

Date of Hearing: April 28, 2015

ASSEMBLY COMMITTEE ON ARTS, ENTERTAINMENT, SPORTS, TOURISM, AND  
INTERNET MEDIA

Ian Charles Calderon, Chair

AB 836 (Rendon) – As Amended April 15, 2015

**SUBJECT:** Tour guides: regulation.

**SUMMARY:** Creates a voluntary certification program for tour guides under the California Travel and Tourism Commission (Commission) and requires tour guides providing tours to multiple sites in California to have adequate training and knowledge and pass a criminal background check. Requires the Commission to provide a list of certified tour guides to individuals seeking to hire a tour guide in California upon request. Specifically, **this bill:**

- 1) Defines "approved school" or "approved tour guide school" to mean a facility that is approved by the Commission and meets minimum standards for training and curriculum in California tour guiding and related subjects and meets any of the following requirements:
  - a) Approved by the Bureau for Private Postsecondary Education;
  - b) Approval by the Department of Consumer Affairs; and,
  - c) Accreditation by the Accrediting Commission for Senior Colleges and Universities or the Accrediting Commission for Community and Junior Colleges of the Western Association of Schools and Colleges and that is any of the following:
    - i) A public institution;
    - ii) An institution incorporated and lawfully operating as a nonprofit public benefit corporation, as specified, and is not managed by any entity for profit;
    - iii) A college or university of the state higher education system as specified; and,
    - iv) A school requiring equal or greater training than required and recognized by the United States Department of Education.
- 2) Defines a "certificate" to mean a valid certificate issued by the Commission.
- 3) Defines "Commission" to mean the California Travel and Tourism Commission.
- 4) Defines "Compensation" to mean anything of value, including, but not limited to, a payment, loan, advance, donation, contribution, deposit, or gift money.
- 5) Defines "tour guide business" to mean a business that provides tour guides in California for compensation.
- 6) Defines "tour guide professional" or "tour guide" to mean a person who is certified by the Commission pursuant to this chapter and who practices tour guiding for compensation.

- 7) Requires the Commission to establish a tour guide certification program and provide for the promotion of certified tour guides to persons or organizations seeking to hire tour guides in California.
- 8) Authorizes the Commission to collect fees to cover the cost of the program and to approve tour guide schools.
- 9) Gives the Commission authority to issue certifications to individuals who hold a current and valid registration, certification, or license to work as a tour guide from any California city, county, or city and county.
- 10) Authorizes the Commission to certify individuals from other states who hold a current and valid registration, certification, or license and who demonstrate knowledge of tour group safety and California geography, history, and culture, as specified, and provides discretion to the Commission to give credit towards the academic requirements for individuals attending non-approved schools.
- 11) Requires an applicant for certification as a tour guide to submit an application to the Commission and provide evidence that he or she meets the following:
  - a) Be eighteen (18) years of age or older;
  - b) Must successfully complete the curricula in California tour guiding and related subjects including tour group safety and California geography, history, and culture.

Provides that successful completion of a program from an approved school shall be deemed to satisfy this requirement;
  - c) Pass a California tour guide competency examination that is approved by the Commission; and,
  - d) Pay fees required by the Commission.
- 12) States that a tour guide certificate expires in two years unless renewed.
- 13) Requires the Commission to determine whether the school from which an applicant received his or her training meets the academic requirements for certification, as specified.
- 14) Allows the Commission to conduct any investigation the commission deems necessary to establish that the information received by an applicant is accurate.
- 15) Requires an applicant to submit fingerprints for a criminal background check conducted by the Department of Justice and the Federal Bureau of Investigation, as specified, and authorizes the DOJ and the Commission to charge a fee not to exceed the reasonable cost of processing the request.
- 16) Permits the Commission to require its own employees, volunteers, and members to undergo a background investigation process similar to an applicant.
- 17) States the grounds for discipline, certificate revocation, or denial of an application are as follows:

- a) Unprofessional conduct;
  - b) Procuring a certificate by fraud, misrepresentation, or mistake;
  - c) Impersonating an applicant or acting as a proxy for an applicant in any examination;
  - d) Impersonating a certificate holder, or permitting a noncertified person to use a certificate;
  - e) Violating or attempting to violate any provision of this act or any rule or bylaw adopted by the Commission;
  - f) Committing any fraudulent, dishonest, or corrupt act that is substantially related to the qualifications or duties of a certificate holder;
  - g) Committing any act punishable as a sexually related crime;
  - h) Committing any act that results in denial of licensure, revocation, suspension, restriction, citation, or any other disciplinary action against an applicant or certificate holder by a state or territory of the United States. A certified copy of the decision, order, judgment, or citation shall be conclusive evidence of these actions; and,
  - i) Being convicted of a felony or misdemeanor that is substantially related to the qualifications or duties of a certificate holder.
- 18) Authorizes the Commission to discipline a certificate holder by probation, suspension, revocation, or suspending or staying the disciplinary order with or without conditions, or taking any other action as the Commission deems proper.
- 19) Voids a certificate denial or discipline not conducted as required by the Act.
- 20) Requires any denial or discipline to be decided and imposed in good faith and in a fair and reasonable manner. Establishes the method for which a disciplinary action must be undertaken including providing reasonable notice and the opportunity to be heard.
- 21) Requires the Commission to provide background information relating to a certificate holder to law enforcement or to a local agency responsible for regulating or administering a local ordinance relating to tour guiding as specified.
- 22) Requires the Commission to maintain an accurate list of certified tour guides and provide the list to tour guide businesses and other organizations seeking to hire tour guides.
- 23) Prevents a non-certified person from taking a tour group into state parks and other state facilities for compensation as part of a multisite tour.
- 24) Expresses that this Act will not interfere with a person's exercise of the right to freedom of speech.
- 25) Specifies that the Act applies only to tour guides for hire that show travelers more than one sight in California and excludes tour guides that work for a museum, amusement park, or other organization that invites tourists to visit its facility.

- 26) Provides that a certificate holder can perform tour guides in any city or county and is not required to obtain any other certification, license, permit, or authorization to engage in that practice.
- 27) Allows a city or a county to establish its own program within its jurisdiction and seek approval from the Commission for its tour guides to obtain state certification.
- 28) States that a city, county, or city and county may require a tour guide business or establishment to file copies or provide other evidence of a certificate held by a person providing tour guide services at the business.
- 29) States that a city, county, or city and county may charge a tour guide business or establishment a business licensing fee as specified.
- 30) Provides that a city or a county may adopt rules relating to business practices, land use, and zoning relating to the practice of tour guiding.

**EXISTING LAW:**

- 1) Establishes a nonprofit mutual benefit corporation known as the California Travel and Tourism Commission. (Government Code (GC) Section 13995 et seq.)
- 2) Requires the Commission to consist of thirty-seven members – twelve professional members appointed by the Governor, twenty-four elected members representing various aspects of the industry, and the Director of the Governor's Office of Business and Economic Development as the chairperson. (GC Section 13995.40)
- 3) Defines the purpose of the Commission is to market and promote travel and tourism to and within California in order to expand and strengthen the travel and tourism industry in the state by utilizing generic promotional methods and techniques which will mutually benefit travel and tourism businesses of all sizes and categories. (GC Section 13395.1)
- 4) Declares the marketing of California tourism affects the public interest and gives the Director and the Commission the authority to exercise the police powers of this state for the purpose of protecting the health, peace, safety, and general welfare of the people of California. (GC Section 13395.50-51)

**FISCAL EFFECT:** Unknown

**COMMENTS:**

- 1) *Author and supporters' statements of need for legislation: greater training and oversight of tour guides will increase safety along with increased enjoyment of the California tourist experience.*

According to the author, "Every year, California attracts millions of tourists from all around the world. Many come on or take organized tours with tour guides. In order for these tour passengers to get the most out of their visit and return to the Golden State, it is necessary to ensure that their tour guides have knowledge of California's history, culture and sights, as well as knowledge of safe tour guiding practices." The bill's sponsor, Tour Guide Coalition

of California, add in support, "Currently the tour guide market is completely unregulated in the State of California. Preserving the quality of the state's tourism industry is important for economic, cultural, and health and safety reasons. The direct travel industry is responsible for \$106.4 billion in spending from visitors, contributes \$6.6 billion in state and local taxes, and supports 917,000 with earnings of \$32.3 billion. Nearly 16 million international tourists visit the United State as part of tour groups and whose experience is deeply influenced by their tour guide's attitude, commentary and professionalism. Despite the high volume of tourism, the state of California does not regulate tour guides. As a result, individuals without proper training or adequate knowledge about California's history, culture and special interests can be hired as guides for tours."

2) *Background: Tourism industry marketing through Visit California and California Travel and Tourism Commission.*

The California Tourism Marketing Act grew out of efforts to reverse a multi-year decline in California's tourism industry. During the 1970s, Governor Brown closed the Office of Tourism and withdrew funding from many tourism promotion efforts. During Governor Deukmejian's tenure, the Office of Tourism was reactivated. In February 1993, Governor Wilson created the Governor's Task Force on Tourism Funding (Executive Order W-41-93) for the purpose of "investigating various tourism funding methods and making policy recommendations regarding a new, "non-tax" method of providing stable financing for statewide tourism promotion." The Task Force, which was composed of representatives from various California businesses, developed the concept that was ultimately enacted by SB 256 (Johnston) Chapter 871, Statutes of 1995, as the California Tourism and Marketing Act.

The Act authorized the establishment of a non-profit, public benefit corporation, Visit California, to oversee the promotion of California as a premier travel destination. The statute became operative upon industry wide approval in 1997 and the assessment program was initiated in 1998. In 2001, the program was renewed by industry referendum with an 84% margin, while in 2007 it was renewed by a 91% margin. The first full year of assessment funding occurred during the 1998-99 fiscal year and between 1998 and 2002, the marketing budget was fully funded by the Commission and the state at approximately \$14 million annually.

Visit California is comprised of 37 Commission members, representing each industry segment (Accommodations, Restaurants and Retail, Attractions and Recreation, Transportation and Travel Services, and Passenger Car Rental). The Commission meets three times a year and directs and approves the marketing plan, expenditures and the overall strategic course for California tourism. The assessment program is administered by the Office of Tourism, Tourism Assessment Program which is housed in GO-Biz.

According to the California Travel Association, the travel industry generated \$106.4 billion in revenue from visitors and contributes to \$6.6 billion in state and local taxes in 2012. The revenue stream is predicted to grow to over \$135.6 billion by 2016. In 2013, California hosted nearly 16 million international visitors and it is forecasted to grow at over 5% per year through 2016. To support this volume of visitors, the travel and tourism industry maintains over 950,000 jobs.

3) *Tour guides are regulated elsewhere, and in some local jurisdictions in California.*

According to information provided by the author, several regions in the United States have tour guide certification programs. For example, the San Diego Professional Tour Guide Association was created to enhance the visitor's overall experience while in San Diego. Consistent with this mission, it has a voluntary certification program that consists of a written examination, an oral presentation, and two ride-a-long training tours. The association provides standard rates for various set tours which are serviced by its certified tour guides. In New York City, a voluntary program exists that requires a written test and a criminal declaration. The State of Hawaii issues a certification to tour guides that have completed an approved eight-hour tour guide course. In New Orleans, certified tour guides must provide a criminal background check with no felony convictions within five years, pass a drug test, be eighteen years or older, and successfully complete the written tour guide examination. Only certified tour guides may provide tours in New Orleans or risk a misdemeanor charge. In the District of Columbia, a licensed tour guide is required to pay the required fees, pass a criminal background check, be eighteen years or older, and be fluent in English. The District of Columbia regulations restrict the practice of tour guiding to only licensed persons. While consistency lacks among the programs, the overarching principle is to provide for tour guides that demonstrate baseline knowledge of the regional history and culture that acts to enhance the experience of its visitors

4) *Recent anecdotal stories of untrained tour guides posing as travel experts run the gamut from bad service in California to theft and physical assaults abroad.*

When one searches the internet, there are many stories of tourists being taken advantage of. In a compilation of *Tour Guide Horror Stories*, offered by the author, traveler's bad experiences in California are detailed, including; a San Francisco tour guide who steered the tour daily to a Chinese buffet before taking them to see sites such as "UC Harvard", a Sacramento resident who states that his family visiting from China had a tour guide who "made me feel like I was being conned" by adding extra charges and hidden fees, and "when some tourist refused to pay the hidden charges or extra charges they raised their tone and argued with the tourists" and badgered them into paying; yet another visitor from China had a frightening experience with a tour bus driver who, "was speeding all the time, he drove 80 on the freeway and said 55 speed limit was only for trucks." And although the law for commercial drivers is that they may not consume alcohol for 24 hours before driving, "the bus driver was drunk when he drove." She reports that he brought 3 big liter bottles of beer to the hotel the night before departure. The next morning the bus driver missed the departure time, and when he finally arrived all the passengers waiting for him could smell alcohol on him as he walked by. The trip that day was from San Francisco to Yosemite, where, "because the bus driver was late he had to drive very fast to catch the other buses in the tour group. The road was a crooked tiny road and it was really scary." In addition to the driver issues, the tour guide did not explain their destinations at all, just where the restrooms were at stops. The guide brought his wife along and to the tourist, "it seems like he is having a vacation and not us."

The online traveler's aid service *iPatrol Travel Advice* warns of "Fake Tour Guides" saying, "When visiting most popular areas you might come across touts claiming to be tour guides. If you happen to sign up with one of them, they would take you to places you don't want to go, bring you over to various uncles' rug shops, souvenir, jewelry shops and alike where you will

be pressured into buying things. Your so called 'guide' has an agreement with the shop owner and receives a commission from anything you buy. In worst case scenarios touts may take your money for their 'services' and abandon you. According to *iPatrol*, "A 'Tout' is any person who solicits a customer in an importune, typically aggressive or bold manner. An example would be a person who is always to be found in heavily touristed areas, who presents himself as a guide (particularly towards those who do not speak the local language) but operates on behalf of local bars, restaurants, or hotels, being paid to direct tourists towards certain establishments."

The issue of tourist safety has spawned a number of online websites, including, *Tourist Killed: Global monitoring of tourist deaths, attack, robbery, rip-offs, arrests*. This site details the worst of stories from around the world of fake tour guides preying on unsuspecting tourists, such as the following:

- This story from Mexico, A woman visiting León, Guanajuato from Sinaloa was assaulted by 'pirate' guides, who she hired in the bus station to take her on a tour of the city and state capital, Correo Guanajuato reports. The guides' took her through the capital, then forcefully threw her from their truck in a tunnel and took off with all her money, travel papers and other effects. 'They took everything, they left me with nothing,' she told police afterwards. The attack comes just one week after another tourist was mugged by a man pretending to be a tour guide."
- This story from China, "Shanghaidaily.com reports that a tour guide who was accused of threatening to kill a sightseer while brandishing a pointed object in an effort to force tourists to buy more from a shop was detained yesterday on suspicion of beating others, Beijing's tourism administration said. An initial investigation showed the 29-year-old man surnamed Meng doesn't have a tour guide certificate, and the travel agency called Mingdutengda that he claimed to work for wasn't registered, Beijing News reported today."
- This from Thailand, "According to bangkokpost.com, two tour guides were arrested on Sunday for allegedly stealing valuables from a tourist in Patpong, Bangkok police. Pol Lt Col Siam Insuwanno, deputy superintendent of Thung Mahamek police station, said the two suspects were named as Sommai Tubtim, 42, and Ritthicha Kongsomboon, 53. The victim, whose name was withheld, told investigators that he was attacked by a group of three men after he left a night entertainment venue in Patpong. The three men stole his valuables, including an iPhone 5 smartphone, and fled."

5) *Policy and Implementation issues raised in Business and Professions Committee remain largely unaddressed.*

This bill comes to the Committee on a double referral after having been heard in the Business and Professions Committee April 14, 2015. In that venue, a number of policy and implementation concerns were raised by the analysis, which this committee shares, and thus they are detailed below. The author responds that the bill is a work in progress, and is working with all stakeholders to make sure that all concerns are vetted and all ideas for improvement explored.

## 6) POLICY ISSUES FOR CONSIDERATION

- a) This bill will not prevent persons from operating as tour guides or holding themselves out as tour guides or operating tour guide businesses except as discussed above in regards to state parks and structures. Further, this bill does not offer title protection for certified tour guides so there are no limitations on a person calling himself or herself a certified tour guide.
- b) Additionally, there is no review process or oversight by the State as required by every board and bureau under the Department of Consumer Affairs. Unlike the boards and bureaus which have a sunset date that triggers their review, the Commission does not have a sunset date leaving the process for obtaining and regulating the tour guide certification program unchecked.
- c) Another consideration is the weight that is afforded to a license or certification endorsed by the State and what effect the creation of more licenses or certifications has on the diminution of the value of current licensees or certificate holders.
- d) The author should consider whether the placement in the Business and Professions Code (BPC) is the proper section to place this proposed legislation. Considering that the California Tourism Marketing Act which created the California Travel and Tourism Commission is codified in the Government Code, the author may want to work with Legislative Counsel to assure that the language is correctly placed. Further, its placement within the BPC might be reconsidered since section 9400 sits amidst five repealed chapters.

## IMPLEMENTATION ISSUES

- e) Upon discussion with the Commission, two major concerns were raised. The first concern involves start-up costs related to the formation and administration of the tour guide examination. While the Commission seems well poised to assist in the formation of the examination, its concerns over cost and administration remain an issue. The Commission is established primarily as a marketing agency and has never been charged with examination administration. Additionally, as a marketing agency, the Commission has never had a regulatory function. While the subject matter is within the expertise of the Commission, this would be a departure from the Commission's core mission and would likely require restructuring of the organization from its current form.
- f) Considering this new regulatory scheme and the need for the development of a new examination and administration program, the author may consider a delayed implementation so that the infrastructure can be established prior to program initiation.

## REGISTERED SUPPORT / OPPOSITION:

### Support

Tour Guide Coalition of California  
Numerous individuals

### Opposition



There is no opposition on file.

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