

AMENDED IN SENATE JUNE 15, 2014
AMENDED IN SENATE APRIL 9, 2014
AMENDED IN SENATE SEPTEMBER 12, 2013
AMENDED IN SENATE SEPTEMBER 3, 2013
AMENDED IN SENATE JULY 10, 2013
AMENDED IN SENATE JUNE 25, 2013
AMENDED IN ASSEMBLY APRIL 16, 2013
AMENDED IN ASSEMBLY APRIL 1, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 852

Introduced by Assembly Member Dickinson
(Principal coauthor: Assembly Member Alejo)

February 21, 2013

An act to ~~amend Section 17206 of, and to add Sections 6126.6, 6126.8, 6126.9, and 6134 to, the Business and Professions Code, relating to the State Bar, and declaring the urgency thereof, to take effect immediately.~~ *add Section 12801.2 to the Vehicle Code, relating to driver's licenses.*

LEGISLATIVE COUNSEL'S DIGEST

AB 852, as amended, Dickinson. ~~State Bar of California: enforcement actions.~~ *Driver's licenses: applications.*

Existing law authorizes the Department of Motor Vehicles to issue original driver's licenses to qualified persons. Existing law requires

every application for an original or a renewal of a driver's license to contain specified information about the applicant.

This bill would prohibit a person from receiving financial compensation for the sole purpose of assisting an individual with a driver's license application. The bill would impose a \$2,500 civil penalty for a violation of this provision and would authorize the enforcement of this provision by the Attorney General or by the district attorney, county counsel, or city attorney of the location in which the violation occurred, as specified.

~~(1) Existing law prohibits a person from practicing law in California, or from advertising or holding himself or herself out as practicing law, unless the person is an active member of the State Bar, or otherwise authorized, as specified, to practice law in this state. A violation of these provisions is a crime.~~

~~This bill would, for violations of the above-described provisions, require the State Bar to disclose, in confidence, the information in its investigation to the agency responsible for the criminal enforcement of these provisions or exchange that information with that agency. This bill would authorize the State Bar to request the Attorney General, a district attorney, or a city attorney acting as a local prosecutor, to bring an enforcement action or, if those entities have not elected to bring that action 60 days after that request, to bring a civil action in its own name, as specified. The bill would require the court, in a civil enforcement action by the State Bar for the unlawful practice of law, to impose a civil penalty not to exceed \$2,500, to be paid to the State Bar. The bill would require the court to impose a civil penalty not to exceed \$6,000 for the intentional violation of any injunction prohibiting the unlawful practice of law. The bill would require the court to consider, when applicable, additional relief provided under existing law and to award reasonable attorney's fees and costs, as specified. The bill would require any penalty collected pursuant to these provisions to be paid into the treasury of the State Bar and used for specified purposes.~~

~~(2) Existing law requires the State Bar to issue an Annual Discipline Report by April 30 of each year describing the performance and condition of the State Bar discipline system during the preceding calendar year, as specified.~~

~~This bill would additionally require the State Bar to annually report, by April 30 of each year, the number of complaints of the unauthorized practice of law received, requests for enforcement actions made to the Attorney General, a district attorney, or a city attorney acting as a local~~

~~prosecutor pursuant to the provisions described in (1) above, and other unlawful practice of law proceedings filed by the State Bar, as specified, during the preceding calendar year. The bill would also require the report to include an accounting of any penalties collected pursuant to the provisions described in (1) above, and any expenditure of those funds, during the preceding calendar year. The bill would require the report to be made to the Assembly and Senate Committees on Judiciary and would authorize the information required by the report to be included in the Annual Discipline Report described above. The bill would also require the board of trustees to establish and administer an oversight committee of the board, the majority of whom would be nonattorneys, to oversee the State Bar's investigation and enforcement duties, as specified.~~

~~(3) Existing law makes a person who engages in unfair competition, as defined, liable for a civil penalty not to exceed \$2,500 for each violation and requires that this penalty be assessed and recovered in a civil action brought in the name of the people of the State of California by specified persons in any court of competent jurisdiction. Existing law requires a court, for an unfair competition action brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, to determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action, and provides for the reimbursement of these expenses, as specified.~~

~~This bill would similarly require the court, for an action brought at the request of the State Bar of California, to determine the reasonable expenses incurred by the State Bar in the investigation and prosecution of the action and provide for the reimbursement of these expenses.~~

~~(4) This bill would declare that it is to take effect immediately as an urgency statute.~~

~~Vote: $\frac{2}{3}$ -majority. Appropriation: no. Fiscal committee: ~~no~~-yes. State-mandated local program: no.~~

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 12801.2 is added to the Vehicle Code, to
- 2 read:
- 3 12801.2. (a) A person shall not receive financial compensation
- 4 for the sole purpose of filling out an original driver's license
- 5 application for an individual.

1 (b) A person in violation of this section is subject to a civil
 2 penalty of not more than two thousand five hundred dollars
 3 (\$2,500) for each offense. Actions for relief pursuant to this section
 4 may be commenced in a court of competent jurisdiction by the
 5 Attorney General, or by the district attorney, county counsel, or
 6 city attorney of the location in which the violation occurred.

7 (c) Section 40000.1 does not apply to a violation of this section.

8 SECTION 1. ~~Section 6126.6 is added to the Business and~~
 9 ~~Professions Code, to read:~~

10 ~~6126.6. Unless otherwise expressly provided, the remedies or~~
 11 ~~penalties provided by this article are cumulative to each other and~~
 12 ~~to the remedies or penalties available under all other laws of this~~
 13 ~~state.~~

14 ~~SEC. 2. Section 6126.8 is added to the Business and Professions~~
 15 ~~Code, to read:~~

16 ~~6126.8. (a) For a violation of Section 6125 or 6126, the State~~
 17 ~~Bar shall disclose, in confidence, the information in its~~
 18 ~~investigation to the agency responsible for the criminal enforcement~~
 19 ~~of this article or exchange that information with that agency.~~

20 ~~(1) The State Bar may request the Attorney General, a district~~
 21 ~~attorney, or a city attorney acting as a local prosecutor, to bring~~
 22 ~~an enforcement action under Chapter 5 (commencing with Section~~
 23 ~~17200) of Part 2 of Division 7.~~

24 ~~(2) If the Attorney General, a district attorney, or a city attorney~~
 25 ~~has not elected to bring an enforcement action 60 days after a~~
 26 ~~request from the State Bar or, with the approval of the Attorney~~
 27 ~~General, a district attorney, or a city attorney acting as a local~~
 28 ~~prosecutor, the State Bar may bring a civil action in its own name,~~
 29 ~~as provided in Section 6030, for any violation of Section 6125 or~~
 30 ~~6126.~~

31 ~~(3) Paragraphs (1) and (2) shall not apply to an action by the~~
 32 ~~State Bar brought under Section 6126.7.~~

33 ~~(b) In a civil enforcement action brought by the State Bar, in~~
 34 ~~addition to the remedies and relief available in Section 6030 and~~
 35 ~~subdivision (e) of Section 6126.3, in those cases involving injury~~
 36 ~~or likelihood of imminent harm to a client or the public, the court~~
 37 ~~shall:~~

38 ~~(1) Impose a civil penalty in an amount not to exceed two~~
 39 ~~thousand five hundred dollars (\$2,500) for each violation of Section~~
 40 ~~6125 or 6126, to be paid to the State Bar. In determining the~~

1 amount of the civil penalty to be assessed, the court shall consider
2 any relevant circumstances presented by any of the parties to the
3 case, including, but not limited to, the nature and seriousness of
4 the misconduct, the number of violations, the persistence of the
5 misconduct, the length of time over which the misconduct occurred,
6 the willfulness of the defendant's misconduct, and the defendant's
7 assets, liabilities, and net worth.

8 (2) ~~Impose a civil penalty for the intentional violation of any~~
9 ~~injunction prohibiting the unlawful practice of law, in an amount~~
10 ~~not to exceed six thousand dollars (\$6,000) for each violation, to~~
11 ~~be paid to the State Bar. If the conduct constituting the violation~~
12 ~~is of a continuing nature, each day of that conduct shall be deemed~~
13 ~~a separate and distinct violation. In determining the amount of the~~
14 ~~civil penalty to be assessed, the court shall consider any relevant~~
15 ~~circumstances, including, but not limited to, the extent of the harm~~
16 ~~caused by the conduct constituting a violation, the nature and~~
17 ~~persistence of the conduct, the length of time over which the~~
18 ~~conduct occurred, the defendant's assets, liabilities, and net worth,~~
19 ~~and any corrective action taken by the defendant.~~

20 (3) ~~Consider, when applicable, the relief available in paragraphs~~
21 ~~(1) to (6), inclusive, of subdivision (a) of Section 6126.5.~~

22 (4) ~~Award to the State Bar reasonable attorney's fees and costs~~
23 ~~and, in the court's discretion, exemplary damages as provided in~~
24 ~~Section 3294 of the Civil Code.~~

25 (e) ~~In an action under subdivision (b), any penalty collected~~
26 ~~shall be paid into the treasury of the State Bar and the funds~~
27 ~~received shall be used as the board may direct for the purposes of~~
28 ~~providing relief to clients harmed by persons engaged in the~~
29 ~~unauthorized practice of law and for the purposes established~~
30 ~~pursuant to Section 6033. The board shall annually report any~~
31 ~~collection and expenditure of funds authorized by this section to~~
32 ~~the Assembly and Senate Committees on Judiciary in the report~~
33 ~~described in Section 6126.9.~~

34 SEC. 3. ~~Section 6126.9 is added to the Business and Professions~~
35 ~~Code, to read:~~

36 ~~6126.9. Notwithstanding Section 10231.5 of the Government~~
37 ~~Code, the State Bar shall, by April 30 of each year, report annually~~
38 ~~to the Assembly and Senate Committees on Judiciary concerning~~
39 ~~the number of complaints of the unauthorized practice of law~~
40 ~~received, referrals made pursuant to subdivision (a) of Section~~

1 6126.8, and proceedings filed by the State Bar pursuant to Sections
2 6030, 6126.3, 6126.4, and 6126.8, during the preceding calendar
3 year. The report shall also include an accounting of any collection
4 and expenditure of funds authorized by Section 6126.8 during the
5 preceding calendar year. The report required by this section may
6 be included in the report described in Section 6086.15.

7 SEC. 4. Section 6134 is added to the Business and Professions
8 Code, to read:

9 6134. The Board of Trustees shall establish and administer an
10 oversight committee of the board, the majority of which shall be
11 composed of public members under Section 6013.5, to oversee
12 the State Bar's investigation and enforcement of this article.

13 SEC. 5. Section 17206 of the Business and Professions Code
14 is amended to read:

15 17206. Civil Penalty for Violation of Chapter

16 (a) Any person who engages, has engaged, or proposes to engage
17 in unfair competition shall be liable for a civil penalty not to exceed
18 two thousand five hundred dollars (\$2,500) for each violation,
19 which shall be assessed and recovered in a civil action brought in
20 the name of the people of the State of California by the Attorney
21 General, by any district attorney, by any county counsel authorized
22 by agreement with the district attorney in actions involving
23 violation of a county ordinance, by any city attorney of a city
24 having a population in excess of 750,000, by any city attorney of
25 any city and county, or, with the consent of the district attorney,
26 by a city prosecutor in any city having a full-time city prosecutor,
27 in any court of competent jurisdiction.

28 (b) The court shall impose a civil penalty for each violation of
29 this chapter. In assessing the amount of the civil penalty, the court
30 shall consider any one or more of the relevant circumstances
31 presented by any of the parties to the case, including, but not
32 limited to, the following: the nature and seriousness of the
33 misconduct, the number of violations, the persistence of the
34 misconduct, the length of time over which the misconduct occurred,
35 the willfulness of the defendant's misconduct, and the defendant's
36 assets, liabilities, and net worth.

37 (c) If the action is brought by the Attorney General, one-half of
38 the penalty collected shall be paid to the treasurer of the county in
39 which the judgment was entered, and one-half to the General Fund.
40 If the action is brought by a district attorney or county counsel,

1 the penalty collected shall be paid to the treasurer of the county in
2 which the judgment was entered. Except as provided in subdivision
3 (e), if the action is brought by a city attorney or city prosecutor,
4 one-half of the penalty collected shall be paid to the treasurer of
5 the city in which the judgment was entered, and one-half to the
6 treasurer of the county in which the judgment was entered. The
7 aforementioned funds shall be for the exclusive use by the Attorney
8 General, the district attorney, the county counsel, and the city
9 attorney for the enforcement of consumer protection laws.

10 (d) ~~The Unfair Competition Law Fund is hereby created as a~~
11 ~~special account within the General Fund in the State Treasury. The~~
12 ~~portion of penalties that is payable to the General Fund or to the~~
13 ~~Treasurer recovered by the Attorney General from an action or~~
14 ~~settlement of a claim made by the Attorney General pursuant to~~
15 ~~this chapter or Chapter 1 (commencing with Section 17500) of~~
16 ~~Part 3 shall be deposited into this fund. Moneys in this fund, upon~~
17 ~~appropriation by the Legislature, shall be used by the Attorney~~
18 ~~General to support investigations and prosecutions of California's~~
19 ~~consumer protection laws, including implementation of judgments~~
20 ~~obtained from those prosecutions or investigations and other~~
21 ~~activities that are in furtherance of this chapter or Chapter 1~~
22 ~~(commencing with Section 17500) of Part 3. Notwithstanding~~
23 ~~Section 13340 of the Government Code, any civil penalties~~
24 ~~deposited in the fund pursuant to the National Mortgage Settlement,~~
25 ~~as provided in Section 12531 of the Government Code, are~~
26 ~~continuously appropriated to the Department of Justice for the~~
27 ~~purpose of offsetting General Fund costs incurred by the~~
28 ~~Department of Justice.~~

29 (e) ~~If the action is brought at the request of a board within the~~
30 ~~Department of Consumer Affairs, a local consumer affairs agency,~~
31 ~~or the State Bar of California, the court shall determine the~~
32 ~~reasonable expenses incurred by the board, local agency, or the~~
33 ~~State Bar in the investigation and prosecution of the action.~~

34 Before any penalty collected is paid out pursuant to subdivision
35 (e), the amount of any reasonable expenses incurred by the board
36 shall be paid to the Treasurer for deposit in the special fund of the
37 board described in Section 205. If the board has no such special
38 fund, the moneys shall be paid to the Treasurer. The amount of
39 any reasonable expenses incurred by a local consumer affairs
40 agency shall be paid to the general fund of the municipality or

1 county that funds the local agency. The amount of any reasonable
2 expenses incurred by the State Bar shall be paid to the State Bar
3 to fund its investigation and enforcement of Sections 6125 and
4 6126.

5 (f) If the action is brought by a city attorney of a city and county,
6 the entire amount of the penalty collected shall be paid to the
7 treasurer of the city and county in which the judgment was entered
8 for the exclusive use by the city attorney for the enforcement of
9 consumer protection laws. However, if the action is brought by a
10 city attorney of a city and county for the purposes of civil
11 enforcement pursuant to Section 17980 of the Health and Safety
12 Code or Article 3 (commencing with Section 11570) of Chapter
13 10 of Division 10 of the Health and Safety Code, either the penalty
14 collected shall be paid entirely to the treasurer of the city and
15 county in which the judgment was entered or, upon the request of
16 the city attorney, the court may order that up to one-half of the
17 penalty, under court supervision and approval, be paid for the
18 purpose of restoring, maintaining, or enhancing the premises that
19 were the subject of the action, and that the balance of the penalty
20 be paid to the treasurer of the city and county.

21 SEC. 6. This act is an urgency statute necessary for the
22 immediate preservation of the public peace, health, or safety within
23 the meaning of Article IV of the Constitution and shall go into
24 immediate effect. The facts constituting the necessity are:

25 The unauthorized practice of law and the victimization of
26 consumers by nonlawyers continues to be a problem in California,
27 as evidenced by the scams of persons who offered to assist
28 homeowners with home loan modifications during the recent
29 economic downturn and housing crisis, and by “notaries” who
30 continue to prey on immigrants. Proposed immigration reform
31 legislation pending in the United States Congress has resulted in
32 nonlawyers soliciting and taking advantage of immigrants with
33 the promise of benefits and relief under that legislation before it
34 is enacted. To prevent these nonattorneys from committing fraud
35 upon immigrants and other consumers by engaging in the
36 unauthorized practice of law, it is necessary that this act take effect
37 immediately.

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