



sending it to the Senate Committee on Energy, Utilities, and Communications.

• **Governor's Reorganization Plan No. 2 of 1995**, which merges the State Police with the California Highway Patrol, was presented to the legislature in May and was not rejected; accordingly, the plan went into effect in July. [15:2&3 CRLR 17]

DEPARTMENT OF CONSUMER AFFAIRS

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The Department of Consumer Affairs (DCA) oversees the activities of 37 administrative agencies which regulate 180 diverse professions, occupations, and industries. The primary function of DCA and its constituent agencies is to protect consumers from incompetent, dishonest, or impaired practitioners.

Most of the multi-member boards under DCA's jurisdiction are relatively autonomous of DCA control. However, the DCA Director is authorized to review and reject regulatory changes proposed by all DCA agencies; only a unanimous vote of the agency's board will override the Director's rejection. Additionally, the Department may intervene in matters regarding its boards if probable cause exists to believe that the conduct or activity of a board, its members, or its employees constitutes a violation of criminal law.

DCA maintains several divisions and units which provide support services to its constituent agencies, including a Legal Unit whose attorneys advise DCA boards at meetings and regulatory hearings; a Division of Investigation whose investigators gather evidence in complaint cases filed against the licensees of some DCA agencies; a Legislative Unit which assists agencies in drafting language for legislation and regulations affecting DCA agencies and their licensees; an Office of Examination Resources (formerly the Central Testing Unit) whose psychometricians analyze and assist in validating licensure examinations used by DCA agencies; and a Budget Office whose technicians assist DCA agencies in assessing their fiscal status and preparing budget change proposals for legislative review.

In addition to its functions relating to its various boards, bureaus, and examin-

ing committees, DCA is also charged with administering the Consumer Affairs Act of 1970. In this regard, the Department educates consumers, assists them in complaint mediation, and advocates their interests before the legislature, the courts, and its own constituent agencies.

The DCA Director also maintains direct oversight and control over the activities of several DCA bureaus and programs, including the following:

• **Bureau of Automotive Repair**—**Chief:** K. Martin Keller; (916) 255-4300; **Toll-Free Complaint Number:** (800) 952-5210. Established in 1971 by the Automotive Repair Act (Business and Professions Code section 9880 *et seq.*), DCA's Bureau of Automotive Repair (BAR) registers automotive repair facilities; official smog, brake and lamp stations; and official installers/inspectors at those stations. BAR's regulations are located in Division 33, Title 16 of the California Code of Regulations (CCR). BAR's other duties include complaint mediation, routine regulatory compliance monitoring, investigating suspected wrongdoing by auto repair dealers, oversight of ignition interlock devices, and the overall administration of the California Smog Check Program, Health and Safety Code section 44000 *et seq.*, which provides for mandatory biennial emissions testing of motor vehicles in federally designated urban nonattainment areas, and districts bordering a nonattainment area which request inclusion in the Program. BAR licenses approximately 16,000 smog check mechanics who will check the emissions systems of an estimated nine million vehicles this year. Testing and repair of emissions systems is conducted only by stations licensed by BAR.

• **Bureau of Security and Investigative Services**—**Chief:** James C. Diaz; (916) 445-7366. The Bureau of Security and Investigative Services (BSIS) regulates six industries: private security services (private patrol operators and armored contract carriers) (Business and Professions Code section 7580 *et seq.*), repossessioners (Business and Professions Code section 7500 *et seq.*), private investigators (Business and Professions Code section 7512 *et seq.*), alarm company operators (Business and Professions Code section 7590 *et seq.*), firearms and baton training facilities (Business and Professions Code section 7585 *et seq.*), and locksmiths (Business and Professions Code section 6980 *et seq.*). BSIS' purpose is to protect the health, welfare, and safety of those affected by these industries. To accomplish this, the Bureau regulates and reviews these industries by its licensing procedures and by the adoption and enforcement of regulations. For example, BSIS reviews all complaints for possible

violations and takes disciplinary action when violations are found. The Bureau's primary method of regulating, however, is through the granting or denial of initial/renewal license or registration applications.

• **Bureau of Electronic and Appliance Repair**—**Chief:** Curt Augustine; (916) 445-4751. Created in 1963, the Bureau of Electronic and Appliance Repair (BEAR) registers service dealers who repair major home appliances, electronic equipment, cellular telephones, photocopiers, facsimile machines, and equipment used or sold for home office and private motor vehicle use. Under SB 798 (Rosenthal) (Chapter 1265, Statutes of 1993), BEAR also registers and regulates sellers and administrators of service contracts for the repair and maintenance of this equipment. BEAR is authorized under Business and Professions Code section 9800 *et seq.*; its regulations are located in Division 27, Title 16 of the CCR. The Electronic and Appliance Repair Dealer Registration Law requires service dealers to provide an accurate written estimate for parts and labor, provide a claim receipt when accepting equipment for repair, return replaced parts, and furnish an itemized invoice describing all labor performed and parts installed.

• **Bureau of Home Furnishings and Thermal Insulation**—**Chief:** Karen Hatchel; (916) 324-1448. The Bureau of Home Furnishings and Thermal Insulation (BHFTI) regulates the home furnishings and insulation industries in California. The Bureau's mandate is to ensure that these industries provide safe, properly labeled products which comply with state standards. Additionally, BHFTI is to protect consumers from fraudulent, misleading, and deceptive trade practices by members of the home furnishings and insulation industries; BHFTI is also responsible for toy safety testing for the state of California. The Bureau is established in Business and Professions Code section 19000 *et seq.*

BHFTI establishes rules regarding furniture and bedding labeling and sanitation. The Bureau enforces the law by conducting extensive laboratory testing of products randomly obtained by BHFTI inspectors from retail and wholesale establishments throughout the state. To enforce its regulations, which are codified in Division 3, Title 4 of the CCR, BHFTI has access to premises, equipment, materials, and articles of furniture. The Bureau may issue notices of violation, withhold products from sale, and refer cases to the Attorney General or local district attorney's offices for possible civil penalties. BHFTI may also revoke or suspend a licensee's registration for violation of its rules.



• **Tax Preparer Program**—*Administrator: Jacqueline Bradford; (916) 324-4977.* Pursuant to Business and Professions Code section 9891 *et seq.*, the Tax Preparer Program registers approximately 19,000 tax preparers in California. The Program's regulations are codified in Division 32, Title 16 of the CCR. Registrants must be at least eighteen years old; have a high school diploma or pass an equivalency exam; and must have completed sixty hours of instruction in basic personal income tax law, theory, and practice within the previous eighteen months or have at least two years' experience equivalent to that instruction. Prior to registration, tax preparers must deposit a bond or cash in the amount of \$5,000 with the Program. Members of the State Bar, accountants regulated by the state or federal government, and those authorized to practice before the Internal Revenue Service are exempt from the Program's registration requirement.

■ MAJOR PROJECTS

DCA Observes First Sunset Hearings. On November 27, November 28, and December 5, DCA officials observed the first-ever "sunset" hearings on its occupational licensing boards conducted by the Joint Legislative Sunset Review Committee (JLSRC) pursuant to SB 2036 (McCorquodale) (Chapter 908, Statutes of 1994). [14:4 CRLR 20]

SB 2036 inserted an expiration date into the laws creating all DCA licensing boards, and the boards (but not the licensing statutes) will be abolished on that date unless the legislature affirmatively acts prior to that date to extend the existence of the board. Each expiring board must prepare a comprehensive report demonstrating its necessity and documenting its performance approximately 18 months prior to abolition. SB 2036 sets forth eleven criteria upon which the board's necessity and performance will be judged. Thereafter, SB 2036 requires the JLSRC to hold a public hearing on the board and its report, and make recommendations to DCA on the future existence of that board. Within 60 days of receiving the JLSRC's recommendations, DCA must report its findings and recommendations back to the legislature so that it can take any action deemed necessary prior to the board's expiration date.

Prior to the actual sunset hearings, DCA Director Marjorie Berte convened a special working group on October 18 to assist the Department in formulating the executive branch's approach to sunset review and evaluation. The working group, which consisted of officials from the Governor's

Office, the State and Consumer Services Agency, the Attorney General's Office, and representatives of public interest organizations, suggested that DCA focus on precisely identifying the market flaw or risk which requires regulation, the seriousness of the risk presented, the extent to which the barrier to entry and/or regulatory program relate to that flaw or risk, whether the barrier limits competition, and whether the barrier is duplicative of a private sector function or is otherwise unnecessary. Attendees also noted that DCA should identify the consumers of the products and/or services offered by the regulated industry (to determine whether they need the protection afforded by state certification or licensing) and the principal beneficiaries of the current regulatory system.

The regulatory boards evaluated by the JLSRC this year—all of which are scheduled to sunset on July 1, 1997—are the Board of Landscape Architects, Board of Guide Dogs for the Blind, Board of Registration for Geologists and Geophysicists, Court Reporters Board, Board of Barbering and Cosmetology, and Board of Accountancy (*see agency reports on these boards for detailed information on the sunset hearings*). The JLSRC also evaluated the Athletic Commission (although it cannot be sunsetted by the legislature because it is created in the constitution) and a hybrid regulatory program under which interior designers may be certified (Business and Professions Code section 5800 *et seq.*). Finally, the Committee received a status report on the now defunct Cemetery Board and the Board of Funeral Directors and Embalmers (*see below*). DCA Director Marjorie Berte, Deputy Director Curt Augustine, and other DCA management officials were present at the hearings to observe the testimony and questioning by JLSRC members. At this writing, the JLSRC is scheduled to release separate reports on each expiring board by January 16.

Additionally, the Department is conducting internal reviews of two of its bureaus—the Bureau of Electronic and Appliance Repair and the Bureau of Home Furnishings and Thermal Insulation—as part of the overall sunset process and in response to a requirement in the 1995–96 Budget Act (*see below*).

BEAR Sunset Review Report. On December 29, DCA released its regulatory review report on BEAR, as required by budget control language in the 1995–96 Budget Act. As part of its participation in the state's "performance-based budgeting" pilot project, DCA's purpose in conducting the review was to determine whether the regulatory activities of the Bureau are appropriate and necessary.

BEAR currently regulates the home electronics and appliance repair industries (including major home appliances, appliances in private motor vehicles—including radios and burglar alarms, personal computers, satellite antennas and related equipment, video monitors, and home office products); it also regulates the sale and administration of service contracts sold for the repair of products under its jurisdiction (*see below*). Approximately 65% of BEAR's registrants are involved in electronic repair; 30% engage in appliance repair; and the remainder engage in both electronic and appliance repair. BEAR registers only businesses, not the individual technicians who do the work. During the period reviewed by DCA, BEAR ranked fifth highest (among all 38 DCA boards and bureaus) in number of consumer complaints filed, fifth highest in the number of restitution dollars returned to consumers, and 19th largest in annual budget.

BEAR's primary means of enforcing its regulations is through undercover operations and response to consumer complaints; additional methods include requiring the provision of written repair estimates and the return of all parts replaced during repair. BEAR is authorized to issue citations, which may include an order of correction or abatement and/or an administrative fine or penalty. Additionally, BEAR is authorized to issue misdemeanor infractions for unregistered practice.

In analyzing the need to regulate these repair industries, DCA established a market condition study designed to assess the general health of the markets regulated by BEAR; the study is intended to help assess BEAR's impact on deterring fraudulent and negligent practices against consumers and ensuring a fair and competitive market. DCA's assessment of the market regulated by BEAR revealed that nearly 10% of all service dealers are the subject of complaints filed; however, incompetence by BEAR registrants is not likely to result in a serious threat to public health or safety. The potential financial harm caused by BEAR registrant incompetence, while once high due to high market prices for electronic equipment and appliances, has been somewhat minimized at least in the case of electronics—many electronic products are obsolete when purchased and are considered "throw-aways" (the cost of repair is usually more than the cost of replacement with a newer, enhanced product). However, appliance repair appears to present a formidable threat to the economic safety of California consumers.

DCA's market assessment revealed that, in all types of disciplinary actions



taken against BEAR service dealers, appliance repair registrants have represented far more than the 30% of the license population they comprise. Over the past four years, appliance repair accounted for half of the statements of issues and 38% of the accusations filed with the Attorney General's Office; in addition, appliance repair dealers accounted for disproportionately high percentages of license denials (59%), citations (56%), and violations of BEAR's practice act (73%).

Following its evaluation of a number of regulatory options, DCA recommended that the electronics repair industry be deregulated as of January 1, 1998; the existing consumer protection provisions of requiring written estimates and invoices and the return of used parts would be retained but recast into the Civil Code. DCA recommended a continuation of BEAR's regulation of the appliance repair industry, and an exploration of the industry's attempts to implement technician certification programs. The service contractor component of BEAR's jurisdiction is scheduled to sunset in 1998; DCA recommended a further review of this program prior to the sunset date. Finally, DCA recommended a consolidation of BEAR's remaining regulatory programs with those of BHFTI, to make a Bureau of Home Products and Safety (see below).

BHFTI Sunset Review Report. Also on December 29, DCA released its regulatory review report on BHFTI. DCA noted that the statute leading to the creation of BHFTI, the Mattress Inspection Act of 1911, was intended to protect the public from dishonest business practices of mattress manufacturers by requiring the labeling of mattresses to disclose the contents of the concealed filling materials. Subsequent legislation extended this labeling requirement to upholstered furniture and pillows, and encompassed other public health and safety issues (such as flammability, sanitization, and product specifications). Under current law, all businesses that sell mattresses or upholstered home furnishings must be licensed by the Bureau, which maintains eleven separate licensing categories. Additionally, BHFTI oversees the inspection and enforcement of standards for bedding and home furnishings materials. BHFTI's primary enforcement powers include its authority to require samples of products from manufacturers for testing, deny licenses, issue citations and fines, and withhold products from sale in California if they are found to be unsafe or not in compliance with product standards.

Due to the lack of self-regulation in most of the home furnishings industry and

the inability of consumers to inspect or test the contents of products prior to purchase, DCA identified the vulnerability of consumers to fraud, negligence, and significant safety and health risks as a critical market flaw necessitating the regulation of the home furnishings and bedding industries. In support of this assertion, the Department's report noted an 80% failure rate for futons subjected to flammability testing at BHFTI's laboratory, and a comparable failure rate for futon manufacturers to meet minimum safety standards for either the California or national level.

DCA then proceeded to evaluate the need for and effect of each of BHFTI's regulatory programs. The Department opined that BHFTI's regulation of the home furnishings industry serves to protect the public by reducing the occurrence and severity of fires involving upholstered furniture. According to DCA, the incidence of fires in California where upholstered furniture was the first item to ignite and propagate a fire has dropped significantly since the Bureau began enforcement of a mandatory open flame standard for all furniture sold in California. At the same time, the incidence of similar fires continues to increase in the other 49 states, which have no regulation of this nature.

In evaluating BHFTI's thermal insulation program, DCA noted that fires started by the ignition of insulation consistently increased from 1974 until 1985, when BHFTI acquired regulatory authority over insulation. Since then, the Bureau has tracked a general pattern of annual decline in both the total number of insulation fires, as well as the number of deaths, injuries, and economic damages resulting from those fires.

DCA's evaluation of BHFTI's regulation of the waterbed industry led it to propose that the waterbed industry be deregulated and the industry be allowed to self-regulate according to its own standards. In reaching this recommendation, DCA noted that, in 1974, BHFTI published a set of standards for waterbed labeling and efficacy which have become the *de facto* national standards for the industry, and that the industry has effectively regulated itself in the absence of federal regulation.

Regarding BHFTI's sanitization program for used furniture products, DCA found a continuing public health interest in requiring regulation in this area. Specifically, DCA found sanitization requirements and enforcement important in combatting the transmission of infectious agents and parasites from soiled and used mattresses, and pointed to current and continued potential for mattress contami-

nation—as evidenced by BHFTI's May 1995 confiscation of 86 soiled and filthy mattresses from a firm that was selling them without sanitizing them.

DCA's examination of BHFTI's labeling requirements for furniture stuffing and plumage (feather and down) products led the Department to make several recommendations. With respect to labeling regulations for furniture stuffing, DCA recommended changing to a more "consumer friendly" format and context, and to reduce the number of BHFTI-required labeling designs to a few universal industry formats. According to DCA, this will simplify processes and reduce costs to both the industry and BHFTI, and increase consumers' ability to identify information on the labels. DCA also recommended the elimination of California's plumage standards and the adoption of federal guidelines in their place.

In evaluating BHFTI's overall licensing structure, DCA recommended a simplification of the licensing process, streamlining the eleven existing licensing categories to reduce the need for multiple licenses, and reducing unlicensed activity. DCA also suggested the addition of an "importer" licensing category, defined as a manufacturer whose principal operations are not located in the United States. In making this recommendation, DCA noted that importers are the fastest growing industry segment, and are increasingly in noncompliance with industry standards. With importers under a separate licensing category, DCA argued that BHFTI would have greater effectiveness in addressing this growing compliance area.

Finally, and as noted above, DCA recommended that BHFTI be consolidated with BEAR, to make a Bureau of Home Products and Safety.

DCA Inherits Cemetery Board's Problems. On August 3, Governor Wilson signed AB 910 (Speier) (Chapter 381, Statutes of 1995), an urgency bill which provides that if the Cemetery Board and Board of Funeral Directors are not consolidated or otherwise restructured by January 1, 1996, DCA will succeed to and be vested with all duties, powers, and obligations of both boards on that date. The serious problems of both boards and the industry they purport to regulate have been well-documented [15:2&3 CRLR 47, 57; 15:1 CRLR 47-48, 55-56; 14:4 CRLR 4, 47, 55], and the legislature has unsuccessfully attempted on several occasions to abolish, merge, or cut off funding to both boards. The legislature's passage and Governor Wilson's approval of AB 910 finally came after shocking revelations of improprieties at cemeteries across the state,



including extensive losses from endowment care trust funds and gross mismanagement of cemetery grounds (*see* agency report on CEMETERY BOARD for further information).

Thus, AB 910 finally paved the way for DCA to take over the administration and enforcement of the Cemetery Act and the Funeral Directors and Embalmers Law as of January 1, 1996. However, on September 25, the Cemetery Board—its small staff overwhelmed by complaints stemming from the scandals and having exhausted the enforcement funds allocated to it—approved a memorandum of understanding authorizing Board Executive Officer Ray Giunta to immediately delegate the Board's functions to DCA. Giunta signed the memorandum on September 25, and DCA Director Marjorie Berte signed it on October 2, thus requiring DCA to take over the Cemetery Board three months early.

The Department immediately confiscated the records and files of the Cemetery Board, and soon identified as many as 40 cemeteries which must be investigated due to failure to file annual endowment care trust fund reports or discrepancies within filed reports. At this writing, DCA estimates that as many as 16 criminal prosecutions may result from these investigations. The Department is also managing eleven cemeteries and \$500 million in endowment care trust funds which had been under conservatorship by the Board, and is attempting to transfer them by court order as soon as possible to private entities within the state.

On December 5, the Joint Legislative Sunset Review Committee required Berte to give a status report on the Department's takeover of the Cemetery Board. She described it as a "wrenching experience," inasmuch as DCA was forced to take over the board and the industry it was supposed to be regulating on only a few days' notice, and found improprieties on such a massive scale that it had already diverted the time of 20 employees to handling the scandal and spent close to \$3 million in investigative, audit, and Attorney General costs. Acknowledging that the Department has been publicly condemned by former Board members, outraged consumers, and the death services industry for taking over the Board, Berte defended DCA's actions and stated that it is being "accosted and criticized by people who lack facts, and we can't disclose facts because these matters are still under investigation."

Berte also stated that DCA is working cooperatively with the Board of Funeral Directors and Embalmers to ensure a smooth transition of that board's functions to the Department on January 1.

Registration of Unlawful Detainer Assistants. On July 11, DCA held a public hearing on proposed regulations which would implement AB 1573 (Burton) (Chapter 1011, Statutes of 1993), which defines the term "unlawful detainer assistant" as a person who, for compensation, renders assistance or advice in the prosecution of an unlawful detainer claim or action, including any bankruptcy petition that may affect the unlawful detainer action or claim. AB 1573 also requires unlawful detainer assistants to use written contracts with their clients, and requires DCA to adopt regulations which include the standard form contract to be used; the contract must include provisions relating to the services to be performed, their cost, and a statement (in ten-point bold-face type) that the unlawful detainer assistant is not an attorney and may not perform the legal services that an attorney performs. Contracts must be in English and in the language of the client if the client is non-English-speaking. [15:2&3 CRLR 19]

DCA's proposed regulatory changes would provide the specific form and content of the standard form contract, and specify terms and conditions for its use; require the assistant to disclose civil liability and/or criminal conviction information to the client in the contract; and set forth requirements in cases where a language other than English is used in oral sales presentations or negotiations leading to execution of the contract.

No comments were presented at the July 11 hearing; at this writing, the regulatory proposal is still being reviewed by DCA.

OAL Approves BEAR Service Contractor Registration Regulations. On June 15, BEAR released modified language of new Article 5.5 (sections 2756–2758.5), Title 16 of the CCR. These new rules would implement SB 798 (Rosenthal) (Chapter 1265, Statutes of 1993) by establishing a system for the registration and regulation of service contractors in California; BEAR modified the language after the Office of Administrative Law (OAL) rejected an earlier version in April. [15:2&3 CRLR 19] OAL approved the modified version on September 21.

BAR Adopts Regulations to Implement New Inspection and Maintenance Program. On June 15, BAR held a public hearing to explain upcoming changes to California's inspection and maintenance (I&M) program, also called the Smog Check Program. These changes were prompted by 1990 amendments to the federal Clean Air Act and several state statutes belatedly enacted by the legislature to comply with the federal standards after a long standoff

with the federal government. [14:2&3 CRLR 18–21]

Under the new program, the state will be divided into three types of areas for the purpose of determining which type of smog check testing is required. "Enhanced areas" are those urbanized areas which are do not meet federal air quality standards; in some enhanced areas, at least 15% of the vehicles registered must be inspected at state-contracted or licensed "test-only" stations each year (750,000 vehicles annually), instead of traditional Smog Check stations which may both test and repair. The test-only program in the remaining enhanced areas will be fully implemented as soon as facilities become operational. The vehicles required to go to test-only stations for initial tests will consist of high-mileage fleet vehicles, vehicles for hire, likely high-emitters identified through remote sensing and by test-and-repair Smog Check stations, tampered vehicles, and vehicles targeted through the high-emitter profile. In enhanced areas, 85% of motorists can continue to go to licensed test-and-repair stations for smog checks; however, these privately-operated stations will be required to use loaded-mode test equipment to inspect vehicles using the Acceleration Simulation Mode.

Other areas of the state may be classified as "basic" (not enhanced) or "change-of-ownership." In these areas, the BAR 90 two-speed idle test will continue to be used, but a specification update will identify any software/hardware changes necessary to upgrade units to accommodate changes made by the new program.

In order to implement the new legal requirements, BAR promulgated several sets of regulatory changes during the fall:

- On May 8, BAR adopted emergency amendments to sections 3340.22.2, 3340.35, and 3340.50.4, Title 16 of the CCR. The amendment to section 3340.22.2 states that BAR will provide updated language which must be posted on a required sign at Smog Check Program stations describing new statutory repair cost limits. BAR's amendments to sections 3340.35 and 3340.50.4 increase the cost of Smog Check certificates to licensed stations from \$7 to \$7.75 each, based on changes in the Consumer Price Index and pursuant to Health and Safety Code section 44060(c)(3). [15:2&3 CRLR 19–20] Following a public hearing on July 7, BAR adopted these regulatory changes on a permanent basis; OAL approved them on September 25.

- On June 22, BAR adopted emergency amendments to sections 3340.42 and 3340.42.1, Title 16 of the CCR. The changes to section 3340.42 prescribe new maximum emission standards that are to



be used by licensed Smog Check technicians when performing a smog check; specify the type of loaded mode equipment and procedures to be used for dynamometer-based emissions testing in the enhanced program areas of the state; and establish the definition of the term "gross-polluting vehicle." BAR's changes to section 3340.42.1 establish new maximum emission standards and test procedures for heavy-duty vehicles powered by gasoline. Following a public hearing on September 27, BAR adopted these changes on a permanent basis; OAL approved them on December 1.

- On June 23, BAR adopted changes to numerous provisions in Articles 1 and 5.5, Title 16 of the CCR; these amendments establish BAR's new Smog Check technician training and testing requirements.

The new regulations delete the "inspector" classification; change the term "mechanic" to "technician" wherever applicable; introduce three new technician licenses and establish qualifications for each license and the requirements to maintain them; establish the qualifications to be certified to be an institution or instructor providing training for the new technician licenses; and set forth the conversion process for existing mechanic licenses to the new technician licenses.

The three new licensure categories are (1) the intern technician license, which enables an individual, under the direction of a supervising technician, to perform repairs or adjustments to the emissions control systems at Smog Check stations in all areas of the state; (2) the basic area technician license, which allows an individual to inspect, diagnose, adjust, repair, and certify the emissions control systems on vehicles subject to the Smog Check Program at licensed stations in basic areas of the state (*see above*); and (3) the advanced emission specialist license, which enables an individual to perform these functions at Smog Check stations in all areas of the state.

Following public hearings on September 12 in Sacramento and September 14 in Long Beach, BAR adopted these regulatory changes on a permanent basis; OAL approved them on December 5.

- On August 17, BAR adopted new subsections 3340.1(p) and 3340.7, Title 16 of the CCR, on an emergency basis. New subsection 3340.1(p) defines the term "test-only facility" as a facility contracted by BAR to test and inspect vehicles, and new subsection 3340.7 specifies that a test-only facility may charge a fee for a Smog Check inspection.

Following a public hearing on the permanent adoption of these regulations on

October 31, BAR adopted the proposed changes and submitted them to OAL, where they are pending at this writing.

- On November 20, BAR adopted new section 3340.8, Title 16 of the CCR, on an emergency basis. The new section establishes a mechanism whereby consumers may obtain a one-time, twelve-month economic hardship extension from the biennial Smog Check certificate of compliance requirement. This extension may be issued to a vehicle owner who is subject to repair costs; will be issued by a test-only facility; and a fee in the same amount as the fee for a certificate of compliance will be charged for the extension.

At this writing, BAR is scheduled to hold a public hearing on the proposed permanent adoption of section 3340.8 on January 25 in Sacramento.

- On December 8, BAR published notice of its intent to amend several other provisions of its regulations. Section 3340.37 currently authorizes Smog Check stations to install a retrofit oxides of nitrogen (NOx) exhaust control device on a 1966 through 1970 model year vehicle, and requires stations to affix a window sticker to the windshield designating whether a retrofit NOx control device has been properly installed or whether the vehicle is exempt from the requirement for a NOx control device. BAR's proposed amendment would delete the requirement for the issuance of NOx window stickers.

BAR also proposes to amend section 3353(d) regarding the manner in which dealers must provide customers with written estimates for parts and labor necessary for motor vehicle repairs. Under Business and Professions Code section 9984.9, a dealer may not perform repairs and no charges shall accrue before obtaining the customer's written authorization to proceed. Section 3353(d) addresses "unusual circumstances" and provides dealers with an alternative of giving a written estimate to the customer, and customers with an alternative method of giving the dealer authorization during business hours. BAR proposes to amend section 3353(d) to provide for customer authorization of vehicle repairs when the vehicle is towed to a dealer during business hours; and to amend section 3353(d)(1) to delete a provision for a customer to write a work order for the written estimate price for labor and parts necessary to repair the motor vehicle.

At this writing, BAR is scheduled to hold a public hearing on these proposed regulatory changes on January 25 in Sacramento.

BSIS Rulemaking. On November 24, BSIS published notice of its intent to amend section 697 and adopt new section

693, Title 16 of the CCR, to implement SB 1713 (Hart) (Chapter 1091, Statutes of 1994); that bill requires BSIS—with the technical assistance of the Commission on Peace Officer Standards and Training and the advice of the security guard industry and other interested parties—to develop and implement minimum selection, competency, and training standards for armed security guards. [14:4 CRLR 21]

First, BSIS proposes to amend section 697, which currently emphasizes weapon nomenclature and maintenance, weapon handling and shooting fundamentals, and a minimum level of shooting proficiency; the current training and requalification standards do not address the application of law relating to deadly force, methods to de-escalate conflict, and methods to reduce the need for deadly force. BSIS proposes to correct these deficiencies and improve the shooting proficiency standard by eliminating the current firearms training course that initial applicants for the firearm permit are required to complete, and replacing it with a new Firearm Training Course that will be required for initial firearm permit applicants. The proposed amendments emphasize training on the laws and standards regarding the use of deadly force and on the avoidance of deadly force. The proposal also sets forth new standards for fire range qualification; each individual must discharge 50 rounds a minimum of three times according to a specified schedule.

BSIS also proposes to adopt new section 693, which would specify the requirements for renewal of a firearms qualification card. The current requalification standard only requires the applicant to annually reconfirm shooting proficiency on the firing range; the proposed regulation would require renewal applicants to requalify on the firing range twice a year. In addition, renewal applicants will be required to complete a two-hour review course, twice per year, on the use of deadly force and on the avoidance of deadly force.

At this writing, BSIS is scheduled to hold a public hearing on these proposed regulatory changes on January 8 in Sacramento.

BHFTI Targets Misleading Advertising. In its September newsletter, BHFTI identified false and misleading advertising in the home furnishings and bedding industries as an enforcement priority, and outlined measures it is taking to protect the consumer. In 1994, the Bureau formed the Ad Hoc Committee on Advertising, which has identified three key areas where advertising laws need strengthening and enforcement: misleading or inflated retail prices to show greater dollar savings, "going out of



business" and "grand opening" sales, and perpetual sales (including "clearance" and "liquidation" sales).

Additionally, BHFTI is currently working with the San Diego Better Business Bureau's Home Furnishings Ethics Task Force, consisting of various home furnishings industry leaders (both in the furniture and bedding retail market) and local media representatives. The goal of the Task Force is to secure voluntary compliance with the Better Business Bureau's advertising guidelines, implementation of an industry self-regulatory process which focuses on industry's commitment to truthful advertising, and education of the consumer.

Business and Professions Code section 17500 *et seq.* cover false advertising in general. BHFTI's regulations pertaining to false and misleading advertising are found in sections 1300-1316, Title 16 of the CCR.

■ LEGISLATION

SB 523 (Kopp), as amended September 14, is the California Law Revision Commission's bill to standardize and update the provisions of the Administrative Procedure Act (APA) governing state agency adjudication procedures, including the procedures for taking enforcement action against occupational licenses utilized by most DCA agencies. The APA was enacted in 1945, and has not been comprehensively reviewed or amended since that time. Unfortunately, SB 523 falls somewhat short of the Commission's 1993 recommendations for sweeping changes in APA adjudicative procedures [14:2&3 CRLR 1; 9:3 CRLR 1]—due largely to opposition by the Attorney General's Office, DCA, its constituent agencies, and other agencies subject to the APA.

Among other things, SB 523 permits related cases to be consolidated into a single proceeding; provides for proceedings to compel discovery to be held before an administrative law judge (ALJ) instead of superior court; codifies practice authorizing a motion for change of venue; extends to an ALJ the authority to order a deposition and provide for notice to the parties of the deposition petition; clarifies the availability of alternative dispute resolution (ADR) techniques in an adjudicative proceeding; provides that a settlement conference may be separate from the prehearing conference; allows prehearing conferences to be held by telephone; simplifies and broadens the application of restitution provisions; allows agency members to vote electronically whether to accept the ALJ's proposed decision; and clarifies that where an ALJ is required for a formal adjudicative proceeding under

the APA, such use is also required if the proceeding is conducted informally or for an emergency decision.

SB 523 also enacts the "Administrative Adjudication Bill of Rights," which specifies the minimum due process and public interest requirements that must be satisfied in a hearing that is subject to the APA, including notice and an opportunity to be heard, written hearing procedures made available to the parties, open hearings, neutrality of the presiding officer, disqualification of the presiding officer, and a written decision based upon the hearing record. The bill expressly prohibits *ex parte* communications, with specified exceptions; extends language assistance requirements to witnesses; requires credibility findings of the presiding officer to be given "great weight" upon review; expands provisions governing allegations of sexual conduct, sexual harassment, assault, or battery to apply in all cases; limits the application of the APA to constitutionally and statutorily required hearings of state agencies; and clarifies that the APA is not intended to override a conflicting or inconsistent statute or federal law that governs a particular matter.

The bill also enhances flexibility by creating an informal hearing procedure; providing subpoena power to all adjudicating agencies, presiding officers, and attorneys for the parties; providing for the enforcement of orders and sanctions arising from APA adjudicative proceedings; providing for an emergency procedure for decisions in which immediate interim relief is required; allowing the presiding officer to grant motions for intervention; encouraging the use of ADR techniques, such as mediation and arbitration; allowing the use of telephone hearings in certain circumstances with the consent of the parties; and creating a declaratory decision procedure for agency advice. This bill was signed by the Governor on October 16 (Chapter 938, Statutes of 1995).

AB 1374 (Speier), as amended September 8, requires all state agencies, with limited exceptions, on or before January 1, 1997, to accept payments made by a credit card or a payment device, as defined, and to submit to the Director of General Services (DGS) a letter of intent, as specified. This bill authorizes state agencies, or DGS acting on behalf of state agencies, to negotiate and enter into contracts to implement or facilitate the acceptance of credit card and payment devices by state agencies; and makes it a misdemeanor for an officer or employee of a state agency, or other individual, who in the course of his/her employment or duty has or had access to payment card information provided to the

state agency under these provisions to disclose or make known in any manner information provided under these provisions or use the information for any unauthorized purpose. This bill was signed by the Governor on October 14 (Chapter 926, Statutes of 1995).

SB 342 (Campbell), as amended August 29, prohibits, with specified exceptions, state agencies from levying or collecting any fee or charge in an amount that exceeds the estimated actual or reasonable cost of providing the service, inspection, or audit for which the fee or charge is levied or collected, including those cost components specified in existing law. This bill was signed by the Governor on October 9 (Chapter 685, Statutes of 1995).

SB 338 (Campbell), as amended July 30, provides that revenues derived from the assessment of fines and penalties by any state agency shall not be expended unless the legislature specifically provides authority for the expenditure of these funds in the annual budget act or other legislation. The bill also declares that this requirement shall not apply to specified funds and charges. This bill was signed by the Governor on October 5 (Chapter 654, Statutes of 1995).

AB 1610 (Archie-Hudson). Existing law voids any home solicitation contract or offer for the repair or restoration of residential premises signed and dated by the buyer within a prescribed period from when a disaster causes damages to the residential premises, except as otherwise provided. Existing law also provides a buyer with a right to cancel this type of home solicitation contract or offer that is not void under the above-described provision within a prescribed time period. Existing law defines a disaster for purposes of these provisions to mean an earthquake, flood, fire, hurricane, riot, storm, tidal wave, or other similar sudden or catastrophic occurrence. As introduced February 24, this bill revises this definition to mean a sudden or catastrophic occurrence for which a state of emergency or local emergency has been declared, as specified. This bill was signed by the Governor on July 17 (Chapter 123, Statutes of 1995).

AB 1180 (Morrisey). The Administrative Procedure Act (APA) requires specified state agencies to follow certain procedures with respect to administrative adjudications. As introduced February 23, 1995, this bill would permit a small business, as defined, to utilize an alternative hearing procedure when a state agency seeks to impose a civil penalty on that business. [A. CPGE&ED]

AB 895 (Kaloogian). Existing law provides that in making appointments to



state boards and commissions, the Governor and every other appointing authority shall be responsible for nominating a variety of persons of different backgrounds, abilities, interests, and opinions in compliance with specified state policy. As introduced February 22, 1995, this bill would make a technical, nonsubstantive change. [A. Desk]

SB 258 (O'Connell). Existing law does not regulate persons who perform home inspections for a fee. As amended June 20, this bill would define terms related to paid home inspections, establish a standard of care for home inspectors, and prohibit certain inspections in which the inspector or the inspector's employer, as specified, has a financial interest. The bill would also provide that contractual provisions seeking to waive the statutory duty of care or limit the liability of a home inspector to the cost of the home inspection report are contrary to public policy and invalid. [A. CPGE&ED]

SB 1077 (Greene), as amended August 29, would eliminate DCA's Tax Preparer Program. This bill would instead require tax preparers to file a bond with DCA and to complete specified continuing education requirements. This bill would also prohibit a tax preparer from making a deposit in lieu of bond and would limit the aggregate liability of the surety to all persons against any one tax preparer. [S. Inactive File]

AB 141 (Bowen). The California Public Records Act (PRA) requires state and local agencies to make records subject to disclosure under the Act available to the public upon request, subject to certain conditions. As amended June 12, this bill prohibits state and local agencies from selling, exchanging, furnishing, or otherwise providing a public record subject to disclosure under the PRA to a private entity in a manner that prevents a state or local agency from providing the record pursuant to the Act. The bill states that it does not require a state or local agency to use the State Printer to print public records nor prevent the destruction of records pursuant to law. The bill also exempts from the above prohibition contracts entered into prior to January 1, 1996, between the County of Santa Clara and a private entity for the provision of public records subject to disclosure under the PRA. This bill was signed by the Governor on July 17 (Chapter 108, Statutes of 1995).

AB 958 (Knight). Under the PRA, public records of state agencies are required to be available for inspection. The PRA exempts from disclosure certain records, including test questions, scoring keys, and other examination data used to administer

an academic examination. As amended September 1, this bill requires, upon the request of any member of the legislature or the Governor or his/her designee, the disclosure to the requester of test questions or materials that would be used to administer an examination and are provided by the State Department of Education and administered as part of a statewide testing program to pupils enrolled in the public schools. The bill authorizes the requester to view these materials and states that the requester shall keep these materials confidential. This bill was signed by the Governor on October 11 (Chapter 777, Statutes of 1995).

AB 142 (Bowen). The PRA provides, among other things, that any person may receive a copy of any identifiable public record from a state or local agency upon payment of fees covering the direct costs of duplication or any applicable statutory fee. As amended April 3, this bill would expressly provide that any agency that has information that constitutes an identifiable public record that is in an electronic format shall, unless otherwise prohibited by law, make that information available in an electronic format, when requested by any person, thus imposing a state-mandated local program with respect to local agencies. It would specify that direct costs of duplication shall include the costs associated with duplicating electronic records.

Existing law provides for the state and local administration of a system for the registration of certain vital information on prescribed forms, and specifies the procedure for managing that information, including the availability and confidentiality of certain information. This bill would define the term "vital records" for this purpose, expand the authority of the State Registrar to adopt related regulations to include confidential portions of any vital record, and require applicants for copies of vital records to submit an application with prescribed information under penalty of perjury. [A. GO]

SB 323 (Kopp). Existing provisions of the PRA require each state and local agency, as defined, to make its records open to public inspection at all times during office hours, except as specifically exempted from disclosure by law; the PRA also defines the term "writing." As amended June 8, this bill would revise the definitions of the terms "local agency" and "writing," and define the term "public agency"; provide for public inspection of public records and copying in all forms, as specified; and require public agencies to ensure that systems used to collect and hold public records be designed to ensure ease of public access.

Existing law requires an agency to justify withholding any record by demonstrating (1) that the record in question is exempt under express provisions of the PRA, or (2) that on the facts of the particular case, the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record. This bill would require the agency to identify the provision of law on which it based its decision to withhold a record or, if withholding is based on the public interest, to state the public interest in disclosure and the public interest in nondisclosure.

Existing law authorizes the filing of a petition in superior court alleging that certain public records are being improperly withheld from the public. The bill would prohibit a public official or agency defending the withholding of records against a petition in the superior court that public records are being improperly withheld from the public from offering a rationale not given by the official or agency in denying disclosure of the public records. [A. GO]

AB 63 (Katz). Existing law provides that the cost limit for repairs under BAR's Smog Check Program is a minimum of \$450, except as specified. Existing law also requires BAR to implement a program with the capacity to commence Smog Check testing at test-only stations of a specified percentage of vehicles by January 1, 1995, and by January 1, 1996, respectively (see MAJOR PROJECTS); requires a certificate of compliance to be issued by a test-only facility authorized to perform referee functions for a vehicle that cannot be adjusted or repaired without exceeding the applicable repair cost limit; and requires BAR to develop and implement a repair subsidy program.

As amended July 29, this bill requires BAR to develop and implement either the repair subsidy program or a program that would provide for a twelve-month economic hardship extension for vehicles from the biennial certificate of compliance requirement under specified circumstances. The bill requires the program to be implemented when BAR has issued a public notice declaring that the program for testing a specified percentage of vehicles at test-only stations is operational or when specified testing is operative, and delays the use of the \$450 limit until that time, as specified. This bill was signed by the Governor on October 16 (Chapter 982, Statutes of 1995).

AB 809 (Hauser). Under existing law, an automotive repair dealer is required to pay a fee for each place of business operated by him in this state and to register with BAR. These forms are required to



contain sufficient information to identify the automotive repair dealer, including name, address, retail seller's permit number, if required, and other identifying data which is prescribed by BAR. As amended April 25, this bill provides that the forms shall also require a statement by the dealer that each location is in an area that, pursuant to local zoning ordinances, permits the operation of a facility for the repair of motor vehicles. This bill further requires the forms to include a statement signed by the dealer under penalty of perjury that the information provided is true. This bill also provides that a state agency is not authorized or required by this provision to enforce a city, county, regional, air pollution district, or air quality management district rule or regulation regarding the site or operation of a facility that repairs motor vehicles. This bill was signed by the Governor on July 17 (Chapter 114, Statutes of 1995).

SB 827 (Kelley), as amended August 21, exempts from BAR's registration requirement a person whose primary business is the wholesale supply of new or rebuilt automotive parts, who solely engages in the remachining of individual automotive parts without compensation for warranty adjustments, and who does not engage in repairing or diagnosing malfunctions of motor vehicles or motorcycles. This bill further requires that such a person, prior to commencing work, must provide the customer with a specified notice and description of the remachining services to be performed. These provisions will be repealed on January 1, 1998, and existing law will be reinstated on that date. This bill, which was sponsored by the California Automotive Wholesalers' Association, was signed by the Governor on October 4 (Chapter 572, Statutes of 1995).

SB 137 (Craven), as amended July 11, authorizes the DCA Director to adopt regulations establishing a system for the issuance of citations for violations of the Automotive Repair Act. This bill also provides that the application for registration shall designate that the applicant is registering as an auto body repair shop if the applicant intends to perform auto body repair. The application for registration shall also include a written statement signed under penalty of perjury that the applicant has been issued licenses or permits, if required by law, as specified. This bill was signed by the Governor on September 2 (Chapter 445, Statutes of 1995).

AB 1381 (Speier). The Automotive Consumer Notification Act requires the seller of a vehicle to include a specified "lemon law" disclosure if that vehicle

has been returned, or should have been returned, to the dealer or manufacturer for failure to conform to warranties. As amended August 21, this bill revises and recasts the Automotive Consumer Notification Act to, among other things, require the manufacturer to retitle specified defective vehicles in its name, request the Department of Motor Vehicles to inscribe the ownership certificate with a "lemon buy-back" notation, affix a "lemon buy-back" decal to the left doorframe of the vehicle, deliver a specified notice to the transferee of the vehicle, and obtain the transferee's acknowledgment. The bill applies only to vehicles reacquired by a manufacturer on or after January 1, 1996. This bill was signed by the Governor on October 4 (Chapter 503, Statutes of 1995).

AB 1383 (Speier), as amended July 28, would make existing law which authorizes DCA to certify third-party dispute resolution processes inoperable for a four-year period, during which alternative provisions added by the bill would be operative. Among other things, the bill would require DCA to impose an additional fee of up to \$2 on the sale of all new motor vehicles, to be used solely for the purposes of the bill subject to appropriation by the legislature.

Existing law specifies the remedies for breach of a consumer warranty, including the remedies for breach of an express warranty. This bill would eliminate the above provisions which specify the damages available for breach of an express consumer warranty, and replace them with provisions applicable solely to motor vehicle manufacturers who refuse to participate in or comply with a decision rendered pursuant to state-certified new car arbitration proceedings under the bill, as specified. [S. Jud]

SB 1085 (Wright), as amended April 5, is a spot bill making minor changes in the law requiring DCA to certify qualified third-party dispute resolution processes to resolve "lemon law" disputes. [S. Rls]

AB 1457 (Granlund). Existing law establishes the Smog Check Program implemented by BAR, and authorizes the Air Resources Board (ARB) to certify new motor vehicles and new motor vehicle engines. All motor vehicle manufacturers of specified vehicles are required to provide certain emission control service information. As introduced February 24, this bill would require any person, including any manufacturer or dealer, who sells, leases, or transfers ownership of a motor vehicle that may not be repaired by an independent automotive repair dealer due to the inaccessibility of emissions-related parts, tools, or information, to provide the trans-

feree with a specified notice and affix a prescribed decal to the motor vehicle. This bill would require ARB, in conjunction with BAR, to determine the inaccessibility of emissions-related parts, tools, or information. [A. Trans]

AB 1270 (McPherson). Under existing law, alarm company operators must file a written application for a license containing specified information, including the name of the applicant and the location of the address for which the license is sought. In addition, within three working days after commencing employment, any employee performing the function of alarm agent who is not registered with BSIS is required to submit an application for registration and his/her fingerprints. As amended July 15, this bill provides that information on an application for an alarm company operator's license and on an alarm agent's application for registration with BSIS is confidential under the Information Practices Act, and shall not be released to the public, except as specified. The bill also provides that these restrictions shall not preclude release of information to the public regarding the status of an operator's license or the status of a registrant or the release of information to law enforcement or other governmental agencies for other authorized purposes.

Under existing law, a licensed alarm company operator is required to maintain a file or record of specified information on employees which is available to BSIS, and prohibits BSIS and DCA from releasing that employee information to any persons other than governmental agencies. This bill deletes that prohibition. This bill was signed by the Governor on August 3 (Chapter 359, Statutes of 1995).

AB 952 (Gallegos). The Alarm Company Act defines the term "alarm company operator" to exclude any entity retained to monitor alarm systems, provided the entity does not perform any other duties within the definition of an alarm company operator. As amended March 27, this bill deletes that exclusion and instead provides that the definition includes any entity that is retained by a licensed alarm company operator, a customer, or any other person or entity, to monitor one or more alarm systems, whether or not the entity performs any other duties within the definition of an alarm company operator, as specified. This bill was signed by the Governor on August 10 (Chapter 395, Statutes of 1995).

AB 1541 (Lee). Under the Repossessors Act, BSIS licenses and regulates persons engaged in the business of repossessing personal property. As amended July 15, this bill revises various provisions of that Act. Among other things, this bill:



- changes the title of the Act to the Collateral Recovery Act;

- changes references to personal property to collateral;

- specifies the contents of an application for a license by a limited liability company but provides that nothing in this bill permits a limited-liability company to be licensed as a repossession agency;

- authorizes a repossession agency to assign a license to another entity, with consent of the BSIS Chief, as specified;

- with respect to storing personal effects or other personal property not covered by a security agreement, deletes the requirement that they be stored at the location of the licensed agency and waives the inventory requirement under specified circumstances;

- with respect to special license plates, as specified, provides for removal from a repossessed vehicle and disclosure to the registered owner that the plates will be destroyed if not claimed within 60 days;

- on the notice of seizure of a vehicle, specifies that a repossession agency is not responsible for tire failure unless the failure is due to the negligence of the agency;

- with regard to collateral subject to registration under the Vehicle Code, provides that repossession occurs when the repossessor gains entry to the collateral or when the collateral becomes connected to a tow truck;

- specifies that a licensed repossession agency and a legal owner, registered owner, lienholder, lessor, or lessee are not liable for the act or omission of each other in connection with making, accepting, or carrying out an assignment, as specified;

- deletes as a prohibited act the failure to disclose in communications with the consumer that the repossession agency is attempting to collect a debt; and

- makes clarifying and conforming changes.

Existing law generally requires a vehicle to be registered before it may be driven or hauled on a highway. This bill exempts a repossessed vehicle from the registration requirement solely for the purpose of transporting it from the point of repossession to the storage facilities of the repossessor, and from those storage facilities to a licensed motor vehicle auction. This bill was signed by the Governor on October 3 (Chapter 505, Statutes of 1995).

AB 123 (Rainey). Existing law defines a locksmith as a person who engages in the business of installing, repairing, opening, modifying locks, or who originates keys for locks. It is a misdemeanor for a person who is not licensed as a locksmith to perform these services, subject to specified exceptions. As amended June 15, this bill

creates an exception for an agent or employee of a retail establishment that has a primary business other than providing locksmith services. The locksmith services must be limited in scope and performed on the premises on locks purchased from the retail establishment, as specified. In addition, an unlicensed agent or employee of the retail establishment may not represent himself/herself to be a licensed locksmith or a locksmith, redesign or implement a master key system, perform locksmithing services on automotive locks, or possess specified locksmith tools. This bill also exempts from licensing requirements law enforcement officers, firefighters, and emergency medical personnel who perform locksmith services in the course of their duties. This bill was signed by the Governor on July 22 (Chapter 184, Statutes of 1995).

AB 1226 (Martinez). Existing law, added by initiative statute, prohibits any attorney from disclosing or permitting to be disclosed to a defendant the address or telephone number of a victim or witness, unless specifically permitted to do so by the court after a hearing and a showing of good cause. The initiative statute provides that any amendment of its provisions by the legislature shall require a two-thirds vote of the membership of each house. As amended April 25, this bill requires the court, when the defendant is acting as his/her own attorney, to endeavor to protect the address and telephone number of a victim or witness by providing for contact only through a private investigator licensed by BSIS and appointed by the court or by imposing other reasonable restrictions, absent a showing of good cause as determined by the court. This bill was signed by the Governor on July 22 (Chapter 184, Statutes of 1995).

AB 581 (Hoge). The Private Security Services Act requires a licensee, qualified manager of a licensee, or security guard who, in the course of his/her employment, carries a firearm to complete a course of training in the carrying and use of firearms and to receive a firearms qualification card prior to the carrying of a firearm. Existing law requires a person entering the employ of a licensee to perform the functions of a security guard or a security patrolperson to complete a course in the exercise of the power to arrest prior to being assigned to a duty location. As amended March 23, this bill would revise and recast these provisions and would exempt peace officers, as defined, from the training requirements of these provisions. [A. CPGE&ED]

AB 53 (Murray). BSIS licenses and regulates private investigators, private security services licensees, and alarm com-

pany operators and agents. Existing law authorizes the sheriff or the chief or other head of a municipal police department to issue a license to carry a pistol, revolver, or other firearm capable of being concealed upon the person. As amended May 26, this bill would establish procedures for BSIS to issue a permit allowing private investigators, private security services licensees, and alarm company operators and agents to carry a pistol, revolver, or other firearm capable of being concealed upon the person in a concealed manner in accordance with recommendations of the Concealed Weapons Permit Board (CWPB), which would be created by the bill. The bill would establish the CWPB, consisting of specified members, and would set forth its duties. The bill would provide that on or after January 1, 1997, this procedure is the exclusive means whereby these persons may carry a concealed weapon; and provide procedures for the sheriff or the chief or other head of a municipal police department where the applicant for a permit resides or maintains a business to object to the issuance of a permit. The bill would authorize the DCA Director to adopt and enforce reasonable rules to establish qualifications to be a bodyguard.

Under existing law, any person, except as specified, who brings or possesses certain firearms within any state or local public building or at any meeting required to be open to the public, or within specified state offices or residences of specified state officials, or within school zones is guilty of a public offense, punishable as specified. The bill would exempt from these prohibitions persons issued a permit to carry a concealed firearm under the above provisions, and, in certain instances, honorably retired peace officers authorized to carry a concealed or loaded weapon.

Existing law requires the Attorney General to keep and properly file, among other things, forms and records pertaining to licenses to carry concealed firearms. This bill would also require the Attorney General to keep and properly file a copy of each permit issued by the DCA Director under the above provisions. [A. Inactive File]

LITIGATION

Three cases challenging the state's diversion of money from agency special funds to the general fund are in settlement negotiations. *Malibu Video Systems, et al. v. Kathleen Brown, et al.*, No. BC082830 (Los Angeles County Superior Court), *Abramovitz, et al. v. Wilson, et al.*, No. BC120571 (Los Angeles County Superior Court), and *Hathaway, et al. v. Wilson, et al.*, No. BC137792 (Los Angeles County Superior



Court), all class actions filed by Los Angeles attorney Richard I. Fine on behalf of state licensees, allege that the State of California illegally diverted money from the reserve funds of special-funded agencies in California. "Special-funded agencies" (including all the regulatory programs in DCA) receive funding support not from the general fund but from licensing and other fees imposed on their licensees; those fees are generally passed on by the licensees to the consumers of their services as a cost of doing business. In the Budget Acts of 1991-92, 1992-93, and 1993-94, the legislature included provisions which reduced the reserve funds of special-funded agencies down to three months' worth of operational expenses, and diverted the rest to the general fund. In *Malibu Video Systems*, Fine claims that the 1991-94 diversions reduced the total amount in special-funded agencies' reserve funds by 46% (from \$1.569 billion in 1991 to \$848.5 million in 1994); *Abramovitz* challenges similar diversions in the 1994-95 budget, and *Hathaway* (filed on October 25, 1995) challenges similar diversions in the 1995-96 budget. Fine alleges that these funds were collected for consumer protection purposes, and that diverting them to help pay the state's deficit both deprives consumers of protection from incompetent and dishonest practitioners and serves to double-tax taxpayers who are consumers of the services of state licensees. [14:4 CRLR 22; 12:4 CRLR 1]

At this writing, *Malibu Video* and *Abramovitz* have been consolidated. If settlement negotiations break down, petitioners' motion for class certification is scheduled to be heard on February 20. A similar federal court lawsuit filed by Fine, *Malibu Video Systems, et al. v. Kathleen Brown, Treasurer of the State of California, et al.*, No. CV942093-RMT(EX) (C.D. Cal.), has been stayed pending resolution of the state court cases.

OFFICE OF THE LEGISLATIVE ANALYST

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Created in 1941, the Legislative Analyst's Office (LAO) is responsible for providing analysis and nonpartisan advice on fiscal and policy issues to the California legislature.

LAO meets this duty through four primary functions. First, the office prepares a detailed, written analysis of the Govern-

nor's budget each year. This analysis, which contains recommendations for program reductions, augmentations, legislative revisions, and organizational changes, serves as an agenda for legislative review of the budget. Second, LAO produces a companion document to the annual budget analysis which paints the overall expenditure and revenue picture of the state for the coming year. This document also identifies and analyzes a number of emerging policy issues confronting the legislature, and suggests policy options for addressing those issues. Third, the Office analyzes, for the legislature's fiscal committees, all proposed legislation that would affect state and local revenues or expenditures. The Office prepares approximately 3,700 bill analyses annually. Finally, LAO provides information and conducts special studies in response to legislative requests.

LAO staff is divided into nine operating areas: business and transportation, capital outlay, criminal justice, education, health, natural resources, social services, taxation and economy, and labor, housing and energy.

MAJOR PROJECTS

1995-96 Budget Enacted. On August 3, Governor Wilson signed the 1995-96 Budget Act; the Act and related trailer legislation authorize total state spending of \$58.6 billion in 1995-96, including \$43.3 billion from the general fund, an increase of 3.9% over 1994-95.

In September, LAO published the *State Spending Plan for 1995-96: The 1995 Budget Act and Related Legislation*, which summarized the key features of the 1995-96 budget package. Among other things, LAO noted that—once again—the budget depends largely on federal actions to achieve almost \$800 million of savings. [15:2&3 CRLR 24; 14:2&3 CRLR 23] In addition to immigrant funding, most of the budgeted savings in welfare and health programs require either federal law changes or administrative waivers. Accordingly, LAO noted that the success of California's 1995-96 budget depends to a large extent on the actions of Congress and the Clinton administration.

The major features of the 1995-96 budget package include the following:

- The budget increases per-pupil spending for K-12 education to \$4,435, or \$126 more than the adjusted per-pupil level in last year's budget.
- General fund support for higher education increased by 4-5%, and the budget package does not include any undergraduate student fee increases.
- The budget package reduces statewide welfare grant levels by 4.9%, and

establishes regional grant levels that will be lower in counties with less expensive housing costs.

- The corrections budget increased by 8.6% over last year.

- The Wilson administration anticipates ending fiscal year 1995-96 with about \$2 billion of unused borrowable cash in special fund balances; this cash cushion, if realized, will avoid the need to make across-the-board spending cuts.

The budget package does not include two major initiatives originally proposed by the Governor: (1) his tax reduction proposal, and (2) a further realignment of state responsibilities to the counties. [15:2&3 CRLR 24]

California's Crime Rate Hits Ten-Year Low in 1994. In August, LAO released a *California Update* addressing California's crime rate. According to the report, California's crime rate is the lowest in ten years, dropping 6.5% between 1993 and 1994. The crime rate is measured using the California Crime Index (CCI), which is composed of reported incidents of four types of violent crimes (homicide, rape, robbery, and assault) and two types of property crimes (burglary and motor vehicle theft). California's overall crime rate for 1994 was 3,147.7, meaning that there were about 3,148 reported crimes per 100,000 Californians that year. However, LAO noted that because the CCI measures only crimes that are reported to law enforcement authorities, the crime rate probably understates the actual number of crimes committed.

In its report, LAO opined that possible reasons for the drop in crime may include the continued aging of the population (particularly the aging of the so-called "baby boomers"); relative stability in the illegal drug trade and corresponding reductions in drug-related violence; and the possible deterrent effects of criminal sentencing legislation such as the "Three Strikes and You're Out" law. [15:1 CRLR 30] However, LAO also noted that California's crime rate has been steadily declining since 1991, and is consistent with trends in other states.

According to LAO, many researchers attribute the recent decline in crime rates to the decline in the number of juveniles, because juveniles commit a disproportionate number of crimes. However, LAO noted that the juvenile population is expected to increase rapidly over the next ten years, and opined that juvenile crime may increase commensurately.

The Welfare Reform Struggle Continues. In a September *California Update*, LAO again analyzed pending congressional welfare reform proposals and their