



BOARD OF GUIDE DOGS FOR THE BLIND

*Executive Officer: Manuel Urena
(916) 445-9040*

The Board of Guide Dogs for the Blind has three primary functions. The Board protects the blind guide dog user by licensing instructors and schools to ensure that they possess certain minimum qualifications. The Board also enforces standards of performance and conduct of these licensees as established by law. Finally, the Board polices unlicensed practice.

The Board, authorized by Business and Professions Code section 7200 *et seq.*, consists of seven members, two of whom must be dog users. In carrying out its primary responsibilities, the Board is empowered to adopt and enforce regulations, which are codified in Division 22, Title 16 of the California Code of Regulations (CCR).

The Board currently licenses three guide dog schools and 48 trainers.

MAJOR PROJECTS

LAO Proposes To Eliminate Board. In its *Analysis of the 1993-94 Budget Bill*, one of the recommendations made by the Legislative Analyst's Office (LAO) for streamlining state government proposed that the legislature eliminate the state's regulatory role in thirteen currently-regulated areas. Particularly relevant to the Board of Guide Dogs for the Blind is LAO's recommendation that the state stop regulating several consumer-related business activities. In determining whether the state should continue to regulate a particular area, LAO recommended that the state consider whether the board or bureau protects the public from a potential health or safety risk that could result in death or serious injury; whether the board or bureau protects the consumer from severe financial harm; and whether there are federal mandates that require the state to regulate certain activities. Based on these criteria, LAO recommended that the state remove its regulatory authority over activities currently regulated by the Board, among other bureaus and agencies. At this writing, LAO's recommendations have not been amended into any pending legislation.

LEGISLATION

AB 1863 (Burton), as amended May 5, would establish a five-year pilot project to provide an arbitration procedure for the resolution of disputes between guide dog

users and guide dog schools relating to the continued physical custody and use of a guide dog. [12:4 CRLR 83] The bill would specify disputes that may be subject to this procedure; these provisions would be repealed on January 1, 1999. [A. W&M]

AB 1419 (Baca). Existing law authorizes the Board of Guide Dogs for the Blind to authorize guide dog schools or instructors employed by those schools to provide home training in the use of guide dogs; existing law also provides that the guide dog user, as a condition of receiving home training, shall have completed a formal in-residence training program within the previous two years from a school licensed to provide guide dog training. As amended May 5, this bill would instead require, as a condition of receiving home training, that the guide dog user have completed a formal in-residence training program from a school licensed by the Board or from a school recognized by another state to provide guide dog training. The bill would provide for a specified waiver of this requirement.

Existing law sets forth requirements for licensing instructors in giving training to blind persons. This bill would require an instructor to provide proof of completion of not less than twenty hours of specified continuing education, as a condition of renewal of an instructor's license.

Existing law prohibits any person from selling, giving, or furnishing any guide dog or seeing-eye dog to a blind person unless specified requirements are met, including the requirement that the dog has been spayed, when appropriate. This bill would instead require that the dog has been neutered.

Existing law provides that it is an unlawful denial of equal access to housing accommodations to refuse to rent or lease to individuals with disabilities, and defines the term "guide dog" for that purpose. This bill would revise the definition of "guide dog."

Existing law makes it an infraction for any person to deny admittance to certain facilities to a blind person on the basis that the person is accompanied by a guide dog. This bill would revise the definition of "guide dog."

Existing law generally regulates cruelty to animals, but does not expressly regulate harmful conduct directed toward guide dogs. This bill would make it a misdemeanor for any person, with no legal justification, to intentionally interfere with the use of a guide dog by harassing, obstructing, or intimidating the guide dog user or his/her guide dog.

Existing law provides that a totally or partially blind person who is carrying a

predominantly white cane or using a guide dog shall have the right-of-way and the driver of any vehicle who fails to yield the right-of-way is guilty of a misdemeanor. This bill would alternatively provide for a fine of not less than \$500 nor more than \$1,000, or both fine and imprisonment, for that offense. [A. W&M]

RECENT MEETINGS

The Board has not conducted a meeting since July 1992. [12:4 CRLR 82]

FUTURE MEETINGS

To be announced.

BUREAU OF HOME FURNISHINGS AND THERMAL INSULATION

*Chief: Gordon Damant
(916) 574-2040*

The Bureau of Home Furnishings and Thermal Insulation (BHFTI) is charged with regulating the home furnishings and insulation industries in California. As a division of the state Department of Consumer Affairs (DCA), the Bureau's mandate is to ensure that these industries provide safe, properly labeled products which comply with state standards. Additionally, the Bureau is to protect consumers from fraudulent, misleading, and deceptive trade practices by members of the home furnishings and insulation industries; the Bureau 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.*

The Bureau establishes rules regarding furniture and bedding labeling and sanitation. The Bureau enforces the law by conducting extensive laboratory testing of products randomly obtained by Bureau inspectors from retail and wholesale establishments throughout the state. To enforce its regulations, which are codified in Division 3, Title 4 of the California Code of Regulations (CCR), the Bureau 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. The Bureau may also revoke or suspend a licensee's registration for violation of its rules.

MAJOR PROJECTS

BHFTI Chief to Retire. Effective September 1, BHFTI Chief Gordon Damant



ant will retire from the Bureau after thirty years of public service; Damant has been Bureau Chief since he was appointed by then-Governor Jerry Brown in 1978. At this writing, his replacement has not been named. However, the position of Bureau Chief may be divided into two separate jobs—one policy-oriented, and the other technical in nature. The policy position is expected to remain Governor-appointed and restricted to policy matters, including contact with trade associations. The technical position may be filled by assignment, with the chief making recommendations from the present technical staff. Chief Damant believes this proposed system works well in theory, but may be problematic in practice as contact with trade associations will inevitably involve many technical issues.

More Streamlining Proposed for DCA, BHFTI. On February 8, DCA Director Jim Conran testified before the Senate Committee on Business and Professions' Subcommittee on Efficiency and Effectiveness in State Boards and Commissions on the future of DCA; among other things, Conran stated his support for the consolidation of various DCA bureau functions wherever possible. Specifically, Conran stated that DCA would like to merge the following bureau units: the unregistered activity units of BHFTI, the Bureau of Electronic and Appliance Repair (BEAR), and the Tax Preparers Program (TPP); the complaint intake and mediation units of BHFTI, BEAR, TPP, the Bureau of Automotive Repair (BAR), the Bureau of Collection and Investigative Services (BCIS), and DCA's Division of Consumer Services; and the administrative functions—cashiering, licensing, registration, personnel, labor relations, training, and information systems—of BHFTI, BEAR, TPP, BAR, BCIS, and DCA. [12:4 CRLR 83; 12:2&3 CRLR 91]

In February, the Legislative Analyst's Office (LAO) released a report recommending—among other things—that the legislature completely eliminate the state's regulatory role in thirteen areas. In determining whether to continue a regulatory function, LAO suggested that the legislature consider the basic premise of the state's regulatory process: to protect the public's health, safety, and welfare against serious harm. Any regulatory function that does not meet this test should not be a state responsibility, unless the state is mandated by the federal government to regulate a certain activity. Using this test, LAO recommended that the state no longer regulate the home furnishings area, finding that the risks to consumers are small and that state regulation and enforcement are not warranted.

However, others note that BHFTI's flammability and toy testing programs and its regulation of asbestos may be preventing irreparable harm to consumers. For example, a February 24 *Sacramento Bee* article on BHFTI, entitled "Guardian Agents," reported that BHFTI tests 5,000 consumer products each year for safety, more than the other 49 states combined, and that due to the Bureau's activities, there has been a considerable decline in deaths caused by bedding and upholstered furniture fires in California. Between 1982 and 1991, fires starting in pillows or mattresses fell by nearly 500 incidents, according to the State Fire Marshal's California Fire Incident Reporting System (CFIRS); CFIRS also reported that cigarettes igniting upholstered furniture were responsible for 873 mobilehome fires in 1982, but fewer than 300 in 1991. Thus, BHFTI's strict standards and aggressive testing may have prevented some irreparable harm to consumers in the past, causing some to believe the Bureau should continue to function in order to ensure the protection of California consumers in the future.

Insulation Regulations Update. As a result of the transfer from the California Energy Commission (CEC) to BHFTI of jurisdiction over the sale of insulation in California, BHFTI has proposed amendments to CEC's regulations setting forth the standards which manufacturers must meet before their insulation material may be sold or installed in California. The Bureau's amendments will include in the regulatory scheme products not currently covered, such as insulated roof and wall panels, pipe insulation, and flexible insulated ducting, as well as newly-developed insulation materials including calcium silicate, flexible cellular plastic, and phenolic insulation. The proposed amendments would also update and amend existing product standard regulations to include the latest acceptable testing criteria. Finally, the regulations would establish labeling standards to minimize fraudulent labeling of insulation products. [13:1 CRLR 41] DCA has forwarded the proposed amendments to the state Building Standards Commission for review and approval.

Response to Citation and Fine Questionnaire. Existing law (1) authorizes BHFTI to establish, by regulation, a system for the issuance to a licensee of a citation containing an order of abatement and/or an order to pay an administrative fine where the licensee is in violation of the Bureau's licensing act or any regulation adopted pursuant thereto; (2) authorizes BHFTI to adopt regulations estab-

lishing a system for the issuance of an administrative citation to an unlicensed person who is acting in the capacity of a licensee under the Bureau's jurisdiction; and (3) provides that if, upon investigation, BHFTI has probable cause to believe that a person is advertising in a telephone directory with respect to the offering or performance of services which require a license from BHFTI but without being properly licensed by the Bureau, BHFTI may issue a citation containing an order of correction which requires the violator to cease the unlawful advertising and notify the telephone company furnishing services to the violator to disconnect the telephone service furnished to any telephone number contained in the unlawful advertising. [13:1 CRLR 40]

In order to implement these statutory provisions, BHFTI recently released a questionnaire seeking informal input regarding draft language for the proposed citation regulations. [13:1 CRLR 41] According to Bureau Chief Gordon Damant, approximately 70–80% of the responses to the questionnaire expressed support for the enforcement activities, although some respondents questioned whether the Bureau Chief should be able to make findings regarding disciplinable behavior at his/her own discretion or whether he/she should be assisted by a panel, perhaps including industry members, in making such determinations.

In late May, BHFTI published notice of its intent to adopt regulations implementing (1) and (2) above. Specifically, BHFTI proposes to adopt new sections 1383, 1383.1, 1383.2, 1383.3, 1383.4, 1383.5, and 1383.6, Title 4 of the CCR. Proposed section 1383 would provide that the Bureau Chief is authorized to determine when and against whom a citation will be issued and to issue citations to BHFTI licensees containing orders of abatement and/or fines for violations of specified laws.

Proposed section 1383.1 would provide that each citation shall be in writing; describe with particularity the nature of the violation, including a specific reference to the provision of law determined to have been violated; contain assessment of an administrative fine and/or an order of abatement fixing a reasonable period of time for abatement; inform the cited person that if he/she desires a hearing to contest the finding of the violation, that hearing shall be requested by written notice to the Bureau within thirty days of the issuance of the citation; and be served upon the licensee personally or by certified mail.

Proposed section 1383.2 would provide the range of fines that the Bureau



Chief may assess for violation of various provisions of the Business and Professions Code or the CCR. According to section 1383.2, in no case shall the total amount assessed exceed \$2,500 for each investigation.

Proposed section 1383.3 would provide that, in assessing an administrative fine and issuing an order of abatement, the Chief shall give due consideration to the following factors: the nature and severity of the violation; the good or bad faith of the cited person; the history of previous violations; evidence that the violation was willful; the extent to which the cited person or entity has cooperated with the Bureau; the extent to which the cited person has mitigated or attempted to mitigate any loss caused by the violation; the extent of the consumer injury which is a direct and proximate result of the violation; and such other matters as justice may require.

Proposed sections 1383.4 and 1383.5 discuss the penalties for failure to comply with an order of abatement and the procedure for contesting citations, respectively. Finally, proposed section 1383.6 would provide that the BHFTI Chief may issue citations against any unlicensed person who is acting in the capacity of a licensee under the jurisdiction of the Bureau and who is not otherwise exempt from licensure. Each citation shall contain an order of abatement fixing a reasonable period of time for abatement of a violation and may contain assessment of an administrative fine ranging from \$100 to \$2,500 for each investigation. The section would provide that any sanction authorized by the Bureau shall be separate from and in addition to any other civil or criminal remedies.

The Bureau is scheduled to conduct a public hearing on these proposed regulations on July 6 in Sacramento.

Debate Continues Over Fee Increases. BHFTI's license fees are currently set at their statutory ceilings; if legislation is not enacted raising the maximum fee amounts, the Bureau may have to eliminate its \$132,000 budget for state-of-the-art scientific equipment. [13:1 CRLR 41] According to Chief Damant, the funds are essential for the Bureau to carry out its mandated functions, since equipment wears out and becomes obsolete after only a few years. SB 574 (Boatwright) would increase the maximum fee for a furniture manufacturer, wholesale furniture dealer, bedding manufacturer, wholesale bedding dealer, or supply dealer license from \$360 to \$540; increase the maximum fee for a custom upholsterer, bedding renovator, or sanitizer license from \$240 to \$360; increase the maximum fee for a retail furniture dealer

or retail bedding dealer license from \$80 to \$120; and create a retail furniture and bedding dealer's license, with a maximum licensing fee of \$240 and a minimum fee of \$40. Although representatives of the furnishings and insulation industry have expressed support for these fee increases, industry members have cautioned that they will oppose the fee increases if the legislature once again decides to transfer fees from BHFTI's special fund to the general fund during this year's budget process. [12:4 CRLR 84]

■ LEGISLATION

AB 622 (Knight), as introduced February 22, would eliminate BHFTI and continue the enforcement and administration of the Home Furnishings and Thermal Insulation Act by the DCA Director. [A. CPGE&ED]

SB 574 (Boatwright), as amended May 17, would—among other things—define the term “seating furniture”; place responsibility for compliance with the Home Furnishings Act not only on the manufacturer and wholesaler, but also on the retailer or any person having in his/her possession any article of upholstered furniture, bedding, or filling materials with intent to resell contrary to the provisions of the Act; and increase the maximum license fees which BHFTI may assess (see MAJOR PROJECTS). [A. CPGE&ED]

SB 842 (Presley), as amended April 13, would permit BHFTI to issue interim orders of suspension and other restrictions, as specified, against its licensees. (See agency update on DCA for more information.) [A. CPGE&ED]

AB 2182 (Lee). Under existing law, BHFTI licenses and regulates insulation manufacturers who sell insulation material in California. As amended May 5, this bill would instead authorize the State Fire Marshal to license insulation manufacturers who sell insulation material in this state, and would require all insulation material manufactured for sale or use in California and all insulation material sold or offered for sale by a manufacturer, wholesaler, or retailer for use in this state to be flame retardant, as specified. [A. W&M]

BOARD OF LANDSCAPE ARCHITECTS

Executive Officer: Jeanne Brode (916) 445-4954

Authorized in Business and Professions Code section 5615 *et seq.*, the Board of Landscape Architects (BLA) licenses

those who design landscapes and supervise implementation of design plans. Prior to 1993, applicants were required to pass the written examination of the national Council of Landscape Architectural Registration Boards (CLARB) in order to qualify for licensure. However, following years of dissatisfaction, BLA decided in May 1992 to discontinue its use of CLARB's exam; commencing in 1993, applicants must instead pass the Board's own Professional Examination for Landscape Architects (PELA) in order to qualify for licensure. [12:4 CRLR 86] In addition, an applicant must have the equivalent of six years of landscape architectural experience. This may be a combination of education from a school with a Board-approved program in landscape architecture and field experience.

In addition to licensing landscape architects, the Board investigates verified complaints against landscape architects, prosecutes violations of the Practice Act, and establishes criteria for approving schools of landscape architecture. BLA's regulations are codified in Division 26, Title 16 of the California Code of Regulations (CCR).

BLA consists of seven members who serve four-year terms. One of the members must be a resident of and practice landscape architecture in southern California, and one member must be a resident of and practice landscape architecture in northern California. Three members of the Board must be licensed to practice landscape architecture in the state of California. The other four members are public members and must not be licentiates of the Board.

■ MAJOR PROJECTS

Board Holds Public Hearing on Proposed Regulations. On February 19, BLA held a public hearing concerning its proposed amendments to sections 2606, 2620, 2623, and 2671, repeal of sections 2624, 2625, and 2626, and adoption of sections 2614 and 2615, Title 16 of the CCR. [13:1 CRLR 43]

During the public hearing, many of those in attendance attempted to—once again—debate with the Board about its decision to break from CLARB and discontinue its use of CLARB's Landscape Architects Registration Examination (LARE). In response, BLA members reiterated that the decision was made after substantial and thorough public debate and after numerous attempts to resolve BLA's differences with CLARB. [13:1 CRLR 42]

In response to some of the comments received regarding specific regulatory