



BUREAU OF COLLECTION AND INVESTIGATIVE SERVICES

Chief: Alonzo Hall
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The Bureau of Collection and Investigative Services (BCIS) is one of over forty separate regulatory agencies within the Department of Consumer Affairs (DCA). The Chief of the Bureau is directly responsible to the director of the Department.

The Bureau regulates the practices of collection agencies in California. Collection agencies are businesses that collect debts owed to others. The responsibility of the Bureau in regulating collection agencies is two-fold: (1) to protect the consumer/debtor from false, deceptive, and abusive practices and (2) to protect businesses which refer accounts for collection from financial loss.

In addition, eight other industries are regulated by the Bureau, including private security services (security guards and private patrol operators), repossessioners, private investigators, alarm company operators, protection dog operators, medical provider consultants, security guard training facilities, and locksmiths.

Private Security Services. Private security services encompass those who provide protection for persons and/or property in accordance with a contractual agreement. The types of services provided include private street patrols, security guards, watchpeople, body guards, store detectives, and escort services. Any individual employed for these services is required to register with the Bureau as a security guard. Any security guard who carries a firearm on the job must possess a firearm permit issued by the Bureau. The Bureau operates to protect consumers from guards who unlawfully detain, conduct illegal searches, exert undue force, and use their authority to intimidate and harass.

Repossessioners. Repossession agencies repossess personal property on behalf of a credit grantor when a consumer defaults on a conditional sales contract which contains a repossession clause. The Bureau functions to protect consumers from unethical methods of repossessing personal property, such as physical abuse resulting in bodily harm, threats of violence, illegal entry onto private property, and misrepresentation in order to obtain property or information about property.

Private Investigators. Private investigators conduct investigations for private individuals, businesses, attorneys, insurance companies, and public agencies. The scope of their job generally falls

within the areas of civil, criminal, and domestic investigations. The Bureau oversees private investigators to protect consumers and clients against investigators who misrepresent, impersonate, or make threats in order to obtain desired information; perform inadequate or incompetent investigations; fail to substantiate charges or charge more than the amount agreed upon; and alter, falsify, or create evidence.

Alarm Industry. Alarm company operators install, service, maintain, monitor, and respond to burglar alarms. These services are provided to private individuals, businesses, and public entities. The Bureau regulates this industry in order to protect clients from potential theft or burglary, invasion of privacy or misrepresentation by alarm companies, and failure on their part to render service as agreed.

Protection Dog Operators. Protection dog operators train, lease, and sell dogs for personal and/or property protection. They also provide patrol services using trained dogs. These services are employed by private individuals, business entities and law enforcement agencies. The Bureau serves to protect against possible violations in this industry, such as inadequately trained or physically abused dogs, overcharges for services, invasions of privacy, or potential theft or burglary of property.

Medical Provider Consultants. Medical provider consultants are contract collectors who provide in-house collection services to medical facilities. They contact insurance companies and/or patients to try to collect on medical debts on behalf of the medical provider. Nevertheless, consultants cannot themselves collect on delinquent debts. Instead, they must turn the debt over to an independent, licensed collection agency in order to avoid any conflict of interest.

Security Guard Training Facilities. These facilities provide necessary training for those desiring to become security guards. Training is given in legal procedures, public safety, minimum standards, and professional conduct. Firearm training is especially important for those guards who will carry a firearm on the job. Upon completion of training, guards must pass an exam before they can be registered.

Locksmiths. As of July 1987, SB 1540 became effective, resulting in the creation of a locksmith regulation program within the Bureau. (For additional information on SB 1540, see CRLR Vol. 6, No. 3 (Summer 1986) p. 25.)

The purpose of the Bureau 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, the Bureau 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. Education is also utilized to assist in achieving Bureau goals.

Consumers and clients may pursue civil remedies to resolve complaints and disputes currently within the regulatory authority of the Bureau. In addition, class action suits may be filed on behalf of consumers by the Attorney General's office and local district attorneys against businesses which engage in repetitive unethical business practices.

On June 20, Governor Deukmejian appointed Esther Winston and Robert L. Morris to the Bureau's Collection Agency Advisory Board. Ms. Winston is a career center technician for the Sacramento City Unified School District and Mr. Morris is a vice president of Merchants Collection Association of San Francisco.

MAJOR PROJECTS:

Civil Liability of Disciplinary Review Committee and Advisory Board Members. On July 19, in response to inquiries raised by the Private Security Services Advisory Board (PSSAB), Department of Consumer Affairs (DCA) legal counsel Steve Martini submitted a memorandum to Bureau Chief Hall concerning the civil liability of Advisory Board and Disciplinary Review Committee members.

In brief, Mr. Martini informed the Board that the California Tort Claims Act distinguishes between discretionary and ministerial duties. Advisory Board members, he explained, execute discretionary duties, whereas state employees such as Bureau and Department staff perform ministerial duties.

Section 818.4 of the Government Code provides almost total immunity from civil liability to persons executing discretionary duties. Even though DRC members perform some ministerial activities, Government Code sections 818.4 and 821.2 provide immunity for such public employees responsible for issuing or denying licenses. Mr. Martini further advised that, in the event a civil suit is brought against a DRC or Advisory Board member, the state would provide a defense through the Attorney General's office.



REGULATORY AGENCY ACTION

Security Guard Training. Efforts to improve security guard training continue. At the July 20 PSSAB meeting, Chief Hall informed the Board that the baton and power to arrest manuals are currently being updated and revised. (See CRLR Vol. 9, No. 3 (Summer 1989) p. 44 and Vol. 9, No. 2 (Spring 1989) p. 51 for background information.) At the request of DCA's Public Affairs and Communications Office, the baton manual is being restructured to create a more readable format. The Bureau reviewed the most recent draft of the power to arrest manual (submitted July 18) and will forward the update to the Public Affairs and Communications Office for consideration.

Legislative attempts to improve security guard training are being made as well. AB 1644 (Peace) will hopefully lead the way in requiring higher standards of training for both armed and unarmed private security guards (see *infra* LEGISLATION).

Financial Violations. At the September 22 meeting of the Collection Agency Advisory Board (CAAB) in San Diego, Chief Hall stressed the continuing problems regarding collection agency fraud. Since his appointment in June 1988, Chief Hall has been continually auditing collection agencies (CAs) which have been suspected of questionable accounting practices. Despite the threat of audits, Chief Hall said he has discovered numerous instances of "creative accounting" where CAs have been "playing with money."

Describing the present situation as "very bleak," Chief Hall noted that 20% of collection agencies are currently violating standards of proper accounting. Two types of improprieties are frequently discovered by the Bureau. First, many CAs have been commingling funds. Audits have revealed that funds which should have been placed in a CA's client trust account are being deposited in the CA's operating expense account. Second, the Bureau has been investigating CAs which have been abusing the TRW credit reporting system. Hall reported that many CAs have refused to clear poor credit ratings on the debtor's TRW, even those which resulted from unsubstantiated claims. In refusing to erase such blemishes until the CAs have collected any outstanding debts, Hall believes the CAs are abusing the system.

Revision of the Qualified Manager Examination. In response to numerous complaints from the collection agency industry, Chief Hall has decided that a revision of the outdated qualified manager (QM) examination is in order. (See

CRLR Vol. 9, No. 2 (Spring 1989) p. 51 and Vol. 8, No. 3 (Summer 1988) p. 51 for background information.) At the September 22 meeting, many industry representatives described the examination as grossly outdated and argued that most of the questions currently have no "correct" answer as the substance of the exam refers to standards and practices of the industry in use as early as 1975.

Chief Hall decided to contact DCA's Central Testing Unit (CTU) and schedule the QM exam for revision as soon as CTU has time. In the interim, the CAs were advised to test their own employees to determine whether they are competent *vis a vis* the current standards and practices of the industry. Chief Hall promised to have pass/fail statistics available at the next meeting along with a plan for submitting updated questions for the QM exam. Hall called for industry support in reforming the examination.

LEGISLATION:

The following is a status update on bills reported in detail in CRLR Vol. 9, No. 3 (Summer 1989) at pages 44-45:

SB 58 (Marks) provides that no person wearing the uniform of a peace officer, security guard, or security personnel, or carrying a firearm, shall be permitted in the immediate vicinity of a polling place, except under specified conditions. This bill was signed by the Governor on September 7 (Chapter 310, Statutes of 1989).

AB 1529 (Lancaster), as amended on August 22, is DCA's omnibus clean-up bill which makes numerous changes in the enabling statutes of several DCA agencies. With respect to BCIS, the bill specifies (among other things) the contents of an application for a license or certificate of registration under the Collection Agency Act, and authorizes the Bureau Chief to request other information or documents which might be deemed necessary. This bill was signed by the Governor on September 29 (Chapter 1104, Statutes of 1989).

AB 613 (Lancaster) deletes the authority of the DCA Director to determine the equivalent amount of experience in investigation work required for a private investigator's license. This bill provides that only an employer, as defined, or his/her agent may certify experience for these purposes; requires employers to respond to a request by an employee for certification of the applicant-employee's experience within thirty days; and specifies the conditions and activities which qualify as experience. This bill was signed by the Governor on September 20 (Chap-

ter 549, Statutes of 1989).

AB 1501 (Quackenbush), as amended on August 21, prohibits a security guard from using or wearing a baton or exposed firearm unless he/she is in uniform, requires any such person using or wearing a baton or exposed firearm to wear a patch reading "private security" of a design approved by the DCA Director, and requires any person required to be registered as a security guard to carry his/her registration card or firearm permit while on duty. This bill was signed by the Governor on September 22 (Chapter 674, Statutes of 1989).

The following bills were made two-year bills and may be pursued when the legislature reconvenes in January: **SB 141 (Deddeh)**, which proposes to set new expiration dates for qualification certificates issued under the Collection Agency Act, and extend several reporting and/or registration deadlines for collection agency licenses and employees of licensees; **SB 104 (Robbins)**, which would change the bond requirement for collection agency licensees; **AB 1644 (Peace)**, which would require BCIS to develop a power to arrest training manual for use by certified instructors in a course of training in the exercise of the power to arrest for security guards who carry a deadly weapon; and **AB 255 (Floyd)**, which would permit DCA to adopt regulations that a security guard must meet in order to become a professional bodyguard.

RECENT MEETINGS:

Private Security Services Advisory Board Meeting. At PSSAB's July 20 meeting in Sacramento, Chief Hall reported that the Bureau is reviewing a final draft of the Private Patrol Operator Exam and would be seeking certification of the test questions. (See CRLR Vol. 9, No. 1 (Winter 1989) p. 42 for background information.) Chief Hall also provided general information concerning the status of all training manuals currently being developed or revised by the Bureau. Finally, he announced that the Private Security Industry Bulletin is being resubmitted to DCA's Public Affairs and Communications Office for final review.

Collection Agency Advisory Board Meeting. At CAAB's September 22 meeting in San Diego, Chief Hall updated those in attendance with respect to "the continuing saga" of conservatorships for out-of-trust collection agencies. (See CRLR Vol. 9, No. 2 (Spring 1989) p. 51 and Vol. 8, No. 4 (Fall 1988) p. 48 for background information.) Hall, while personally opposed to conservatorships, explained that they were introduced be-



cause some smaller CAs cannot afford the premiums of an insurance policy to protect themselves and their clients in case of financial trouble. Although conservatorships are required by statute, the Bureau has been trying to develop an alternative to the conservatorship statute for several years.

Chief Hall also discussed the problems of unlicensed activity. Some out-of-state CAs have established offices in California and have failed to comply with the procedures required for practice in the state. Additionally, sales offices have been extending themselves into the realm of collection agencies. In using their unlicensed employees to conduct CA-related activities, these sales offices are in violation of the law. Finally, attorneys advertising as collection agencies (on matters other than collecting judgments for previous clients) are yet another source of unlicensed activity that has the industry in an uproar.

Chief Hall vowed to "come down hard" on such violators, "sett[ling] for nothing less than the ultimate criminal penalty." Currently, unlicensed activity may result in a misdemeanor penalty up to \$1,000. Hall, however, plans to seek prosecution of such violators under criminal fraud provisions and secure more serious penalties up to \$10,000.

FUTURE MEETINGS:

PSSAB: January 18 in San Francisco.

CAAB: tentatively scheduled for January 17 in Sacramento.

CONTRACTORS STATE LICENSE BOARD

Registrar: David Phillips
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The Contractors State License Board (CSLB) licenses contractors to work in California, handles consumer complaints, and enforces existing laws pertaining to contractors.

The thirteen-member Board, consisting of seven public members, five contractors and one labor member, generally meets every other month. The Board maintains six committees: legislative, enforcement, licensing, public information, strategic planning, and budget/administration. In addition, the Board maintains a Fire Protections Systems Ad Hoc Committee. Committees meet every one to three months, and present recommendations for requested action at the full Board meetings.

MAJOR PROJECTS:

Alternate Testing Method Discussed.

One June 8, CSLB held a regulatory hearing on proposed section 829, Chapter 8, Title 16 of the California Code of Regulations (CCR). Section 804 of that chapter requires every applicant for a contractor's license to pass a two-part written examination. Part one tests an applicant's knowledge of business management and the laws concerning contracting. Part two is a trade-specific examination in the forty different classifications in which the Board issues licenses.

New section 829 would allow CSLB to establish an alternate means of establishing a minimum competency level other than requiring the two-part examination. This method would apply to a limited group of applicants, such as those who have failed the required trade examination by less than five points. In such a case, this proposed rule would allow the Registrar to evaluate the applicant's experience and/or education as defined in the regulations, and grant a maximum of five points towards his/her score. A minimum of four years of experience would be used as a baseline. Once an applicant has met this baseline experience requirement, the Registrar may grant him/her one-half point for each year of experience beyond the baseline up to a maximum of five points towards a passing score.

At this writing, the proposed rule is being reviewed by Department of Consumer Affairs (DCA) legal counsel to determine whether the rule will have a fiscal impact on CSLB's budget.

Written Testing Waiver Regulation Rejected. Following a public hearing on April 21, CSLB submitted amendments to section 843, Title 16 of the CCR, to the Office of Administrative Law (OAL) for approval. The amended section would have specified the licensed trade classifications for which the Registrar may waive a written examination pursuant to Business and Professions Code section 7065.3. (See CRLR Vol. 9, No. 3 (Summer 1989) pp. 45-46; Vol. 9, No. 2 (Spring 1989) p. 52; and Vol. 9, No. 1 (Winter 1989) p. 43 for background information.) On August 9, OAL disapproved the amendment to section 843 because CSLB's rulemaking file failed to comply with the clarity, necessity, and reference standards set forth in Government Code section 11349.1, and because CSLB failed to fully summarize and respond to all public comments. At this writing, the Board has no plans to resubmit the proposal to OAL.

Plumbing Contractor Classification Changes Approved. On May 25, OAL

approved CSLB's revised section 832.36, Title 16 of the CCR. This regulatory action specifies tasks which may and may not be undertaken by plumbing contractors. Specifically, section 832.36 prohibits plumbing contractors from installing fire protection systems and expressly permits the installation of irrigation systems. (See CRLR Vol. 9, No. 2 (Spring 1989) p. 52 and Vol. 9, No. 1 (Winter 1989) p. 43 for background information.)

LEGISLATION:

SB 279 (Montoya). Section 7042.1 of the Business and Professions Code prohibits regulated gas, heating, or electrical corporations from conducting work for which a contractor's license is required except under specified conditions. This section also provides that it shall remain in effect until January 1, 1991, and as of that date is repealed. SB 279, which deletes the provision repealing the existing law, was signed by the Governor on May 30 (Chapter 29, Statutes of 1989).

SB 1565 (Dills), as amended June 19, would have decreased the bond requirements for swimming pool contractors from \$10,000 to \$5,000. This bill was vetoed by the Governor on September 16.

SB 1634 (Dills) would have required all home improvement contracts exceeding \$1,000 to be in writing and signed by all the parties to the contract, and specified the contents of that writing. This bill was vetoed by the Governor on July 28.

The following is a status update on bills described in detail in CRLR Vol. 9, No. 3 (Summer 1989) at pages 46-47:

AB 636 (Eastin), as amended July 10, requires the imposition of a fine in the amount of 20% of the contract amount or \$4,500, whichever is greater, or imprisonment in the county jail, or both, upon a person convicted of improperly acting without a contractor's license who has been previously convicted of unlicensed contracting. This bill was signed by the Governor on September 12 (Chapter 366, Statutes of 1989).

SB 853 (Seymour), as amended August 31, makes it a misdemeanor for an unlicensed contractor to submit a bid to a public agency in order to engage in the business or act in the capacity of a contractor without a license. This bill was signed by the Governor on September 25 (Chapter 863, Statutes of 1989).

AB 959 (Eastin), as amended September 7, would have required payment from a prime contractor to a subcontractor