

**TITLE 16. DEPARTMENT OF CONSUMER AFFAIRS
BUREAU OF SECURITY AND INVESTIGATIVE SERVICES**

NOTICE IS HEREBY GIVEN that the Bureau of Security and Investigative Services (hereinafter referred to as “Bureau”) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at:

**Place: Department of Consumer Affairs
1625 N. Market Boulevard, Hearing Room, First Floor
Sacramento, CA 95834**

Date: July 21, 2011, 9:30 a.m.

Written comments, including those sent by mail, facsimile, or e-mail to the address listed under Contact Person in this Notice, must be received by this office no later than 5:00 p.m. on July 21, 2011.

The Bureau, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference:

Pursuant to the authority vested by Sections 125.9, 148, 149, 6980.7, 7515, and 7581 of the Business and Professions (B&P) Code, and to implement, interpret, or make specific Sections 6980, 6980.7, 6980.10(a), 7500.1, 7512.4, 7515, 7520, 7580.4, 7581, 7582, and 7590.1 of the B&P Code, the Bureau is considering changes to Division 7 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The purpose for the adoption and amendments of these regulations is to provide the Bureau with the ability to issue citations for unlicensed activity and establish fine amounts for such citations. These regulations will also permit the Bureau to issue citations/fines to persons advertising in any written, printed, or verbal communication for the purpose of soliciting business without a license.

Currently the Bureau investigates unlicensed complaints, and then either closes with an educational letter or forwards its findings to the local District Attorney’s office for prosecution. The Bureau does not have enforcement authority over unlicensed activity. These proposed regulations will allow the Bureau to utilize the cite and fine program as a

mechanism to enforce the law, protect consumers and obtain compliance for unlicensed activity or deter unlicensed activity

B&P Code Section 125.9 authorizes the Bureau to adopt, amend, or repeal regulations necessary for Bureau staff to issue administrative citations, which may contain an order of abatement or an order to pay an administrative fine. B&P Code Section 148 authorizes the Bureau to issue an administrative citation to an unlicensed person and B&P Code Section 149 will permit the Bureau to issue citations and fines to those persons/entities who advertise in a telephone directory with respect to the offering or performance of services, without being properly licensed.

The Bureau is proposing to make the following changes:

1. Amend Section 600.1 to clearly define the word “Unlicensed” in section 600.1(f) and “Advertisement” in section 600.1(g). The proposed amendments will also further define each Chapter referenced in this regulation section and remove Chapter 8 (Collection Agencies) since Chapter 8 is no longer under the jurisdiction of the Bureau.
2. Adopt Sections 601.6, 601.7, 601.8, 601.9, and 601.10. The adoption of these regulations will make specific the following:

Section 601.6 of Title 16 of the California Code of Regulations establishes the authority for the Bureau to issue administrative citations for unlicensed activity and fine amounts of such citations. This section also establishes the authority to issue citations and fines to those persons who advertise in any written, printed, or verbal method for the purpose of soliciting business without a license.

Section 601.7 of Title 16 of the California Code of Regulations specifies the factors the Chief of the Bureau shall consider in assessing the amount of an administrative fine.

Section 601.8 of Title 16 of the California Code of Regulations specifies the format of a citation and the process for issuing a citation.

Section 601.9 of Title 16 of the California Code of Regulations establishes the timeframes for complying with an order of abatement and specifies the consequences of failing to honor those timeframes.

Section 601.10 of Title 16 of the California Code of Regulations establishes the process for contesting a citation and establishes that a person issued a citation who has had the citation modified in an informal conference cannot request another informal conference to contest the same citation.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

The Bureau is responsible for regulating the owners/qualified managers/employees of burglar alarm companies, locksmith companies, private investigators, proprietary private security officers, private patrol operator companies, baton/firearm training facilities, and repossession (repo) companies.

Currently the Bureau does not have the ability to issue administrative citations for unlicensed activity, establish fine amounts or collect for such unlicensed citations. This proposal would enable the Bureau to issue administrative citations and assess a fine up to maximum of \$5,000 per citation for unlicensed activity, depending on the severity of the violation.

With 11 staff in enforcement, the Bureau has three (3) analysts in its Unlicensed Activity Action Unit that are specifically dedicated to working unlicensed complaints and seeking to bring businesses into compliance. This proposal anticipates a minimal increase to the present workload by providing staff the ability to issue administrative fines and avoid having to utilize local law enforcement to issue a misdemeanor per B&P Code §16240. The Bureau estimates that the minimal increase in workload would be minor and absorbable.

Nondiscretionary Costs/Savings to Local Agencies: NONE

Local Mandate: NONE

Cost to Any Local Agency or School District for Which Government Code Sections 17500 - 17630 Requires Reimbursement: NONE

Business Impact:

The Bureau has determined that the proposed regulatory action will not have a significant statewide adverse economic impact directly affecting California business, including the ability of California businesses to compete with businesses in other states.

Impact on Jobs/New Businesses:

The Bureau has determined that this regulatory proposal will not have any impact on the creation of jobs or businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California. Any job elimination would be predicated on an individual/company going out of business because of noncompliance with the law (doing business without a license).

Cost Impact on Private Persons or Entities:

The Bureau is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: NONE

EFFECT ON SMALL BUSINESS

Currently, the Bureau licenses approximately 5,405 locksmiths (including their employees), of which 4,324 are considered small businesses; 242,576 private patrol operators (including their employees), of which 2,426 are considered small businesses; and 9,898 private investigators, of which 4,949 are considered small businesses that could be impacted, including the remaining regular businesses, if they were to be found operating without a license. The Bureau, at this time, does not collect statistics on small businesses, including such information related to unlicensed activity.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Bureau must determine that no reasonable alternative considered by the Bureau or that has otherwise been identified and brought to the attention of the Bureau would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The alternative would be not to adopt the regulation and continue without the ability to issue an administrative citation/fine for unlicensed persons. This would prevent the Bureau from obtaining a process to deter unlicensed activity and ensuring public safety. The Bureau's top priority is to protect the consumer and create a more effective deterrent to the unlicensed practitioners. This proposal will ensure that all unlicensed persons are held to similar standards and requirements as current licensees.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Bureau has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Bureau of Security and Investigative Services at 2420 Del Paso Road, Suite 270, Sacramento, California 95834.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public inspection by contacting the person named below or by accessing the website listed below. You may obtain a copy of the final

statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Noreene DeKoning, AGPA
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Sacramento, CA 95834
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The backup contact person is:

Name: Mary Helot, AGPA
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Website Access: Material regarding this proposal can be found at www.bsis.ca.gov.