

Title 4. Business Regulation
Division 3. Bureau of Home Furnishings

NOTICE OF PROPOSED CHANGES

NOTICE IS HEREBY GIVEN that the Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation (Bureau), Department of Consumer Affairs, 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 the Department of Consumer Affairs' First Floor Hearing Room located at 1625 North Market Blvd, Sacramento, California 95834, at 10:00 a.m. on August 8, 2016. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Bureau at its office not later than 5:00 p.m. on August 8, 2016, or must be received by the Bureau at the hearing.

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 19034 and 19170 of the Business and Professions Code (BPC) and to implement, interpret, or make specific sections 19170, 19170.3, and 19170.5 of said code, the Bureau is considering changes to Division 3 of Title 4 of the California Code of Regulations as follows:

INFORMATIVE DIGEST

A. Informative Digest

In accordance with the provisions of the Administrative Procedures Act, Business and Professions Code section 19034 generally authorizes the Bureau to adopt rules and regulations declaring policy of the Bureau and for the administration of Chapter 3, Division 8 of that code.

Business and Professions Code section 19170 establishes the statutory minimum and maximum fee schedule for application, biennial renewal, and other fees for the Bureau's home furnishings applicants and licensees. Business and Professions Code section 19170.3 establishes the statutory minimum and maximum fee

schedule for application and annual renewal for the Bureau's thermal insulation applicants and licensees.

Business and Professions Code section 19170.5 establishes the criteria to determine the delinquency and penalty fee for licenses that are not renewed prior to their expiration and after the renewal remains unpaid after 90 days.

Assembly Bill (AB) 1175 (Ridley-Thomas, Chapter 187, Statutes of 2015) amends section 19170 of the Business and Professions Code to increase the statutory fee ceilings for all license types by approximately 25 percent. Prior to this, the statutory fee schedule was last amended in 2001 increasing the importer and furniture and bedding manufacturer license fees. The statutory maximums for all other license types were last amended in 1993.

Title 4 of the California Code of Regulations Section 1107 specifies fee schedules for the application and biennial renewal of various licenses. The fee schedule was last updated September 2002 to raise the fees for the importer and furniture and bedding manufacturers' licenses. All other licenses were last updated by regulation in 1994.

This proposed rulemaking seeks to amend section 1107 to increase most licensing fees by approximately 15 percent. Depending on the license type, the proposed increase will equate to an additional \$20 to \$100 biennially. In addition, the proposed rulemaking will codify an existing fee for thermal insulation manufacturers. The implementation of the fee increase will make the following changes to existing regulations:

Amend Section 1107(a) of Article 1 of Title 4 of the California Code of Regulation:

- Subsection (1) Importer's license fee increases from \$650 to \$750.
- Subsection (2) Furniture and Bedding Manufacturer's license fee increases from \$650 to \$750.
- Subsection (3) Wholesale Furniture and Bedding Dealer's license fee increases from \$540 to \$625.
- Subsection (4) Supply Dealer's license fee increases from \$540 to \$625.
- Subsection (5) Custom Upholsterer's license fee increases from \$360 to \$420.
- Subsection (6) Sanitizer's license fee increases from \$360 to \$420.
- Subsection (7) Retail Furniture Dealer's license fee increases from \$120 to \$140.

- Subsection (8) Retail Bedding Dealer's license fee increases from \$120 to \$140.
- Subsection (9) Retail Furniture and Bedding Dealer's license fee increases from \$240 to \$280.

Add a new Section 1107(b) of Article 1 of Title 4 of the California Code of Regulation:

- Codify thermal insulation manufacturer fee at \$2,000 annually.

Amend Section 1107(b) & (c) of Article 1 of Title 4 of the California Code of Regulation:

- Update subsections (b) and (c) to (c) and (d) due to the addition of a new subsection (b).

Pursuant to section 19170.5 and in response to the implementation of the proposed fee increase, the delinquency and penalty fees imposed on those that fail to renew their license prior to expiration will also increase. As mandated, a delinquency fee will be assessed at the rate of 20 percent of the renewal fee but not more than one hundred dollars. Depending on the license type, the increase to the delinquency fee equates to \$4 to \$12. When the renewal and delinquency fees are not paid within 90 days, the penalty fee is assessed at an additional 30 percent of the renewal fee. Depending on the license type, the increase to the penalty fee will equate to \$6 to \$30.

The proposed fee increase intends to address the Bureau's structural imbalance and protect the Home Furnishings and Thermal Insulation Fund (Fund) from becoming insolvent as projected in Fiscal Year (FY) 2017/18. Specifically, at the conclusion of FY 2016/17, the Fund is expected to have 1.7 months in reserve. In FY 2017/18, the Fund is expected to have a deficit of 0.7 months in reserve. Correcting the Bureau's structural imbalance will be unattainable without a fee increase.

The fund balance provides specific information on the Bureau's current fund as well as projections for future years. There are several factors that have contributed to the fund's imbalance such as the costs the Bureau incurs to deliver its services. In addition, the fees for the majority of the licenses have remained unchanged while inflation has increased over the years. According to the Consumer Price Index, the rate of inflation is calculated at 30.75 percent since 2002 and 58.00 percent since 1994. A review of the Bureau's Fund condition report demonstrates that the overall revenue for the Bureau has increased by 29 percent, yet expenditures have increased by 59 percent, since FY 2002/03.

B. Policy Statement Overview/Anticipated Benefits of the Proposed Regulations

The Bureau regulates approximately 22,300 licensees in its Home Furnishings program. Through this rulemaking, the Bureau proposes to amend section 1107 of the California Code of Regulation to increase home furnishing license fees by approximately 15 percent and codify the thermal insulation manufacturer fee. This proposal is necessary to ensure sufficient resources are available to maintain current Bureau operations to meet its consumer protection mandate.

As specified in Business and Professions Code section 19004.1, protection of the public shall be the highest priority for the Bureau when exercising its regulatory function under this chapter. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

The proposed fee increase ensures licensing revenues match expenditures, thereby protecting the Bureau's Fund from insolvency. This proposal benefits consumer protection as it is designed to enable the Bureau to maintain its licensing and oversight operations while also ensuring significant surpluses are not created. In addition, the proposal minimizes the economic impact of a fee increase by raising the fee approximately 15 percent rather than to the statutory ceiling and has no effect on the thermal insulation license fee.

C. Consistency and Compatibility With Existing Regulations

During the process of developing these regulations and amendments, the Bureau conducted a search of any similar regulations on this topic and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

FISCAL IMPACT ESTIMATES

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

It is estimated that the proposed fee increase will result in an increase in Bureau revenues for FY 16/17 by approximately \$455,000 and an increase to ongoing annual revenue by approximately \$603,000.

The Bureau does not anticipate any impact on federal funding.

Nondiscretionary Costs/Savings to Local Agencies

None.

Local Mandate

None.

Cost to Any Local Agency or School district for Which Government Code Section 17561 Requires Reimbursement

None.

Business Impact

The Bureau has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

The business impact is expected to be minimal as the licensing fees for Importers and Furniture and Bedding Manufacturers have not been increased since 2002. All other license types have not experienced a fee increase since 1994. During that time, the Consumer Price Index has increased more than 59 percent; however, a fee increase of that scale would not be reasonable. In order to minimize the impact to its licensees, the Bureau is proposing an increase that ensures it remains fiscally solvent while also ensuring significant surpluses are not created. If fees were tied to the consumer price index, retailers would be paying annual fees of \$191 and \$382, rather than \$140 and \$280.

Cost Impact on Representative Private Person or Business

The Bureau is not aware of any significant cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. This initial determination is based on the fact that the license fee will be increased by \$20 to \$100 biennially, depending on the license type. An additional \$4 to \$12 delinquent fee and \$6 to \$30 penalty may be assessed only when a licensee fails to renew their license prior to expiration and after the renewal remains unpaid for 90 days.

The cost impact is expected to be minimal as the licensing fees for Importers and Furniture and Bedding Manufacturers have not been increased since 2002. All other license types have not experienced a fee increase since 1994. In addition, based upon the absence of testimony or comment to the Bureau during Advisory Council discussions about this regulation proposal the Bureau anticipates a minimal impact on representative private persons or businesses.

Effect on Housing Costs

None.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT/ANALYSIS

Impact on Jobs/Business

The Bureau has determined that this regulatory proposal will not have a significant 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. The proposed fee increase equates to \$20 to \$100 biennially which is anticipated to have a minimal impact on businesses. The Bureau does not anticipate the fee increase will have any impact on current business practices or licensing trends that would necessitate the creation or elimination of jobs or the expansion of businesses. In addition, this determination has been made based upon the absence of public testimony during public meetings where this proposal has been discussed, most recently during the October 29, 2015, Advisory Council Meeting.

Effect on Small Business

The Bureau has determined that this regulatory proposal will not have a significant impact on small businesses in the State of California. This initial determination is based on the fact that the license fee will be increased by \$20 to \$100 biennially, depending on the license type. An additional \$4 to \$12 delinquent fee and \$6 to \$30 penalty may be assessed only when a licensee fails to renew their license prior to expiration and after the renewal remains unpaid for 90 days.

The cost impact is expected to be minimal as the licensing fees for Importers and Furniture and Bedding Manufacturers have not been increased since 2002. All other license types have not experienced a fee increase since 1994. Although the Bureau does not have nor does it maintain data to determine if any of its licensees are “small businesses” as defined in Government Code Section 11342.610, this determination has been made based upon the absence of public testimony to this effect during public meetings where this proposal has been discussed, most recently during the October 29, 2015, Advisory Council Meeting.

Benefits of Regulation:

The Bureau has determined that this regulatory proposal will have the following benefits to the health and welfare of California residents, worker safety, and the state’s environment:

- This regulatory proposal may benefit the health and welfare of California residents because this proposal is designed to enable the Bureau to maintain its licensing and oversight operations while also ensuring significant surpluses are not created.
- This regulatory proposal does not affect worker safety because this proposal is specific to fee increases and it is not anticipated to impact current business practices or licensing trends affecting worker safety.

- This regulatory proposal does not affect the state's environment because it is specific to an increase in fees and is not anticipated to impact current business practices that may affect the state's environment.

Consideration of Alternatives

The Bureau must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may present written statements relevant to the above determinations to the Bureau at the address indicated under contact person.

Initial Statement of Reasons and information

The Bureau has prepared an initial statement of 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 may be obtained upon request from the Bureau at 4244 South Market Court, Suite D, Sacramento, California 95834, or from the Bureau web site (www.bearhfti.ca.gov).

Availability and Location of the Final Statement of Reasons and Rulemaking File

All the information upon which the proposed regulation is based is contained in the rulemaking file, which is available for public inspection by contacting the person, named 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

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

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The backup contact person is:

Terri Rice

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Website Access: Materials regarding this proposal can be found at www.bearhfti.ca.gov.