

AMENDED IN ASSEMBLY MARCH 21, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 888

Introduced by Assembly Member ~~Chau~~ Dickinson

February 22, 2013

An act to amend Section ~~6077~~ 17206 of, and to add Section 6026.6 to, the Business and Professions Code, relating to ~~attorneys~~: the State Bar.

LEGISLATIVE COUNSEL'S DIGEST

AB 888, as amended, ~~Chau~~ Dickinson. ~~Attorneys—State Bar of California: enforcement actions.~~

(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 any of these provisions, require the State Bar to disclose, in confidence, the information in its investigation or exchange that information with the agency responsible for the criminal enforcement of those provisions. This bill would authorize the State Bar to request that the Attorney General, a district attorney, or a city attorney acting as a local prosecutor, bring an enforcement action, as specified, or bring a civil action in its own name, as specified. The bill would require that the court, in a civil enforcement action by the State Bar, impose and consider specified remedies, including, but not limited to, specified civil penalties to be paid to the State Bar, and specified penalties for any intentional violation of any injunction

prohibiting the unlawful practice of law, as specified, to be paid to the State Bar.

(2) Existing law makes any person who engages, has engaged, or proposes to engage in unfair competition, liable for a civil penalty not to exceed \$2,500 for each violation, which must be assessed and recovered in a civil action brought in the name of the people of the State of California by any of specified persons, in any court of competent jurisdiction. Existing law requires, if the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, that the court determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

This bill would also require, if the action is brought at the request of the State Bar of California, that the court determine the reasonable expenses incurred by the State Bar in the investigation and prosecution of the action and require the amount of those expenses be paid to the State Bar to fund its investigation and enforcement of specified provisions.

~~The State Bar Act provides for the licensure and regulation of attorneys by the State Bar of California. The State Bar is governed by the board of trustees of the State Bar. Under existing law, rules of professional conduct adopted by the board of trustees are binding upon all members of the State Bar and the board has power to discipline members for a willful breach of those rules.~~

~~This bill would make technical, nonsubstantive changes to that provision.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

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

- 1 *SECTION 1. Section 6026.6 is added to the Business and*
- 2 *Professions Code, to read:*
- 3 *6026.6. (a) For violations of Sections 6125 and 6126, the State*
- 4 *Bar shall disclose, in confidence, the information in its*
- 5 *investigation or exchange that information with the agency*
- 6 *responsible for the criminal enforcement of the provisions of this*
- 7 *article. The State Bar may request the Attorney General, a district*
- 8 *attorney, or a city attorney acting as a local prosecutor, to bring*
- 9 *an enforcement action under Chapter 5 (commencing with Section*

1 17200) of Part 2 of Division 7, or the State Bar may bring a civil
2 action in its own name, as provided in Section 6030.

3 (b) In a civil enforcement action brought by the State Bar, in
4 addition to the remedies and relief available in Section 6030 and
5 subdivision (e) of Section 6126.3, the court shall:

6 (1) Impose civil penalties specified in Section 17206, to be paid
7 to the State Bar.

8 (2) Impose penalties for any intentional violation of any
9 injunction prohibiting the unlawful practice of law, as specified
10 in Section 17207, to be paid to the State Bar.

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

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

16 SEC. 2. Section 17206 of the Business and Professions Code
17 is amended to read:

18 17206. Civil Penalty for Violation of Chapter

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

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

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

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

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

38 Before any penalty collected is paid out pursuant to subdivision
39 (c), the amount of any reasonable expenses incurred by the board
40 shall be paid to the Treasurer for deposit in the special fund of the

1 board described in Section 205. If the board has no such special
 2 fund, the moneys shall be paid to the Treasurer. The amount of
 3 any reasonable expenses incurred by a local consumer affairs
 4 agency shall be paid to the general fund of the municipality or
 5 county that funds the local agency. *The amount of any reasonable*
 6 *expenses incurred by the State Bar shall be paid to the State Bar*
 7 *to fund its investigation and enforcement of Sections 6125 and*
 8 *6126.*

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

25 ~~SECTION 1. Section 6077 of the Business and Professions~~
 26 ~~Code is amended to read:~~

27 ~~6077. The rules of professional conduct adopted by the board,~~
 28 ~~when approved by the Supreme Court, are binding upon all~~
 29 ~~members of the State Bar.~~

30 ~~For a willful breach of any of these rules, the board has power~~
 31 ~~to discipline members of the State Bar by reproof, public or~~
 32 ~~private, or to recommend to the Supreme Court the suspension of~~
 33 ~~members of the State Bar from practice for a period not exceeding~~
 34 ~~three years.~~