

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

NOTICE OF PROPOSED REGULATORY ACTION CONCERNING

Private Investigator Fees, § 639

California Code of Regulations (CCR)

NOTICE IS HEREBY GIVEN that the Bureau of Security and Investigative Services (Bureau) is proposing to take the rulemaking action described below under the heading Informative Digest/Policy Statement Overview. Any person interested may present statements or arguments relevant to the action proposed in writing. 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 Board at its office by **Monday, December 27, 2021**.

The Bureau has not scheduled a public hearing on this proposed action. The Bureau will, however, hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days prior to the close of the written comment period.

The Bureau may, after considering all timely and relevant comments, adopt the proposed regulations substantially as described in this notice, or may modify the proposed regulations 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 the 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 Business and Professions (BPC) section 7515, and to implement, interpret or make specific BPC sections 7529, 7530, and 7570, the Bureau proposes changes to section 639 of Division 7 of Title 16 of the California Code of Regulations (CCR).

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Bureau of Security and Investigative Services (Bureau) regulates professions in six (6) practice acts: Alarm Company Act, Locksmiths, Private Investigator Act, Private Security Services Act, Proprietary Security Services Act, and Collateral Recovery Act.

Every Bureau licensee is required to carry proof of licensure in the form of a pocket card issued by the Bureau, which is mailed to the licensee at the time of initial licensure and at each renewal cycle.

The Bureau is a self-supporting, special fund agency that obtains its revenues from licensing, permit, registration and application fees. Under existing law, Business and Professions Code (BPC) section 7570, the Bureau is authorized to collect fees to support its functions. The fees are intended to be sufficient to cover the cost of the Bureau's regulatory services.

As part of its effort to manage its financial resources wisely, the Bureau underwent two independent fee audits, one for the Private Investigator Fund (PI Fund) and one for the Private Security Services Fund (PSS Fund) (see documents entitled "California Bureau of Investigative and Security Services, Fee Audit Review - Private Investigator Fees, September 7, 2018 (Final Report), CPS HR Consulting" and "California Bureau of Security and Investigative Services, Performance and Fee Review, April 14, 2017 (Final Report), CPS HR Consulting," respectively (collectively, "audit")), that reviewed the licenses and fees supporting the fund conditions. The process used for collecting and analyzing the data for the audit required active participation by the Bureau's and Department of Consumer Affairs' management and staff.

The scope and objectives of the PI Fund audit included the following:

- Assess and correlate the workload for approximately six (6) Bureau employees supported by the PI fund to the actual activities performed to determine an hourly or unit cost to support licensing, renewal, enforcement, etc.
- Analyze all fees and other revenues collected by the Bureau within the PI fund and related expenditures (including DCA overhead pro rata expenses), to determine if fee levels are sufficient for the recovery of the actual cost of conducting its programs.
- Determine a cost basis to fairly increase existing fees to: cover all PI-related costs, ensure a sufficient PI fund reserve, and assess other PI funded services provided by the Bureau when a separate fee is not provided by statute or regulation.
- Based on the financial analysis, project fees/revenues and related costs for the next three to five fiscal years.
- Prepare a written report of the findings and recommendations.

The Legislature enacted legislation to increase statutorily authorized fees for the Bureau where necessary to sufficiently fund operations and recover costs in accordance with the PI audit. Effective July 1, 2020, SB 609 (Glazer, Ch. 377, Statutes of 2019) amended BPC section 7570 to increase the statutory minimums amounts of various fees, including the application and examination fee, the branch office certificate fee, the fee for an original private investigator license, the fee to obtain a certificate of licensure, and the reexamination fee for applicants and qualified managers.

As reflected on page 9 in the Senate Committee on Business, Professions and Economic Development's analysis dated September 12, 2019 for SB 609, the private investigator application, licensing, renewal and re-examination fee increases were deemed necessary for the following reasons:

On September 7, 2018, an independent consulting firm completed its fee audit review of BSIS's PI fees. The audit found that "fee income" has been up and down slightly over the last three Fiscal Years (FY), but overall revenues have not kept up with expenditures since FY 14-15. Moreover, scheduled fees have not been raised for 20 years. The current PI fee structure is insufficient to recover PI-related costs and will deplete the reserve in FY 19-20 unless action is taken before then to increase fees.

Unless fee adjustments are made in the near future, the BSIS will have insufficient revenue to continue operating many of its licensing programs funded through PI fees. SB 609 would increase fees within the PI Act, including those for application, examination, and license renewal.

BPC section 7570 enacted and codified the audit and legislative recommendations set forth above as the minimum and maximum PI fees the Bureau could charge.

The scope and objectives of the PSS Fund audit included the items listed below. Page 6 of the audit clarifies its applicability to the PI Act, stating "pursuant to a cross reference to the Private Security Services Act, the Act authorizes PI licensees and qualified managers to obtain a Bureau-issued firearm permit under specified conditions."

- Assess and correlate the workload for approximately 65 Bureau employees to the actual activities performed to determine an hourly or unit cost to support licensing, renewal, enforcement, etc.
- Analyze all fees and other revenues collected by the Bureau within the PSS fund and related expenditures (including DCA overhead pro rata expenses), to determine if fee levels are sufficient for the recovery of the actual cost of conducting its programs.

- Determine a cost basis to fairly increase existing fees to: cover all PSS-related costs, ensure a sufficient PPS fund reserve, and assess other PSS-funded services provided by the Bureau when a separate fee is not provided by statute or regulation.
- Based on the financial analysis, project fees/revenues and related costs for the next three to five fiscal years.
- Prepare a written report of the findings and recommendations.

The Legislature also enacted legislation to increase statutorily authorized fees for the Bureau where necessary to sufficiently fund operations and recover costs in accordance with the PSS audit. Effective July 1, 2018, SB 547 (Hill, Chapter 429, Statutes of 2017) amended BPC section 7588 to increase the statutory minimums amounts of various fees, including the firearms permit fee and the firearms permit renewal fee, for private patrol operators, private patrol operator qualified managers, and security guards. (Bus. & Prof. Code, § 7588, subds. (i)(1) and (i)(2).)

As reflected on page 14 in the Senate Committee on Business, Professions and Economic Development’s analysis dated September 15, 2017 for SB 547, various fee increases, including the firearms permit fee and the firearms permit renewal fee for private patrol operators, private patrol operator qualified managers, and security guards, were deemed necessary for the following reasons:

The BSIS conducted an independent fee audit in April 2017, which found that the current fee structure needed to be adjusted. As a result, the BSIS proposed fee increases for many of its licensing categories based on the recommendations from the audit. The proposed fee adjustments address the impact of inflation as well as more appropriately aligning fee amounts with the workload incurred by the BSIS associated with each fee.

Section 7588(i)(1) and (i)(2) established fees related to firearms permits for private patrol operators, as follows:

- (i)(1) A firearms permit fee shall be at least one hundred dollars (\$100) and may be increased to an amount not to exceed one hundred ten dollars (\$110).
- (i)(2) A firearms permit renewal fee shall be at least eighty dollars (\$80) and may be increased to an amount not to exceed eighty-eight dollars (\$88).

Effective January 1, 2019, SB 1217 (Morrell, Chapter 791, Statutes of 2018), enacted at BPC section 7570(i) and (j), established statutory minimums for the firearms permit and

renewal fees to \$100 and \$80, respectively, for PIs. Prior to the enactment of BPC section 7570(i) and (j) in 2019, the PI Act cross-referenced firearm provisions in the PSS Act, including the requirement for an applicant to pay application fees. As such, PIs applying for an initial or renewal firearms permit paid the fee as required by BPC section 7588, which was increased in 2018 as a result of the PSS audit.

Effective January 1, 2021, Senate Bill (SB) 385 (Jones, Chapter 326, Statutes of 2019), amended Business and Professions Code (BPC) section 7529 to require the Bureau to issue an enhanced photo identification card to licensees upon issuance or renewal beginning January 1, 2021. Prior to the bill's enactment, private investigators (PIs) were required to carry a photo identification card. (Bus. & Prof. Code, § 7529.) Presently, the Bureau has a contract with Psychological Services Industries (PSI) to provide photo identification cards to Bureau licensees for a five-dollar (\$5) fee, which includes a \$1 processing fee. The enhanced photo identification card will contain the name of the licensee, license expiration date, and a photograph of the licensee.

BPC section 7529 authorizes the Bureau to recover costs for the enhanced photo identification card by including the fee in the initial and renewal application fee. As the Bureau will now collect the fee for the enhanced card from licensees, PSI will bill the Bureau directly for the card, which will eliminate the \$1 processing fee. Accordingly, licensees will pay only \$4 for the card.

The fee increases in this proposal reflect the audit recommendations and legislative determinations that these fee increases are necessary to support the PI license, application and firearms permit functions provided by the Bureau. The proposed increase in fees is necessary to enable the Bureau to sustain operations to effectively protect consumers through its licensing and enforcement functions.

This proposal will:

- Increase the initial and renewal private investigator application fees to include a four-dollar (\$4) per licensee (all license principals and qualified manager) charge for the cost of the enhanced photo identification card as authorized by SB 385;
- Increase the following private investigator (PI) fees to the statutory minimums required by SB 609's amendments to BPC 7570 (and reflected as the "floor" in the table above), which became operative on July 1, 2020: (a) PI original license application and examination fee, (b) original branch office certificate application fee, (c) original PI license fee, (d) PI license renewal fee, (e) branch certificate renewal fee; and, (f) assignment of PI license fee; and,
- Adopt fees for the firearm permit and renewal fees consistent with the statutory minimums required by SB 1217, which are \$100 and \$80, respectively.

ANTICIPATED BENEFITS OF THE PROPOSAL

The proposed amendments to the Bureau's fees will enable the Bureau to recoup the costs of producing enhanced photo identification card, and continue operating its licensing programs funded through PI fees, including the Private Security Services Fund. The proposal will also eliminate any confusion caused by an inconsistency between the statutes and the regulation, and will therefore provide clarity to licensees.

CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS

During the process of developing these regulations and amendments, the Bureau has 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 Costs/Savings in Federal Funding to the State: The proposed regulations will result in one-time costs of \$28,300 to update the Bureau's information technology system to receive and process the enhanced photo identification (ID) card fee revenues.

However, because the Bureau currently maintains a contract with the PI photo ID card company (PSI) for other services and because PSI already invoices the Bureau for other costs, adding the PI photo ID cost is not anticipated to increase workload or costs. Licensees are currently required to pay \$5 directly to PSI to receive a photo ID card upon initial licensure and biennial license renewal. Under this proposal, licensees will pay \$4 to the Bureau, which will be paid to PSI to pay the costs of the photo ID.

The Bureau anticipates approximately 4,962 photo ID cards will be issued per year, which would result in revenues of \$19,848 per year.

The Bureau recognizes that additional fees for private investigator applications, renewal, re-examination, and firearms permits and renewals are being revised or added; however, these remaining adjustments align the regulation with current law at BPC section 7570 and therefore this regulatory proposal will not result in additional revenue for the Bureau. BPC 7570, as amended by SB 609 (Glazer, Chapter 377, Statutes of 2019) and SB 1217 (Morrell, Ch. 791, Statutes of 2018), sets these fees as minimum statutory fee amounts.

The regulations conform the Bureau's regulations to current law. As a result, no additional workload, costs, or revenues will result from these amendments.

Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: No direct nondiscretionary costs or savings to local agencies are anticipated.

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Sections 17500 – 17630 Require Reimbursement: None

Cost Impact on Representative Private Person or Business, and Effect on Small Business: The regulations reduce the costs for licensees to obtain an ID card from \$5 to \$4. The Bureau anticipates 4,962 licensees will save \$1 each or total cost savings of \$4,962 per year and up to \$49,620 over a ten-year period.

The Bureau recognizes that additional fees are being adjusted in this proposal. However, the remaining adjustments align the regulation with current law (the minimum fees PIs are already required to pay by statute) and will not result in any impact to the PI applicant or licensee population.

Effect on Housing Costs: None

Effect on Small Business:

The Bureau has determined that the proposed regulations may affect small businesses. The proposed regulations affect licensees and applicants applying for private investigator licensure, renewal, reexamination, or firearms permits or renewals. However, the Bureau does not keep data regarding the type or number of individuals or entities that may be considered a small business.

The regulations reduce the costs for licensees to obtain an ID card from \$5 to \$4. The Bureau anticipates 4,962 licensees will save \$1 each or total cost savings of \$4,962 per year and up to \$49,620 over a ten-year period.

The Bureau recognizes that additional fees are being adjusted in this proposal. However, the remaining adjustments align the regulation with current law (the minimum fees PIs are already required to pay by statute) and will not result in any impact to the PI applicant or licensee population.

BUSINESS IMPACT

The Bureau has made the initial determination that the proposed regulations will not have a statewide adverse economic impact directly affecting businesses including the inability of California businesses to compete with businesses in other States.

This initial determination is based on the following facts:

The regulations would reduce the costs for licensees to obtain an enhanced photo identification card from \$5 to \$4. The Bureau anticipates 4,962 licensees will save \$1 each or total cost savings of \$4,962 per year and up to \$49,620 over a ten-year period.

The Bureau recognizes that additional fees are being adjusted in this proposal to align with the statutorily required minimum fees for private investigator applications, licenses and renewals and for firearms permits and renewals as set forth in Business and Professions Code section 7570. However, these adjustments align the regulation with current law (the minimum fees PIs are already required to pay by statute) and will not result in any additional fiscal impact to the PI applicant or licensee population.

RESULTS OF ECONOMIC IMPACT ASSESSMENT:

This regulatory proposal will have the following effects:

It will not create or eliminate jobs, create new business or eliminate existing businesses, or affect the expansion of businesses currently doing business within the State of California because the fees in this proposal align with the statutorily required minimum fees for private investigator applications, licenses and renewals and for firearms permits and renewals as set forth in Business and Professions Code section 7570. These adjustments align the regulation with current law (the minimum fees PIs are already required to pay by statute) and therefore will not result in any additional fiscal impact to the PI applicant or licensee population.

This regulatory proposal does not affect the health and welfare of California residents or worker safety because this proposal does not involve health and welfare issues or worker safety. This regulatory proposal does not affect the state's environment because this proposal is not relevant to the state's environment. It is solely related to private investigator application, license, renewal and firearms permit and renewal fees.

Benefits of the Proposed Action:

The proposed amendments to the Bureau's fees will enable the Bureau to recoup the costs of producing enhanced photo identification card, and continue operating its

licensing programs funded through PI fees, including the Private Security Services Fund. The proposal will also eliminate any confusion caused by an inconsistency between the statutes and the regulation, and will therefore provide clarity to licensees.

CONSIDERATION OF ALTERNATIVES

The Bureau must determine that no reasonable alternative it considered to the regulation 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, would be as effective and less burdensome to affected private persons than the proposal described in this Notice, 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 statements or arguments orally or in writing relevant to the above determinations at the above-mentioned public hearing or during the written comment period, as described above.

CONTACT PERSON

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

Name: Karissa Huestis
Address: 2420 Del Paso Road, Suite 270
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The backup contact person is:

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

AVAILABILITY OF STATEMENT OF REASONS, TEXT OR PROPOSED REGULATIONS, AND RULEMAKING FILE

The Bureau will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, and the initial statement of reasons. Copies may be obtained by contacting Karissa Huestis at the address or phone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing, if requested, and considering all timely and relevant comments received, the Bureau may adopt the proposed regulations substantially as described in this notice. If the Bureau makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Bureau adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Karissa Huestis at the address indicated above. The Bureau will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Karissa Huestis at the above address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed through our website at www.bsis.ca.gov.