

AMENDED IN SENATE SEPTEMBER 6, 2013

AMENDED IN SENATE SEPTEMBER 3, 2013

AMENDED IN SENATE JULY 2, 2013

AMENDED IN ASSEMBLY MAY 8, 2013

AMENDED IN ASSEMBLY MARCH 21, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 888

Introduced by Assembly Member Dickinson

February 22, 2013

An act to amend Section 17206 of, and to add Sections 6126.8 and 6126.9 to, the Business and Professions Code, relating to the State Bar, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 888, as amended, Dickinson. 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 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 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 specify that if the conduct constituting the intentional violation is of a continuing nature, each day of that conduct shall be deemed a separate and distinct violation. The bill would, in determining the amount of the civil penalty to be assessed for these violations, require the court to consider any relevant circumstances, as specified. 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~~ *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.

(3) Existing law makes a person who engages in unfair competition, as defined, liable for a civil penalty not to exceed \$2,500 dollars 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.

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

Vote: $\frac{2}{3}$. 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 6126.8 is added to the Business and
2 Professions Code, to read:
3 6126.8. (a) For violations of Sections 6125 and 6126, the State
4 Bar shall disclose, in confidence, the information in its
5 investigation to the agency responsible for the criminal enforcement
6 of the provisions of this article or exchange that information with
7 that agency. The State Bar may request the Attorney General, a
8 district attorney, or a city attorney acting as a local prosecutor, to
9 bring an enforcement action under Chapter 5 (commencing with
10 Section 17200) of Part 2 of Division 7, or the State Bar may bring
11 a civil action in its own name, as provided in Section 6030, for
12 any violation of Section 6125 or 6126.
13 (b) In a civil enforcement action brought by the State Bar, in
14 addition to the remedies and relief available in Section 6030 and
15 subdivision (e) of Section 6126.3, the court shall:
16 (1) Impose a civil penalty in an amount not to exceed two
17 thousand five hundred dollars (\$2,500) for each violation of Section
18 6125 or 6126, to be paid to the State Bar. In determining the
19 amount of the civil penalty to be assessed, the court shall consider
20 any relevant circumstances presented by any of the parties to the
21 case, including, but not limited to, the nature and seriousness of
22 the misconduct, the number of violations, the persistence of the
23 misconduct, the length of time over which the misconduct occurred,

1 the willfulness of the defendant's misconduct, and the defendant's
2 assets, liabilities, and net worth.

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

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

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

20 (c) In an action under subdivision (b), any penalty collected
21 shall be paid into the treasury of the State Bar and the funds
22 received shall be used as the board may direct for the purposes of
23 providing relief to, protecting, and benefiting to clients harmed by
24 persons engaged in the unauthorized practice of law and improving
25 the quality of legal services for the purposes established pursuant
26 to Section 6033. The board shall annually report any collection
27 and expenditure of funds authorized by this section to the Assembly
28 and Senate Committees on Judiciary in the report described in
29 Section 6126.9.

30 SEC. 2. Section 6126.9 is added to the Business and Professions
31 Code, to read:

32 6126.9. Notwithstanding Section 10231.5 of the Government
33 Code, the State Bar shall, by April 30 of each year, report annually
34 to the Assembly and Senate Committees on Judiciary concerning
35 the number of complaints of the unauthorized practice of law
36 received, referrals made pursuant to subdivision (a) of Section
37 6126.8, and proceedings filed by the State Bar pursuant to Sections
38 6030, 6126.3, 6126.4, and 6126.8, during the preceding calendar
39 year. The report shall also include an accounting of any collection
40 and expenditure of funds authorized by Section 6126.8 during the

preceding calendar year. The report required by this section may be included in the report described in Section 6086.15.

SEC. 3. Section 17206 of the Business and Professions Code is amended to read:

17206. Civil Penalty for Violation of Chapter

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

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

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

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

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

Before any penalty collected is paid out pursuant to subdivision (c), the amount of any reasonable expenses incurred by the board shall be paid to the Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund, the moneys shall be paid to the Treasurer. The amount of any reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality or county that funds the local agency. The amount of any reasonable expenses incurred by the State Bar shall be paid to the State Bar to fund its investigation and enforcement of Sections 6125 and 6126.

(f) If the action is brought by a city attorney of a city and county, the entire amount of the penalty collected shall be paid to the treasurer of the city and county in which the judgment was entered for the exclusive use by the city attorney for the enforcement of consumer protection laws. However, if the action is brought by a

1 city attorney of a city and county for the purposes of civil
2 enforcement pursuant to Section 17980 of the Health and Safety
3 Code or Article 3 (commencing with Section 11570) of Chapter
4 10 of Division 10 of the Health and Safety Code, either the penalty
5 collected shall be paid entirely to the treasurer of the city and
6 county in which the judgment was entered or, upon the request of
7 the city attorney, the court may order that up to one-half of the
8 penalty, under court supervision and approval, be paid for the
9 purpose of restoring, maintaining, or enhancing the premises that
10 were the subject of the action, and that the balance of the penalty
11 be paid to the treasurer of the city and county.

12 SEC. 4. This act is an urgency statute necessary for the
13 immediate preservation of the public peace, health, or safety within
14 the meaning of Article IV of the Constitution and shall go into
15 immediate effect. The facts constituting the necessity are:

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