

ASSEMBLY BILL

No. 2138

Introduced by Assembly Members Low and Bonta

February 17, 2016

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2138, as introduced, Low. Tour guides: regulation.

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

This bill would provide for the certification and regulation of tour guides, as defined, by the California Tour Guide Council and would provide for the creation of the council as a nonprofit organization, as specified. The bill would require applicants for certification to, among other things, be 18 years of age or older, meet specified educational criteria, pay fees required by the council, and provide fingerprints for submission to the Department of Justice for a criminal background check. The act would require the department to review specified information and provide fitness determinations and other specified information to the council.

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

guide. The bill would authorize the Public Utilities Commission to enforce these provisions.

This bill would state that this is a matter of statewide concern and would prohibit a city, county, or city and county from enacting an ordinance regulation that conflicts with the requirements of the bill.

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

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

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

1 SECTION 1. It is the intent of the Legislature that this act
2 create a self-funded, nonprofit statewide oversight and regulatory
3 program called the California Tour Guide Council to test and
4 certify tour guide professionals who deliver sightseeing
5 commentary within the State of California. This program will
6 enable consumers to identify and benefit from tour guides who are
7 credible, knowledgeable, and safety-conscious and who, as
8 unofficial “ambassadors” of our state, will present California’s
9 assets to visitors in an accurate, unbiased, and insightful manner.
10 It will require tour guides to pass an examination that tests them
11 on their knowledge of facts of interest about California, as well as
12 on safety and security issues related to the tour experience. To
13 bring added value to the program, the council shall publish an
14 online directory of all Certified California Tour Guides, available
15 to both consumers and businesses for reference, and provide other
16 benefits to tour guides. Finally, certification will bring recognition,
17 credibility, and a sense of personal achievement to our state’s tour
18 guides.

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

21
22 CHAPTER 18. CALIFORNIA TOUR GUIDE ACT
23

24 9400. This chapter shall be known and may be cited as the
25 California Tour Guide Act.

26 9401. For purposes of this chapter, the following terms have
27 the following meanings:

28 (a) “Certificate” means a valid certificate issued by the council
29 pursuant to this chapter.

1 (b) “Compensation” means anything of value, including, but
2 not limited to, a payment, loan, advance, donation, contribution,
3 deposit, or gift of money.

4 (c) “Council” means the California Tour Guide Council created
5 pursuant to this chapter, which shall be a nonprofit organization
6 exempt from income taxation as an organization described in
7 Section 501(c)(3) of the Internal Revenue Code. It may commence
8 activities pursuant to this chapter once the council has submitted
9 an application to the Internal Revenue Service seeking this
10 exemption.

11 (d) “Tour guide” means a person who provides sightseeing
12 commentary, who is certified by the council pursuant to this
13 chapter, and who practices tour guiding for compensation.
14 Excluded from this definition are guides who give tours at
15 museums, state or national parks, attractions, theme parks, private
16 and government facilities, and similar places of interest and who
17 are employees of these specific places. Though these tour and
18 travel-related employees are not required to be certified, they will
19 be strongly encouraged to apply for certification and take the
20 examination, as may any qualified resident of the State of
21 California.

22 (e) “Tour manager” means a person who manages a group’s
23 logistics and itinerary-related factors over a multiday tour. Other
24 industry-accepted titles for a tour manager include tour conductor,
25 tour courier, tour escort, tour director, or tour leader.

26 (f) “Tour operator” or “tour guide business” means a business
27 or establishment that provides or employs tour guides in California
28 for compensation.

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

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

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

39 (A) Is comprised of tour guides and other tour-related
40 professionals.

1 (B) Has sustained a membership of at least 100 dues-paying
2 individuals in California for the previous three years.

3 (C) Has bylaws that require members to comply with a code of
4 ethics.

5 (2) Two members who are employees or are independent
6 contractors employed by a California-based tour operator to give
7 sightseeing commentary.

8 (3) One member selected by an accredited public or private high
9 school, college, or similar institution in California that chooses to
10 participate in the council and that offers at least one course in its
11 curriculum that focuses on the tour segment of the travel industry
12 and the role of a tour guide in the tour process.

13 (4) One member selected by the League of California Cities,
14 unless the league chooses not to exercise this right of selection.

15 (5) One member selected by the California State Association
16 of Counties, unless the association chooses not to exercise this
17 right of selection.

18 (6) One member selected by the Director of Consumer Affairs,
19 unless the department chooses not to exercise this right of selection.

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

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

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

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

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

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

1 9406. In order to obtain certification as a tour guide
2 professional, an applicant shall fill out an application form and
3 provide the council with satisfactory evidence that he or she meets
4 all of the following requirements:

5 (a) The applicant is 18 years of age or older.

6 (b) The applicant has passed a California tour guide competency
7 assessment examination whose content will be based primarily on
8 a California Tour Guide Study Manual created by the council. This
9 online document will be viewable or downloadable as a PDF file
10 and will meet generally recognized principles and standards that
11 are approved by the council. It will focus on California geography,
12 history, attractions, cultural diversity, significant events, places of
13 interest, notable persons, environmental issues, and similar topics.
14 It will also address safe and secure tour operations. It will not cover
15 best-practice topics such as efficient tour operation and tour-related
16 routines and practices, how to deliver effective commentary, and
17 similar content. The examination and study guide will be updated
18 on a quarterly basis.

19 (1) The test will be, except as provided in subdivision (b) of
20 Section 9410, administered online. Each online test will be
21 composed of questions randomly selected from a large database
22 of test questions, so that each test will be unique to the applicant
23 for certification. The exam will focus on California, with a general
24 state emphasis.

25 (2) Applicants will be permitted to take the exam no more than
26 three times per year: one test and two re-tests within 12 months
27 of having taken the first test. The successful completion of this
28 examination may have been accomplished before the date the
29 council is authorized by this chapter to begin issuing certificates.

30 (c) The applicant must be a United States citizen or legal resident
31 and must reside in the State of California.

32 (d) All fees required of the applicant by the council have been
33 paid, either by the applicant or the employer or a combination of
34 both.

35 9408. Any certificate issued pursuant to this chapter shall expire
36 after two years unless renewed in a manner prescribed by the
37 council. The council may, in some cases, provide for the late
38 renewal of a certificate.

1 9409. A certified guide will be given and must wear a
2 state-issued photo identification badge, visible to the public at all
3 times, while conducting a sightseeing tour.

4 9410. (a) A school, association, business, or similar institution
5 that wishes to offer a test-preparation course for potential applicants
6 for the California Tour Guide Certification Test must first obtain
7 approval from the council, pay a fee to the council, which shall be
8 determined by the council, complete an application form provided
9 by the council, and attach a lesson plan. Applicants to offer a
10 test-prep course must be one of the following:

11 (1) A school approved by the Bureau for Private Postsecondary
12 Education.

13 (2) A school approved by the Department of Consumer Affairs.

14 (3) A school accredited by the Accrediting Commission for
15 Senior Colleges and Universities or the Accrediting Commission
16 for Community and Junior Colleges of the Western Association
17 of Schools and Colleges and that is any of the following:

18 (A) A public institution.

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

23 (C) A not-for-profit institution that employs or educates tour
24 guides.

25 (D) A for-profit institution or business that employs or educates
26 tour guides.

27 (E) A college or university of the state higher education system,
28 as defined in Section 100850 of the Education Code.

29 (b) Notwithstanding paragraph (1) of subdivision (b) of Section
30 9406, the council may, under special circumstances, authorize an
31 organization or business which is approved to give a test-prep
32 study course, to administer a certification test at the completion
33 of the course, but only in a “live” setting and with a monitor
34 authorized by the council in attendance.

35 (c) For purposes of this section and any other provision of this
36 chapter that authorizes the council to receive factual information
37 as a condition of taking action, the council may conduct oral
38 interviews of the applicant and others or conduct any investigation
39 the council deems necessary to establish that the information

1 received is accurate and satisfied the criteria established by this
2 chapter.

3 (d) The council may also authorize any institution within the
4 categories under subdivision (a) of Section 9410 to offer an
5 advanced level program of studies to tour guides that have been
6 certified that addresses topics that the California certification
7 program does not, such as consumers needs, delivering effective
8 commentary, cultural factors, and similar topics.

9 (e) Institutions wishing to offer this advanced program must
10 first obtain approval from the council, pay a fee to be determined,
11 complete an application form, attach a lesson plan, and satisfy any
12 other requirements, as determined by the council. Tour guides who
13 successfully complete this advanced program shall be awarded the
14 status of “Master Guide” by the council, which will be displayed
15 on their identification badge and indicated on the council’s Internet
16 Web site.

17 9412. (a) Before issuing a certificate to an applicant or
18 designating a custodian of records, the council shall require the
19 applicant or the custodian of records candidate to submit fingerprint
20 images as directed by the council and in a form consistent with
21 the requirements of this section.

22 (b) The council shall submit the fingerprint images and related
23 information to the Department of Justice for the purpose of
24 obtaining information as to the existence and nature of a record of
25 state and federal level convictions and of state and federal level
26 arrests for which the Department of Justice establishes that the
27 applicant or candidate was released on bail or on his or her own
28 recognizance pending trial.

29 (c) Requests for federal level full background check received
30 by the Department of Justice pursuant to this section shall be
31 forwarded to the Federal Bureau of Investigation by the Department
32 of Justice. The Department of Justice shall review the information
33 returned from the Federal Bureau of Investigation and shall compile
34 and disseminate a fitness determination regarding the applicant or
35 candidate to the council. The Department of Justice shall provide
36 information to the council pursuant to subdivision (p) of Section
37 11105 of the Penal Code.

38 (d) The Department of Justice and the council shall charge a
39 fee not to exceed the reasonable cost of processing the request for
40 state and federal level full background check.

1 (e) The council shall request subsequent arrest notification
2 service from the Department of Justice, as provided under Section
3 11105.2 of the Penal Code, for all applicants for certification or
4 custodian of records candidates for whom fingerprint images and
5 related information are submitted to conduct a search for state and
6 federal level full background check.

7 9413. The council may require all employees, volunteers, and
8 board members to undergo the background investigation process
9 described in Section 9412.

10 9415. It is a violation of this chapter and ground for discipline
11 or denial of an application for a certificate if a certificate holder
12 or applicant commits any of the following acts:

13 (a) Unprofessional conduct.

14 (b) Procuring a certificate by fraud, misrepresentation, or
15 mistake.

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

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

21 (e) Violating or attempting to violate, directly or indirectly, or
22 assisting in or abetting the violation of, or conspiring to violate
23 any provision of this chapter or any rule or bylaw adopted by the
24 council.

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

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

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

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

36 (1) Placing the certificate holder on probation.

37 (2) Suspending the certificate and the right conferred by this
38 chapter on a certificate holder for a period not to exceed one year.

39 (3) Revoking the certificate.

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

3 (5) Taking other actions as the council deems proper, as
4 authorized by this chapter or the council's bylaws.

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

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

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

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

19 (C) Within 10 business days, notify any business that the
20 council's records list as employing the certificate holder that the
21 certificate has been suspended and the reason for the suspension.

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

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

37 9417. (a) An applicant for a certificate shall not be denied a
38 certificate, and a certificate holder shall not be disciplined pursuant
39 to this chapter, except according to procedures that satisfy the
40 requirements of this section. Denial or discipline that is not in

1 accordance with subdivision (c) of Section 9416 shall be void and
2 without effect.

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

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

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

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

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

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

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

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

37 (f) Any action challenging a denial or discipline, including any
38 claim alleging defective notice, shall be commenced within one
39 year after the effective date of the denial or discipline. If the action

1 is successful, the court may order any relief, including
2 reinstatement, that it finds equitable under the circumstances.

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

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

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

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

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

36 9423. It is an unfair business practice for any tour guide
37 business to hire tour guides to provide sightseeing in California to
38 paying customers that is not performed by a certified tour guide
39 professional.

1 9424. Enforcement of the rules and regulations governing
2 certified guides shall be administered by the Public Utilities
3 Commission, which currently issues permits for tour buses.

4 9425. The superior court of a county where a person acts as a
5 tour guide professional in violation of this chapter may, upon a
6 petition by any person, issue an injunction or other appropriate
7 order restraining the conduct. A proceeding under this section shall
8 be governed by Chapter 3 (commencing with Section 525) of Title
9 7 of Part 2 of the Code of Civil Procedure.

10 9427. (a) Except as otherwise provided in this section, a
11 certificate holder has the right, consistent with this chapter and the
12 qualifications established by his or her certification, to perform as
13 tour guides in any city, county, or city and county in the State of
14 California and shall not be required to obtain any other license,
15 permit, or other authorization to engage in that practice.

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

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

25 (d) A city, county, or city and county may charge a tour guide
26 and other travel-related business or establishment that uses tour
27 guides for sightseeing a business licensing fee sufficient to cover
28 the costs of the business licensing activities established by a local
29 ordinance pursuant to this section.

30 (e) This section does not prohibit a city, county, or city and
31 county from adopting land use and zoning requirements applicable
32 to tour guide and travel-related businesses or establishments that
33 use tour guides for sightseeing, unless those requirements differ
34 from requirements uniformly applied to other professional or
35 personal services businesses.

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

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

1 (2) Making reasonable investigations into that information.

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

4 (g) An owner or operator of a tour guide or other travel-related
5 business or establishment subject to subdivision (f) shall be
6 responsible for the conduct of all of the employees or independent
7 contractors working for the business.

8 (h) This section does not preclude a city, county, or city and
9 county from authorizing the suspension, revocation, or other
10 restriction of a license or permit issued to a tour guide or other
11 travel-related establishment or business if violations of this chapter
12 or local ordinance occur on the premises of that establishment or
13 business.

14 9429. This chapter does not restrict or limit in any way the
15 authority of a city, county, or city and county to adopt a local
16 ordinance governing any person who is not certified pursuant to
17 this chapter.

18 9431. This chapter does not affect the rights of any person
19 licensed by the state to practice or perform any functions or services
20 pursuant to that license.

21 9433. The Legislature finds and declares that, due to important
22 health, safety, and welfare concerns that affect the entire state,
23 establishing a uniform standard of certification for tour guides
24 upon which consumers may rely to identify individuals who have
25 achieved specified levels of education, training, and skill is a matter
26 of statewide concern and not a municipal affair, as that term is
27 used in Section 5 of Article XI of the California Constitution.
28 Therefore, all cities, counties, and cities and counties, including
29 charter cities and charter counties shall not enact any ordinance
30 or regulation that conflicts with or duplicates the requirements
31 under this chapter.

32 9440. This chapter shall remain in effect only until January 1,
33 2018, and as of that date is repealed.

O