount shall
3 include the entire cost of the contract, including profit, labor, and
4 materials, but excluding finance charges.

5 (2) If there is a separate finance charge between the contractor
6 and the person contracting for home improvement, the finance
7 charge shall be set out separately from the contract amount.

8 (3) If a downpayment will be charged, the downpayment may
9 not exceed one thousand dollars (\$1,000) or 10 percent of the
10 contract amount, whichever is less.

11 (4) If, in addition to a downpayment, the contract provides for
12 payments to be made prior to completion of the work, the contract
13 shall include a schedule of payments in dollars and cents
14 specifically referencing the amount of work or services to be
15 performed and any materials and equipment to be supplied.

16 (5) Except for a downpayment, the contractor may neither
17 request nor accept payment that exceeds the value of the work
18 performed or material delivered.

19 (6) Upon any payment by the person contracting for home
20 improvement, and prior to any further payment being made, the
21 contractor shall, if requested, obtain and furnish to the person a
22 full and unconditional release from any potential lien claimant
23 claim or mechanic's lien *authorized* pursuant to Section ~~3114~~ 3110
24 of the Civil Code for any portion of the work for which payment
25 has been made. The person contracting for home improvement
26 may withhold all further payments until these releases are
27 furnished.

28 (7) If the contract provides for a payment of a salesperson's
29 commission out of the contract price, that payment shall be made
30 on a pro rata basis in proportion to the schedule of payments made
31 to the contractor by the disbursing party in accordance with
32 paragraph (4).

33 (8) A contractor furnishing a performance and payment bond,
34 lien and completion bond, or a bond equivalent or joint control
35 approved by the registrar covering full performance and payment
36 is exempt from paragraphs (3), (4), and (5), and need not include,
37 as part of the contract, the statement regarding the downpayment
38 specified in subparagraph (C) of paragraph (8) of subdivision (d)
39 of Section 7159, the details and statement regarding progress
40 payments specified in paragraph (9) of subdivision (d) of Section

1 7159, or the Mechanics' Lien Warning specified in paragraph (4)
2 of subdivision (e) of Section 7159. A contractor furnishing these
3 bonds, bond equivalents, or a joint control approved by the registrar
4 may accept payment prior to completion. If the contract provides
5 for a contractor to furnish joint control, the contractor shall not
6 have any financial or other interest in the joint control.

7 (b) A violation of paragraph (1), (3), or (5) of subdivision (a)
8 by a licensee or a person subject to be licensed under this chapter,
9 or by his or her agent or salesperson, is a misdemeanor punishable
10 by a fine of not less than one hundred dollars (\$100) nor more than
11 five thousand dollars (\$5,000), or by imprisonment in a county
12 jail not exceeding one year, or by both that fine and imprisonment.

13 (1) An indictment or information against a person who is not
14 licensed but who is required to be licensed under this chapter shall
15 be brought, or a criminal complaint filed, for a violation of this
16 section, in accordance with paragraph (4) of subdivision (d) of
17 Section 802 of the Penal Code, within four years from the date of
18 the contract or, if the contract is not reduced to writing, from the
19 date the buyer makes the first payment to the contractor.

20 (2) An indictment or information against a person who is
21 licensed under this chapter shall be brought, or a criminal complaint
22 filed, for a violation of this section, in accordance with paragraph
23 (2) of subdivision (d) of Section 802 of the Penal Code, within
24 two years from the date of the contract or, if the contract is not
25 reduced to writing, from the date the buyer makes the first payment
26 to the contractor.

27 (3) The limitations on actions in this subdivision shall not apply
28 to any administrative action filed against a licensed contractor.

29 (c) Any person who violates this section as part of a plan or
30 scheme to defraud an owner or tenant of a residential or
31 nonresidential structure, including a mobilehome or manufactured
32 home, in connection with the offer or performance of repairs to
33 the structure for damage caused by a natural disaster, shall be
34 ordered by the court to make full restitution to the victim based
35 on the person's ability to pay, as defined in subdivision (e) of
36 Section 1203.1b of the Penal Code. In addition to full restitution,
37 and imprisonment authorized by this section, the court may impose
38 a fine of not less than five hundred dollars (\$500) nor more than
39 twenty-five thousand dollars (\$25,000), based upon the defendant's
40 ability to pay. This subdivision applies to natural disasters for

1 which a state of emergency is proclaimed by the Governor pursuant
2 to Section 8625 of the Government Code, or for which an
3 emergency or major disaster is declared by the President of the
4 United States.

5 SEC. 21. Section 7159.14 of the Business and Professions
6 Code is amended to read:

7 7159.14. (a) This section applies to a service and repair
8 contract as defined in Section 7159.10. A violation of this section
9 by a licensee or a person subject to be licensed under this chapter,
10 or by his or her agent or salesperson, is cause for discipline.

11 (1) The contract may not exceed seven hundred fifty dollars
12 (\$750).

13 (2) The contract shall be in writing and shall state the agreed
14 contract amount, which may be stated as either a fixed contract
15 amount in dollars and cents or, if a time and materials formula is
16 used, as an estimated contract amount in dollars and cents.

17 (3) The contract amount shall include the entire cost of the
18 contract including profit, labor, and materials, but excluding
19 finance charges.

20 (4) The actual contract amount of a time and materials contract
21 may not exceed the estimated contract amount without written
22 authorization from the buyer.

23 (5) The prospective buyer must have initiated contact with the
24 contractor to request work.

25 (6) The contractor may not sell the buyer goods or services
26 beyond those reasonably necessary to take care of the particular
27 problem that caused the buyer to contact the contractor.

28 (7) No payment may be due before the project is completed.

29 (8) A service and repair contractor may charge only one service
30 charge. For purposes of this chapter, a service charge includes
31 such charges as a service or trip charge, or an inspection fee.

32 (9) A service and repair contractor charging a service charge
33 must disclose in all advertisements that there is a service charge
34 and, when the customer initiates the call for service, must disclose
35 the amount of the service charge.

36 (10) The service and repair contractor must offer to the customer
37 any parts that were replaced.

38 (11) Upon any payment by the buyer, the contractor shall, if
39 requested, obtain and furnish to the buyer a full and unconditional
40 release from any potential lien claimant claim or mechanic's lien

1 *authorized* pursuant to Section ~~3114~~ 3110 of the Civil Code for
2 any portion of the work for which payment has been made.

3 (b) A violation of paragraph (1), (2), (3), (4), (5), (6), or (8) of
4 subdivision (a) by a licensee or a person subject to be licensed
5 under this chapter, or by his or her agent or salesperson, is a
6 misdemeanor punishable by a fine of not less than one hundred
7 dollars (\$100) nor more than five thousand dollars (\$5,000), or by
8 imprisonment in a county jail not exceeding one year, or by both
9 that fine and imprisonment.

10 (1) An indictment or information against a person who is not
11 licensed but who is required to be licensed under this chapter shall
12 be brought, or a criminal complaint filed, for a violation of this
13 section, in accordance with paragraph (4) of subdivision (d) of
14 Section 802 of the Penal Code, within four years from the date of
15 the contract or, if the contract is not reduced to writing, from the
16 date the buyer makes the first payment to the contractor.

17 (2) An indictment or information against a person who is
18 licensed under this chapter shall be brought, or a criminal complaint
19 filed, for a violation of this section, in accordance with paragraph
20 (2) of subdivision (d) of Section 802 of the Penal Code, within
21 two years from the date of the contract or, if the contract is not
22 reduced to writing, from the date the buyer makes the first payment
23 to the contractor.

24 (3) The limitations on actions in this subdivision shall not apply
25 to any administrative action filed against a licensed contractor.

26 (c) Any person who violates this section as part of a plan or
27 scheme to defraud an owner or tenant of a residential or
28 nonresidential structure, including a mobilehome or manufactured
29 home, in connection with the offer or performance of repairs to
30 the structure for damage caused by a natural disaster, shall be
31 ordered by the court to make full restitution to the victim based
32 on the person's ability to pay, as defined in subdivision (e) of
33 Section 1203.1b of the Penal Code. In addition to full restitution,
34 and imprisonment authorized by this section, the court may impose
35 a fine of not less than five hundred dollars (\$500) nor more than
36 twenty-five thousand dollars (\$25,000), based upon the defendant's
37 ability to pay. This subdivision applies to natural disasters for
38 which a state of emergency is proclaimed by the Governor pursuant
39 to Section 8625 of the Government Code, or for which an

1 emergency or major disaster is declared by the President of the
2 United States.

3 SEC. 22. Section 7303.2 of the Business and Professions Code
4 is amended to read:

5 7303.2. The board shall conduct the following studies and
6 reviews, and shall report its findings and recommendations to the
7 department and the Joint Committee on Boards, Commissions,
8 and Consumer Protection no later than September 1, 2005:

9 (a) The board, pursuant to Section 139 and in conjunction with
10 the Office of *Professional* Examination Resources of the
11 department, shall review the 1600 hour training requirement for
12 cosmetologists.

13 (b) The board, in conjunction with the Office of *Professional*
14 Examination Resources of the department, shall evaluate the
15 equivalency of the national exam.

16 (c) The board shall conduct a study to assess the costs and
17 benefits associated with requiring all applicants to submit
18 fingerprint cards for background investigations.

19 (d) The board, in coordination with the Department of Industrial
20 Relations, shall review all components of the apprenticeship
21 program, including, but not limited to, the following:

22 (1) Apprenticeship curriculum requirements.

23 (2) The standards for the preapprentice trainers, program
24 sponsors, trainers, and placement establishments. The board shall
25 pay particular attention to ways to eliminate duplicative regulations.

26 (e) The board shall review all components of the externship
27 program. In addition to structural changes, the board shall address
28 the following:

29 (1) Whether the program should be eliminated.

30 (2) Whether the program should be available to all students, not
31 just cosmetology students attending private schools.

32 (3) Whether the students should be paid.

33 (f) The board shall assess the costs and benefits associated with
34 same day licensing. If the board determines that the benefits of
35 same day licensing outweigh the costs, the board shall immediately
36 plan and implement safety measures to protect site staff and
37 undispersed licenses.

38 (g) The board, in conjunction with the Office of *Professional*
39 Examination Resources of the department, shall assess the validity
40 of aggregate scoring for board applicants.

1 SEC. 23. Section 7606 of the Business and Professions Code
2 is amended to read:

3 7606. The bureau may, pursuant to the provisions of the
4 Administrative Procedure Act, adopt and enforce reasonably
5 necessary rules and regulations relating to:

6 (a) The practice of embalming;

7 (b) The business of a funeral director;

8 (c) The sanitary conditions of places where such practice or
9 business is conducted with particular regard to plumbing, sewage,
10 ventilation and equipment;

11 (d) Specifying conditions for approval of funeral establishments
12 for apprentices and for approval of ~~embalming schools~~; *mortuary*
13 *science programs*.

14 (e) The scope of examinations;

15 (f) Carrying out generally the various provisions of this chapter
16 for the protection of the peace, health, safety, welfare and morals
17 of the public.

18 SEC. 24. Section 7616 of the Business and Professions Code
19 is amended to read:

20 7616. (a) A licensed funeral establishment is a place of
21 business conducted in a building or separate portion of a building
22 having a specific street address or location and devoted exclusively
23 to those activities as are incident, convenient, or related to the
24 preparation and arrangements, financial and otherwise, for the
25 funeral, transportation, burial or other disposition of human remains
26 and including, but not limited to, either of the following:

27 (1) A suitable room for the storage of human remains.

28 (2) A preparation room equipped with a sanitary flooring and
29 necessary drainage and ventilation and containing necessary
30 instruments and supplies for the preparation, sanitation, or
31 embalming of human remains for burial or transportation.

32 (b) Licensed funeral establishments under common ownership
33 or by contractual agreement within close geographical proximity
34 of each other shall be deemed to be in compliance with the
35 requirements of paragraph (1) or (2) of subdivision (a) if at least
36 one of the establishments has a room described in those paragraphs.

37 (c) Except as provided in Section 7609, and except accredited
38 ~~embalming schools and colleges~~ *mortuary science programs*
39 engaged in teaching students the art of embalming, no person shall
40 operate or maintain or hold himself or herself out as operating or

maintaining any of the facilities specified in paragraph (2) of subdivision (a), unless he or she is licensed as a funeral director.

(d) Nothing in this section shall be construed to require a funeral establishment to conduct its business or financial transactions at the same location as its preparation or storage of human remains.

(e) Nothing in this chapter shall be deemed to render unlawful the conduct of any ambulance service from the same premises as those on which a licensed funeral establishment is conducted, including the maintenance in connection with the funeral establishment of garages for the ambulances and living quarters for ambulance drivers.

(f) Every funeral establishment holding a funeral director's license on December 31, 1996, shall, upon application and payment of fees for renewal of its funeral director's license, be issued a funeral establishment license.

SEC. 25. Section 7641 of the Business and Professions Code is amended to read:

7641. It is unlawful for any person to embalm a body, or engage in, or hold himself or herself out as engaged in practice as an embalmer, unless he or she is licensed by the bureau. However, this section shall have no effect on students and instructors of embalming in ~~embalming colleges~~ *mortuary science programs* approved by the bureau.

SEC. 26. Section 7643 of the Business and Professions Code is amended to read:

7643. In order to qualify for a license as an embalmer, the applicant shall comply with all of the following requirements:

(a) Be over 18 years of age.

(b) Not have committed acts or crimes constituting grounds for denial of licensure under Section 480.

~~(c) Furnish proof showing completion of a high school course or instead he or she may furnish the bureau with evidence that he or she has been licensed and has practiced as an embalmer for a minimum of three years within the seven years preceding his or her application in any other state or country and that the license has never been suspended or revoked for unethical conduct.~~

~~(d)~~

(c) Have completed at least two years of apprenticeship under an embalmer licensed and engaged in practice as an embalmer in this state in a funeral establishment which shall have been approved

1 for apprentices by the bureau and while so apprenticed shall have
2 assisted in embalming not fewer than 100 human remains;
3 provided, however, that a person who has been licensed and has
4 practiced as an embalmer for a minimum of three years within the
5 seven years preceding his or her application in any other state or
6 country and whose license has never been suspended or revoked
7 for unethical conduct shall not be required to serve any
8 apprenticeship in this state.

9 (e)

10 (d) ~~Have successfully completed a course of instruction of not~~
11 ~~less than one academic year in an embalming school graduated~~
12 ~~from a mortuary science program~~ approved by the bureau and
13 accredited by the American Board of Funeral Service Education,
14 ~~or its equivalent, as determined by the bureau, and furnish official~~
15 ~~transcripts from that program or equivalent.~~

16 SEC. 27. Section 7646 of the Business and Professions Code
17 is amended to read:

18 7646. (a) The bureau shall require the applicant to pass ~~an~~
19 ~~examination, which shall include the following subjects both of~~
20 ~~the following:~~

21 (1) *The funeral service sciences section of the national*
22 *examination administered by the International Conference of*
23 *Funeral Service Examining Boards, or its equivalent, as determined*
24 *by the bureau.*

25 ~~(a) Theory and practice of embalming.~~

26 ~~(b) Anatomy, including histology, embryology and dissection.~~

27 ~~(c) Pathology and bacteriology.~~

28 ~~(d) Hygiene, including sanitation and public health.~~

29 ~~(e) Chemistry, including toxicology.~~

30 ~~(f) Restorative art, including plastic surgery and demisurgery.~~

31 ~~(g) Laws;~~

32 (2) *An examination, administered by the bureau, on the state's*
33 *laws and the rules and regulations of the bureau, including those*
34 *sections of the Health and Safety Code which pertain to the funeral*
35 *industry.*

36 (b) *An applicant who has previously passed the funeral services*
37 *sciences section of the national examination described in*
38 *paragraph (1) of subdivision (a) in another state shall be deemed*
39 *to be in compliance with that paragraph.*

1 (c) An applicant who has previously failed the examination
2 administered by the bureau prior to the operative date of this
3 section may, until June 30, 2010, retake that examination. If the
4 applicant passes that examination, he or she shall be deemed to
5 be in compliance with this section.

6 SEC. 28. Section 7647 of the Business and Professions Code
7 is amended to read:

8 ~~7647. The bureau shall examine applicants for embalmer's~~
9 ~~licenses at least once annually. Examinations~~

10 7647. Examinations shall be held administered at such times
11 and places as may be determined by the bureau and the
12 International Conference of Funeral Service Examining Boards.

13 Notice

14 The bureau shall give notice of the time and place of such
15 examinations shall be given as determined by the bureau the
16 examination described in paragraph (2) of subdivision (a) of
17 Section 7646.

18 SEC. 29. Section 7662 of the Business and Professions Code
19 is amended to read:

20 7662. In order to qualify as an apprentice embalmer, an
21 applicant shall comply with all of the following requirements:

22 (a) Be over 18 years of age.

23 (b) Not have committed acts or crimes constituting grounds for
24 denial of licensure under Section 480.

25 (c) ~~Furnish~~ Do one of the following:

26 (1) Furnish proof showing completion of a high school course
27 or instead he or she may furnish.

28 (2) Furnish the bureau with evidence that he or she has been
29 licensed and has practiced as an embalmer for a minimum of three
30 years within the seven years preceding his or her application in
31 any other state or country and that the license has never been
32 suspended or revoked for unethical conduct.

33 (3) Have graduated from a mortuary science program approved
34 by the bureau and accredited by the American Board of Funeral
35 Service Education, or its equivalent, as determined by the bureau,
36 and furnish official transcripts from that program or equivalent.

37 SEC. 30. Section 7665 of the Business and Professions Code
38 is amended to read:

39 7665. All registered apprentice embalmers shall comply with
40 the following requirements during their period of apprenticeship:

1 (a) Shall file a report of apprenticeship as follows:

2 (1) On or before January 15 of each year covering the period
3 of apprenticeship ending as of December 31 preceding.

4 (2) Upon change of supervising embalmer or employer, or both.

5 (3) Upon completion of apprenticeship.

6 (4) Upon application for leave of absence for a period in excess
7 of 15 days.

8 (5) Upon suspending apprenticeship to attend ~~embalming college~~
9 *a mortuary science program*.

10 (6) Upon application for reregistration after suspension or
11 revocation of registration if a complete report of previous
12 registration has not been filed.

13 (b) The information contained in the report shall consist of a
14 concise summary of the work done by the apprentice during the
15 period covered thereby, shall be verified by the apprentice and
16 certified to as correct by his or her supervising embalmer and
17 employer. Upon request of the bureau, each funeral director in
18 whose establishment an apprenticeship is being, or has been,
19 served, and each embalmer under whose instruction or supervision
20 an apprenticeship is being or has been served, shall promptly file
21 with the bureau a report or such other information as may be
22 requested relating to the apprenticeship. Failure to comply with
23 the request is cause for revocation by the bureau of the approval
24 granted to the funeral director or embalmer for the training of
25 apprentices and is also a cause for disciplinary action against the
26 funeral director or embalmer.

27 SEC. 31. Section 7666 of the Business and Professions Code
28 is amended to read:

29 7666. (a) The term of apprenticeship shall be two years.
30 However if an apprentice after having served his or her
31 apprenticeship fails to pass the ~~examination~~ *examinations required*
32 for an embalmer's license he or she may continue for one additional
33 term of apprenticeship, which shall be the maximum apprenticeship
34 permitted and provided further that an apprentice may, upon filing
35 an application therefor, be permitted to continue the apprenticeship
36 for a period not to exceed six months, if approved, for any of the
37 following reasons:

38 (1) While awaiting the processing of applications submitted to
39 the bureau.

1 (2) While awaiting notification of grades of ~~embalmers'~~
2 examinations ~~administered by the bureau~~ *required under Section*
3 *7646*.

4 (3) While awaiting the commencement of a class of ~~an~~
5 ~~embalming school or college~~ *a mortuary science program* when
6 the apprentice intends to enroll in the ~~school or college~~ *program*.

7 Applications filed for an extension of apprenticeship shall be
8 filed by the applicant with the bureau not fewer than 15 days prior
9 to the date the applicant requests the extension to commence.

10 (b) Terms of apprenticeship may be served before, after, or
11 divided by the ~~embalming college course~~ *mortuary science*
12 *program* at the option of the apprentice; provided, however, that
13 the term of apprenticeship must be completed, excluding time
14 spent in active military service, within six years from the date of
15 original registration, or from the date an apprentice successfully
16 passes the ~~examination~~ *examinations* for an embalmer's license
17 required in Section 7646 ~~of this code~~, whichever first occurs, and
18 provided further that if the term of apprenticeship is not completed
19 within the six-year period, the bureau may require that the applicant
20 serve the additional term of apprenticeship, not to exceed two
21 years.

22 (c) A student attending ~~an embalming college~~ *a mortuary*
23 *science program* may register as an apprentice during ~~his or her~~
24 ~~college~~ *the program* term but shall receive no credit for
25 apprenticeship on the term required by this code unless he or she
26 is also a full-time employee of a funeral director.

27 (d) An apprentice while serving his or her required term of
28 apprenticeship shall be a full-time employee in the funeral
29 establishment in which he or she is employed.

30 SEC. 32. Section 7671 of the Business and Professions Code
31 is amended to read:

32 7671. No person who is a duly registered apprentice or a student
33 at an approved ~~embalming school~~ *mortuary science program* in
34 California at the time of any amendment to this chapter raising the
35 requirements for apprentice embalmers or license as an embalmer,
36 shall be required to comply with the provisions of such amendment.

37 SEC. 33. Section 7725.5 of the Business and Professions Code
38 is amended to read:

39 7725.5. A license which is not renewed within five years after
40 its expiration may not be renewed, restored, reissued, or reinstated

1 thereafter. The holder of the expired license may obtain a new
2 license only if the holder pays all of the fees, and meets all of the
3 requirements, other than requirements relating to education, set
4 forth in this chapter for obtaining an original license, except that
5 the bureau may issue a new license to the holder without an
6 examination if the holder establishes to the bureau's satisfaction
7 that, with due regard for the public interest, the holder is qualified
8 to engage in the activity in which the holder again seeks to be
9 licensed. The bureau may, by appropriate regulation, provide for
10 the waiver or refund of all or any part of the application fee in
11 those cases in which a license is issued without an examination
12 under this section.

13 The provisions of this section do not apply to certificates of
14 apprenticeship.

15 SEC. 34. Section 7729 of the Business and Professions Code
16 is amended to read:

17 7729. The amount of the fees prescribed by this chapter shall
18 be fixed according to the following schedule with the minimum
19 amount specified being the amount fixed on January 1, 1988.

20 (a) The application fee for a funeral director's license shall be
21 not less than one hundred dollars (\$100) and not more than two
22 hundred dollars (\$200).

23 (b) The application fee for change of location of a funeral
24 establishment's license shall be not less than one hundred fifty
25 dollars (\$150) and not more than two hundred fifty dollars (\$250).

26 (c) The application fee for permission to assign a funeral
27 establishment's license shall be not less than two hundred dollars
28 (\$200) and not more than three hundred dollars (\$300).

29 (d) The license renewal fee payable by a licensed funeral director
30 shall be not less than one hundred dollars (\$100) and not more
31 than two hundred dollars (\$200). The fee for a delinquent renewal
32 of a funeral director's license shall be 150 percent of the timely
33 renewal fee.

34 (e) The application fee for an embalmer's license and the
35 examination *on the state's laws required under paragraph (2) of*
36 *subdivision (a) of Section 7646* for the license shall be not less
37 than one hundred dollars (\$100) and not more than one hundred
38 fifty dollars (\$150).

39 (f) The renewal fee payable by a licensed embalmer shall be
40 not less than seventy-five dollars (\$75) and not more than one

1 hundred twenty-five dollars (\$125). The fee for a delinquent
2 renewal of an embalmer's license shall be 150 percent of the timely
3 renewal fee.

4 (g) The application fee for a certificate of registration as an
5 apprentice embalmer shall be not less than thirty dollars (\$30) and
6 not more than sixty dollars (\$60).

7 (h) The fee for an application by a funeral establishment for
8 approval to train apprentice embalmers and for renewal of that
9 approval shall be not less than fifty dollars (\$50) and not more
10 than one hundred dollars (\$100).

11 (i) The application fee for a funeral director's examination shall
12 be not less than seventy-five dollars (\$75) and not more than one
13 hundred dollars (\$100).

14 (j) The fee for a timely filing of an individual report or a
15 combined report on preneed trust funds shall be not less than one
16 hundred dollars (\$100) and not more than two hundred dollars
17 (\$200). The fee for a late filing of any report on preneed trust funds
18 shall be 150 percent of the applicable timely fee.

19 (k) The application fee for permission to change the name
20 appearing on a funeral establishment's license shall be not less
21 than one hundred dollars (\$100) and not more than two hundred
22 dollars (\$200), and for permission to change the name on any other
23 license or certificate, not less than twenty dollars (\$20) and not
24 more than forty dollars (\$40).

25 (l) The application fee for a duplicate funeral director's license,
26 a duplicate funeral establishment's license, a duplicate embalmer's
27 license, or a duplicate certificate of registration as an apprentice
28 embalmer, shall be not less than twenty dollars (\$20) and not more
29 than forty dollars (\$40).

30 (m) The fee for filing a report of a change of corporate officers,
31 managers, or preneed trust fund trustees shall be not less than
32 twenty-five dollars (\$25) and not more than fifty dollars (\$50).

33 (n) The application fee for a funeral establishment license shall
34 be not less than three hundred dollars (\$300) and not more than
35 four hundred dollars (\$400).

36 (o) The license renewal fee for a licensed funeral establishment
37 shall be not less than three hundred dollars (\$300) nor more than
38 four hundred dollars (\$400).

39 SEC. 35. Section 9884.2 of the Business and Professions Code
40 is amended to read:

1 9884.2. Upon receipt of the form properly filled out and receipt
2 of the required fee, the director shall ~~validate~~ *issue* the registration
3 and send a proof of ~~such validation~~ *issuance* to the automotive
4 repair dealer. The director shall by regulation prescribe conditions;
5 ~~which that~~ *he or she* determines are necessary to insure future
6 compliance with this chapter, upon which a person, whose
7 registration has previously been ~~invalidated~~ *revoked* or has
8 previously been ~~refused validation~~ *denied* or who has committed
9 acts prohibited by Section 9884.7 while an automotive repair dealer
10 or mechanic or while an employee, partner, officer or member of
11 an automotive repair dealer, may have his *or her* registration
12 ~~validated~~ *issued*.

13 SEC. 36. Section 9884.7 of the Business and Professions Code
14 is amended to read:

15 9884.7. (a) The director, where the automotive repair dealer
16 cannot show there was a bona fide error, may ~~refuse to validate~~
17 *deny*, or may ~~invalidate temporarily or permanently~~, *suspend*,
18 *revoke*, or *place on probation* the registration of an automotive
19 repair dealer for any of the following acts or omissions related to
20 the conduct of the business of the automotive repair dealer, which
21 are done by the automotive repair dealer or any automotive
22 technician, employee, partner, officer, or member of the automotive
23 repair dealer.

24 (1) Making or authorizing in any manner or by any means
25 whatever any statement written or oral which is untrue or
26 misleading, and which is known, or which by the exercise of
27 reasonable care should be known, to be untrue or misleading.

28 (2) Causing or allowing a customer to sign any work order that
29 does not state the repairs requested by the customer or the
30 automobile's odometer reading at the time of repair.

31 (3) Failing or refusing to give to a customer a copy of any
32 document requiring his or her signature, as soon as the customer
33 signs the document.

34 (4) Any other conduct which constitutes fraud.

35 (5) Conduct constituting gross negligence.

36 (6) Failure in any material respect to comply with the provisions
37 of this chapter or regulations adopted pursuant to it.

38 (7) Any willful departure from or disregard of accepted trade
39 standards for good and workmanlike repair in any material respect,

1 which is prejudicial to another without consent of the owner or his
2 or her duly authorized representative.

3 (8) Making false promises of a character likely to influence,
4 persuade, or induce a customer to authorize the repair, service, or
5 maintenance of automobiles.

6 (9) Having repair work done by someone other than the dealer
7 or his or her employees without the knowledge or consent of the
8 customer unless the dealer can demonstrate that the customer could
9 not reasonably have been notified.

10 (10) Conviction of a violation of Section 551 of the Penal Code.

11 Upon ~~refusal to validate~~ *denying* a registration, the director shall
12 notify the applicant thereof, in writing, by personal service or mail
13 addressed to the address of the applicant set forth in the application,
14 and the applicant shall be given a hearing under Section 9884.12
15 if, within 30 days thereafter, he or she files with the bureau a
16 written request for hearing, otherwise the ~~refusal~~ *denial* is deemed
17 affirmed.

18 (b) Except as provided for in subdivision (c), if an automotive
19 repair dealer operates more than one place of business in this state,
20 the director pursuant to subdivision (a) shall only ~~invalidate~~
21 ~~temporarily or permanently~~ *suspend, revoke, or place on probation*
22 the registration of the specific place of business which has violated
23 any of the provisions of this chapter. This violation, or action by
24 the director, shall not affect in any manner the right of the
25 automotive repair dealer to operate his or her other places of
26 business.

27 (c) Notwithstanding subdivision (b), the director may ~~invalidate~~
28 ~~temporarily or permanently~~, *suspend, revoke, or place on probation*
29 the registration for all places of business operated in this state by
30 an automotive repair dealer upon a finding that the automotive
31 repair dealer has, or is, engaged in a course of repeated and willful
32 violations of this chapter, or regulations adopted pursuant to it.

33 SEC. 37. Section 9884.12 of the Business and Professions
34 Code is amended to read:

35 9884.12. All proceedings to ~~refuse to validate, or temporarily~~
36 ~~or permanently to invalidate, deny, suspend, revoke, or place on~~
37 *probation* a registration shall be conducted pursuant to Chapter 5
38 (commencing with Section 11500), Part 1, Division 3, Title 2 of
39 the Government Code.

1 SEC. 38. Section 10146 of the Business and Professions Code
2 is amended to read:

3 10146. Any real estate broker who contracts for or collects an
4 advance fee from any other person, hereinafter referred to as the
5 “principal,” shall deposit any such amount or amounts, when
6 collected in a trust account with a bank or other recognized
7 depository. Such funds are trust funds and not the funds of the
8 agent. Amounts may be withdrawn therefrom for the benefit of
9 the agent only when actually expended for the benefit of the
10 principal or five days after the verified accounts mentioned
11 hereinafter have been mailed to the principal. Upon request of the
12 commissioner, a broker shall furnish to the commissioner an
13 authorization for examination of financial records of the trust
14 account in accordance with the procedures set forth in Section
15 7473 of the Government Code.

16 The commissioner may issue such rules and regulations as he
17 *or she* deems necessary to regulate the method of accounting, and
18 to accomplish the purpose of the provisions of this code relating
19 to advance fees including, but not limited to, establishing forms
20 for and determining information to be included in such accountings.
21 Each principal shall be furnished a verified copy of such
22 accountings at the end of each calendar quarter and when the
23 contract has been completely performed by the licensee. ~~The Real Estate Commissioner~~
24 ~~commissioner~~ shall be furnished a verified
25 copy of any account or all accounts on his *or her* demand therefor.

26 Where advance fees actually paid by or on behalf of any principal
27 are not handled in accordance with the preceding paragraph, it
28 shall be presumed that the agent has violated Sections 506 and
29 506a of the Penal Code. The principal may recover treble damages
30 for amounts so misapplied and shall be entitled to reasonable
31 attorneys’ fees in any action brought to recover the same.

32 SEC. 39. Section 44017.3 of the Health and Safety Code is
33 amended to read:

34 44017.3. (a) ~~Each~~ *The department shall provide a licensed*
35 ~~smog check station shall have with a sign informing customers~~
36 ~~about options when their vehicle fails a biennial smog check~~
37 ~~inspection, including, but not limited to, the option for qualified~~
38 ~~consumers to retire vehicles, receive repair assistance, or obtain~~
39 ~~repair cost waivers. The sign shall include the department’s means~~
40 ~~of contact, including, but not limited to, its telephone number and~~

1 *Internet Web site. This sign shall be* posted conspicuously in an
2 area frequented by customers ~~a sign advising of the minimum or~~
3 ~~maximum amounts established by law to be spent on repairs~~
4 ~~required to cause a motor vehicle to pass a smog check.~~ The sign
5 shall be required in all *licensed smog check* stations ~~where smog~~
6 ~~check inspections are performed.~~ In stations where licensed smog
7 check technician repairs are not performed, the station shall have
8 posted conspicuously in an area frequented by customers a
9 statement that repair technicians are not available and repairs are
10 not performed.

11 (b) ~~The specific amounts enumerated on the sign shall be~~
12 ~~consistent with Section 44017 and shall also refer to the exceptions~~
13 ~~in subdivision (d) of Section 44017.~~

14 (c) ~~The sign shall include language, as determined by the~~
15 ~~department, to warn consumers of the penalties for obtaining a~~
16 ~~certificate or economic hardship extension by means of fraud.~~

17 (b) *In stations where licensed smog check technician repairs*
18 *are not performed, the station shall have posted conspicuously in*
19 *an area frequented by customers a statement that repair*
20 *technicians are not available and repairs are not performed.*

21 SEC. 40. No reimbursement is required by this act pursuant to
22 Section 6 of Article XIII B of the California Constitution because
23 the only costs that may be incurred by a local agency or school
24 district will be incurred because this act creates a new crime or
25 infraction, eliminates a crime or infraction, or changes the penalty
26 for a crime or infraction, within the meaning of Section 17556 of
27 the Government Code, or changes the definition of a crime within
28 the meaning of Section 6 of Article XIII B of the California
29 Constitution.