



day time lag between collection and deposit of these funds, an interpretation which OAL found to be inconsistent with section 8738. As a result of the Board's inability to interpret the "not later than" provision of section 8738 to OAL's satisfaction, the Board has dropped its efforts to adopt section 2376 and will not revise it to comply with OAL's findings.

LEGISLATION:

AB 1540 (Speier), as introduced March 7, would repeal the enabling statutes of the Cemetery Board and the Board of Funeral Directors and Embalmers, and enact the Cemeteries, Funeral Directors and Embalmers Act, with unspecified contents. This two-year bill is still pending in the Assembly Committee on Consumer Protection, Governmental Efficiency, and Economic Development, which was scheduled to hold interim hearings on the bill and the boards' respective performances in October. The Board unanimously opposes this bill on the basis that the proposed restructuring would afford no additional consumer protection and would operate less efficiently than the existing, separate boards.

LITIGATION:

On September 10, the California Supreme Court heard oral argument in *Christensen, et al. v. Superior Court*, No. S016890. The court is reviewing the Second District Court of Appeal's June 1990 decision which considerably expanded the plaintiff class in this multi-million dollar tort action against several Board licensees. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 65; Vol. 11, No. 2 (Spring 1991) p. 62; and Vol. 10, No. 4 (Fall 1990) pp. 61 and 75 for background information.)

RECENT MEETINGS:

At its August 9 meeting, the Board discussed state Senator Marian Bergeson's request that the Board draft regulations regarding cremation contract disclosures. No further action is planned until a meeting with Senator Bergeson is scheduled so that the Board may determine what she specifically wants the regulations to address.

FUTURE MEETINGS:

To be announced.

BUREAU OF COLLECTION AND INVESTIGATIVE SERVICES

Chief: James C. Diaz
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The Bureau of Collection and Investigative Services (BCIS) is one of 38

separate regulatory agencies within the Department of Consumer Affairs (DCA). The Chief of the Bureau is directly responsible to the DCA Director.

Pursuant to the Collection Agency Act, Business and Professions Code section 6850 *et seq.*, 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 twofold: (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. The Bureau also plays an important role in protecting collection agencies from unlawful competition by the detection and prohibition of unlicensed activity within the industry.

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

Private Security Services. Regulated by the Bureau pursuant to Business and Professions Code section 7544 *et seq.*, 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 to provide these services is required to register with the Bureau as a security guard. Any security guard who carries a firearm and/or baton 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.

Repossessionors. 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. Any individual employed by these services is required to be registered with the Bureau. Pursuant to the Repossessors Act, Business and Professions Code section 7500 *et seq.*, 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. Any private investigator who carries a firearm on the job must possess a firearm permit issued by the Bureau. Pursuant to Business and Professions Code section 7512 *et seq.*, 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 Company Operators. Alarm company operators install, service, maintain, monitor, and respond to burglar alarms. These services are provided to private individuals, businesses, and public entities. Any employee responding to alarms who carries a firearm on the job must be registered by the Bureau and possess a Bureau-issued firearm permit. Pursuant to the Alarm Company Act, Business and Professions Code section 7590 *et seq.*, 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. Individuals employed by any of these services must be registered by the Bureau. These services are employed by private individuals, business entities, and law enforcement agencies. Pursuant to Business and Professions Code section 7550 *et seq.*, 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.



REGULATORY AGENCY ACTION

Instead, they must turn the debt over to an independent, licensed collection agency in order to avoid any conflict of interest. Medical provider consultants may be licensed by the Bureau pursuant to Health and Safety Code section 1249.5 *et seq.*

Training Facilities and Instructors.

These facilities provide required firearm training to licensed private investigators; power to arrest and firearm training to alarm agents who respond to alarm systems; and power to arrest, firearm, and baton training to security guards. Upon completion of training, individuals must pass examinations before they may be issued the appropriate permits. Pursuant to Business and Professions Code section 7552 *et seq.*, the Bureau regulates these facilities in order to ensure that required training is provided to licensed individuals, and that only those qualified possess the proper permits to provide service to the consumer.

Locksmiths. Locksmiths install, repair, open, modify, and make keys for locks. These services are provided to private individuals, businesses, and public entities. Pursuant to Business and Professions Code section 6980 *et seq.*, the Bureau regulates this industry in order to protect clients from potential theft or burglary, invasion of privacy, and misuse of a locksmith's skills, tools, or facilities for the commission of a crime.

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.

Two advisory boards function within the Bureau to advise the Chief and the DCA Director on policy matters relating to their respective industries. The Collection Agency Board (CAB) acts pursuant to Business and Professions

Code section 6863.5 *et seq.*, and the Private Security Advisory Board (PSAB) is created under Business and Professions Code section 7516 *et seq.*

MAJOR PROJECTS:

BCIS Seeks Regulatory Revisions.

In July, BCIS announced its proposal to repeal section 613.5 and adopt new section 601.4, Title 16 of the California Code of Regulations. To comply with the Permit Reform Act of 1981, Government Code section 15374 *et seq.*, proposed section 604.1 would set processing times for applications for licensure or registration, and provide maximum time periods for notifying an applicant whether an application is complete and time periods for issuing or denying a license or registration.

Business and Professions Code section 6894.6 specifies persons who are exempt from the registration requirement as employees of licensed collection agencies; 1989 amendments to section 6894.6 expressly deleted an exemption for employees whose duties include accounting for receipts or disbursements of trust monies, preparation of bank deposits or reconciliations, or who have other functions or responsibilities for the financial transactions of the licensed collection agency. However, section 613.5 of the Bureau's regulations provides that such employees are exempt from registration. Therefore, BCIS proposes to repeal section 613.5 as it directly contradicts the controlling statute.

BCIS scheduled September 13 and October 11 public hearings on these proposed revisions.

BCIS Releases Private Investigator

Bulletin. In its July 1991 *Private Investigator Information Bulletin*, BCIS reminded licensees that Business and Professions Code section 7521(b) requires a private investigator to possess a valid private patrol operator license in order to perform certain types of bodyguard services. According to BCIS, private investigators without a private patrol operator license may provide services to protect individuals, but not property, if the service is incidental to an existing investigation.

The *Bulletin* also reported that BCIS is aware that some private investigators are hiring independent contractors to provide services incidental to an investigation, in violation of the Private Investigator Act. Business and Professions Code section 7521.5(e) states that anyone acting for or on behalf of a private investigator in providing investigatory services must be an employee of the private investigator. BCIS claims

that some private investigators are contracting with trainees on an independent contractor basis to perform investigatory services; according to the *Bulletin*, "unless an employer-employee relationship has been established, [licensees] are guilty of aiding and abetting unlicensed activity." According to Business and Professions Code section 7523(b), any person "who knowingly engages an unlicensed private investigator after being notified in writing by the bureau of the private investigator's unlicensed status with the bureau, is guilty of a misdemeanor" punishable by a fine not to exceed \$1,000 or imprisonment in the county jail not to exceed one year, or both.

BCIS Releases Locksmith Informa-

tion Bulletin. In its August 1991 *Locksmith Information Bulletin*, BCIS warned locksmiths who open residences or vehicles for individuals other than the legal owner or occupant of their legal responsibilities. The *Bulletin* noted that Penal Code section 466.6 provides that "any person who makes a key capable of operating the ignition of a motor vehicle for another by any method other than by the duplication of an existing key, whether or not for compensation, shall obtain the name, address, telephone number, if any, date of birth, and driver's license number or identification number of the person requesting or purchasing the key; and the registration or identification number, license number, year, make, model, color, and vehicle identification number of the vehicle for which the key is to be made." This information is to be placed upon a work order, which must be retained for one year and available for inspection by any peace officer during business hours. BCIS reports that it is currently developing a standardized work order form to be used by all locksmiths in such cases; the Bureau has requested sample work order forms from locksmiths to assist in the development of this form.

The *Bulletin* also reminded locksmiths of additional statutory requirements, including Business and Professions Code section 6980.28, which provides that a permittee must carry a valid locksmith permit whenever he/she is engaged in the work of a locksmith, whether on or off the premises of a locksmith shop.

Repossession Program Update. The September 1991 issue of BCIS' *Repossession Agencies Information Bulletin* included a summary of its repossession licensing and regulatory program. The *Bulletin* reported that regulation of the repossession profession is necessary to protect the interests of consumers, cli-



ents, and employees. For example, BCIS noted that prior to January 1981, the majority of repossessions were conducted by independent contractors. These individuals did not receive normal employee benefits, and licensees were able to deny responsibility for illegal acts by independent contractors. According to the *Bulletin*, the establishment of the employee/employer relationship and the implementation of employee registration assures that employees receive required benefits and encourages proper supervision by licensees.

The *Bulletin* also noted that Business and Professions Code section 7507.6 requires that if a reposessor is involved in a violent act which results in a police report, bodily harm, or bodily injury, the licensee, the licensee's qualified certificate holder, or the licensee's employee shall, within seven days, mail or deliver to BCIS a notice concerning the incident on a form provided by the Bureau. According to the *Bulletin*, any injury inflicted upon either the reposessor or the consumer would constitute a violent act for purposes of section 7507.6. During fiscal year 1990-91, BCIS received six reports of violent acts. Business and Professions Code section 7508.4(g) provides that failure to comply with section 7507.6 shall result in a fine of \$25 for the first violation and \$100 for each violation thereafter.

Private Patrol Operator/School Program Update. The September 1991 issue of BCIS' *Private Patrol Operator/School Program Information Bulletin* included the first of a three-part series of informational articles explaining the regulation of the private security industry. The September *Bulletin* addressed BCIS' application process; future issues will discuss the Bureau's issuance and denial process, and its disciplinary procedure and appeal process. According to the *Bulletin*, the most important thing for licensees to remember when hiring new employees is to properly complete the application for registration, which must be accompanied by two classifiable sets of fingerprints and the appropriate registration and fingerprint fees. According to the article, if complete applications are submitted with the appropriate fingerprint cards and fees, the application process will generally conclude within 120 days from the date of the application.

The September *Bulletin* also discussed shooting incidents involving licensees. Business and Professions Code section 7544.5(g) requires private patrol operators to report firearm discharges within seven days of the inci-

dent. Section 7544.6 requires security guards to report to their employer, within 24 hours, any shooting incident that occurs while on duty; section 7544.7 further requires security guards to submit a written report to BCIS within seven days of the incident. Failure to report a firearm discharge may result in a fine of \$25 for the first violation and \$100 for each subsequent violation.

The *Bulletin* noted that a firearm may be used only when there is a clear and present danger to life. Further, BCIS offered some basic rules which should be followed in order to ensure safety, including the following: treat all firearms as if they are loaded; never fire at a fleeing suspect; never point a firearm at anyone unless you are legally justified; never indulge in "horseplay"; and never jeopardize life for the sake of heroics.

Finally, the *Bulletin* included statistics on shooting incidents between fiscal years 1988-89 and 1990-91. During 1990-91, there were two reported shootings which resulted in death, down from six in 1988-89; shootings resulting in injury also decreased from 36 in 1988-89 to eighteen in 1990-91. Overall reported shootings decreased from 86 in 1988-89 to 51 in 1990-91, with the majority of shootings occurring in self-defense.

LEGISLATION:

AB 882 (Murray), as amended August 19, authorizes a person who is employed as a guard or messenger of a common carrier, bank, or other financial institution, while actually employed in and about the shipment, transportation, or delivery of any money, treasure, bullion, bonds, or other thing of value within California, if certain conditions are met, to carry a concealed weapon. This bill was signed by the Governor on October 13 (Chapter 961, Statutes of 1991).

The following is a status update on bills reported in detail in CRLR Vol. 11, No. 3 (Summer 1991) at page 68:

SB 560 (Vuich), as amended June 25, increases from \$1,000 to \$5,000 the fine imposed against any person who violates or conspires to violate any provision of the Repossessor Act, or who knowingly engages an unlicensed repossession agency after being notified by BCIS of that agency's unlicensed status. This bill, which makes a number of other changes to the Repossessor Act, was signed by the Governor on October 5 (Chapter 517, Statutes of 1991).

AB 1893 (Lancaster), as amended August 19, classifies firearm qualifications cards and baton permits as "licenses" under the Private Investigators

Law, and authorizes the DCA Director to deny those licenses under specified conditions. This bill was signed by the Governor on October 7 (Chapter 654, Statutes of 1991).

SB 1083 (Robbins), as introduced March 8, would provide that persons licensed as collection agencies are deemed to be attorneys-in-fact for purposes of depositing or transferring client funds to or from individual or pooled client trust deposits with banks, and that the authorized signatures and instructions of these licensees on items deposited and transfers made to and from the trust deposits of their clients are valid, whether or not the principal-agent relationship is indicated on the item or instruction. This bill is currently pending in the Senate Judiciary Committee.

AB 1180 (Murray), as amended July 1, would substantially revise existing law applicable to private investigators. Among other things, AB 1180 would extend DCA's rulemaking authority to cover private investigators and their employees; extend that rulemaking authority to the establishment of procedures, qualifications, fees, and conditions under which licensed private investigators and security guards who hold valid firearms qualifications cards will be issued a permit by the DCA Director to carry a concealed firearm; and exempt from the Private Investigators Act guards or messengers of common carriers, banks, and other financial institutions while in and about the shipment, transportation, or delivery of any money, treasure, bullion, bonds, or other thing of value within California, if certain conditions are met. This bill is pending in the Senate Business and Professions Committee.

SB 315 (Deddeh), as amended June 20, would exclude newspaper carriers and other independent delivery contractors engaged in the collection of subscriptions or wholesale payments for newspapers from the term "collection agency" as used in the Collection Agency Act. SB 315 would also extend the sunset date of the Collection Agency Act from June 30, 1992 until June 30, 1993. This bill is pending in the Assembly Committee on Banking, Finance, and Bonded Indebtedness.

RECENT MEETINGS:

At CAB's June 21 meeting, DCA Deputy Director Thomas Maddock discussed the possibility of a licensing fee increase for the collection agency program, noting that the Bureau will draft a report detailing the costs involved in operating the program and a justification for the proposed fee increase. CAB



REGULATORY AGENCY ACTION

member Jerry Springer stated that if the major increase in operational costs is caused by the conservatorship program, the Board should examine alternative ways for regulating that aspect of the program.

At PSAB's July 12 meeting, Board member Stephen Geil reported on the progress of the Private Security Training Committee, a task force established to address training needs of the security guard industry. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 68; Vol. 11, No. 2 (Spring 1991) p. 63; and Vol. 11, No. 1 (Winter 1991) p. 54 for background information.) Mr. Geil stated that the Committee's composition reflects a balanced representation of all groups concerned, and noted that the Committee agreed that there must be unanimous agreement for all decisions. The Committee is seeking input from licensed training facilities regarding subjects to be included in a training outline. Mr. Geil reported that only three facilities had responded, but that other facilities still had time to provide input.

Also at its July 12 meeting, PSAB discussed the extent of BCIS' jurisdiction over armored car operators, focusing on whether such carriers, who are regulated by the California Highway Patrol and the Public Utilities Commission, may carry a firearm without obtaining a permit from the Bureau. The Board discussed the conflict between Business and Professions Code section 7521(d), which includes armored contract carriers among the classes of businesses subject to BCIS jurisdiction, and Penal Code section 12027(e), which exempts guards or messengers of common carriers, banks, and other financial institutions, while actually employed in and about the shipment, transportation, or delivery of money, among other things, from Penal Code prohibitions against carrying concealed firearms. The Board noted that pending legislation was aimed at clarifying this ambiguity (see *supra* AB 882 (Murray) in LEGISLATION).

At CAB's September 13 meeting, Chief James Diaz reported that the Bureau is in the process of revamping its conservatorship program. He reported that agencies which appear to be in a questionable status will be monitored; conservatorships will be utilized only in extreme cases. As of September 13, CAB had fifteen agencies under conservatorship, compared to 21 open conservatorships in March.

Also at the September meeting, CAB discussed a possible licensing fee increase. The Board reviewed the licensing/registration costs charged by other

states for the licensing of collection agencies, noting that California's fees exceed those of the other states. The Bureau will meet with industry representatives to discuss this issue further.

FUTURE MEETINGS:

CAB: January 1992 in Sacramento.

PSAB: January 17 in Fresno.

CONTRACTORS STATE LICENSE BOARD

Registrar: David Phillips

(916) 366-5153

Toll-Free Information Number:

1-800-321-2752

The Contractors State License Board (CSLB) licenses contractors to work in California, handles consumer complaints, and enforces existing laws pertaining to contractors. The Board is authorized pursuant to the Contractors State License Law (CSLL), Business and Professions Code section 7000 *et seq.*; CSLB's regulations are codified in Division 8, Title 16 of the California Code of Regulations (CCR).

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:

CSLB Amends Its Complaint Disclosure Policy. At its July 19 meeting, CSLB held a public hearing on the Enforcement Committee's proposal to amend the Board's complaint disclosure policy, codified at section 863, Division 8, Title 16 of the CCR ("Rule 863"). The proposed amendments would prohibit disclosure of pending complaints against a contractor to an inquiring consumer until such complaints are fully investigated and referred for legal action. "Legal action" means referral of the complaint for the issuance of a citation, accusation, statement of issues, or the initiation of criminal action or injunctive proceedings. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 69; Vol. 11, No. 2 (Spring 1991) pp. 65-66; and Vol. 11, No. 1 (Winter 1991) p. 55 for extensive background information.)

In a July 15 letter to CSLB's Regulations Coordinator Robert Porter, the

Center for Public Interest Law (CPIL) again voiced its opposition to this proposed amendment. CPIL maintains that the proposed amendment is contrary to the public interest because it is not authorized by the Business and Professions Code; CSLB has shown no necessity for its proposed amendment to the rule; and the proposed amendment is contrary to CSLB's enabling statute.

Board member Steve Lazarian again expressed concern that the proposed amendment of Rule 863 does not address situations where multiple complaints are pending against a contractor, or where a pending complaint is serious and threatens public health and safety. Staff explained that this issue was addressed in a May 15 "Procedure Memo" from CSLB Registrar David Phillips. The memo requires CSLB supervisors to screen complaints to determine if "(a) there is a threat to health and safety and/or (b) there are multiple complaints against the same licensee." If either (a) or (b) is involved, the complaint is to be given "A" priority and assigned directly to the appropriate field office for investigation by a deputy. Immediately following preliminary investigation, staff is directed to determine the feasibility of issuing a prompt citation. According to CSLB, this referral—which qualifies as "legal action" under the proposed amendments to Rule 863—"will make complaints discloseable sooner for the protection of consumers."

The May 15 Procedure Memo also sets forth four priority classifications for consumer complaints, and suggests appropriate timeframes for processing each. Group "A" complaints, which should be processed within 60 days, include those alleging an "immediately dangerous health and safety condition that might endanger a person's physical being or property"; multiple complaints against the same contractor; and complaints involving fraudulent activities or known organized crime groups. Group "B" complaints, which may be processed within 90 days, include safety and building code violations and investigations of licensure applicants. Group "C" complaints, which should be resolved within 120 days, include large monetary injury complaints (typically commercial projects or real estate transactions) and interagency code violations. Group "D" complaints, which are all other complaints, should be resolved within 180 days.

Following the public hearing, CSLB adopted the proposed revisions, which must be approved by the Director of the Department of Consumer Affairs (DCA) and the Office of Administrative Law;