

AMENDED IN SENATE JUNE 21, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1105

Introduced by Assembly Member ~~Daly Bonta~~

February 27, 2015

~~An act to amend Section 66499.7 of the Government Code, relating to subdivided lands.~~ *An act to amend Sections 17204 and 17206 of the Business and Professions Code, relating to unfair competition.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1105, as amended, ~~Daly Bonta~~. ~~Subdivided lands: release of performance security.~~ *Unfair business practices: enforcement: city attorneys.*

Existing law defines unfair competition to include an unlawful, unfair, or fraudulent business act or practice, unfair, deceptive, untrue, or misleading advertising, and any false representations to the public. Existing law, as amended by Proposition 64 at the November 2, 2004, statewide general election, authorizes an action for relief from this prohibited conduct to be brought by, among others, a person who has suffered injury in fact and has lost money or property as a result of the unfair competition. Existing law also authorizes an action for relief from this prohibited conduct and for civil penalties to be brought by a city attorney of a city having a population in excess of 750,000.

This bill would expand this authorization to allow actions for relief and civil penalties by city attorneys of cities having a population in excess of 250,000, as provided.

~~The Subdivision Map Act and local ordinances authorize or require, under specified circumstances, the furnishing of specified types of security with respect to the performance of various acts or agreements~~

subject to the act. Existing law, until January 1, 2016, also sets forth the specific procedures imposed on a local agency for the complete or partial release of a performance security furnished by a subdivider.

This bill would delete the repeal of the provisions relating to the procedures for releasing a performance security, thereby extending the operation of these provisions indefinitely and imposing a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

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

- 1 SECTION 1. Section 17204 of the Business and Professions
- 2 Code is amended to read:
- 3 17204. Actions for Injunctions by Attorney General, District
- 4 Attorney, County Counsel, and City Attorneys
- 5 Actions for relief pursuant to this chapter shall be prosecuted
- 6 exclusively in a court of competent jurisdiction by the Attorney
- 7 General or a district attorney or by a county counsel authorized
- 8 by agreement with the district attorney in actions involving
- 9 violation of a county ordinance, or by a city attorney of a city
- 10 having a population in excess of ~~750,000~~, 250,000, or by a city
- 11 attorney in a city and county or, with the consent of the district
- 12 attorney, by a city prosecutor in a city having a full-time city
- 13 prosecutor in the name of the people of the State of California
- 14 upon their own complaint or upon the complaint of a board, officer,
- 15 person, corporation, or association, or by a person who has suffered
- 16 injury in fact and has lost money or property as a result of the
- 17 unfair competition.
- 18 SEC. 2. Section 17206 of the Business and Professions Code
- 19 is amended to read:
- 20 17206. Civil Penalty for Violation of Chapter

1 (a) Any person who engages, has engaged, or proposes to engage
2 in unfair competition shall be liable for a civil penalty not to exceed
3 two thousand five hundred dollars (\$2,500) for each violation,
4 which shall be assessed and recovered in a civil action brought in
5 the name of the people of the State of California by the Attorney
6 General, by any district attorney, by any county counsel authorized
7 by agreement with the district attorney in actions involving
8 violation of a county ordinance, by any city attorney of a city
9 having a population in excess of ~~750,000~~, 250,000, by any city
10 attorney of any city and county, or, with the consent of the district
11 attorney, by a city prosecutor in any city having a full-time city
12 prosecutor, in any court of competent jurisdiction.

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

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

35 (d) The Unfair Competition Law Fund is hereby created as a
36 special account within the General Fund in the State Treasury. The
37 portion of penalties that is payable to the General Fund or to the
38 Treasurer recovered by the Attorney General from an action or
39 settlement of a claim made by the Attorney General pursuant to
40 this chapter or Chapter 1 (commencing with Section 17500) of

1 Part 3 shall be deposited into this fund. Moneys in this fund, upon
2 appropriation by the Legislature, shall be used by the Attorney
3 General to support investigations and prosecutions of California's
4 consumer protection laws, including implementation of judgments
5 obtained from such prosecutions or investigations and other
6 activities which are in furtherance of this chapter or Chapter 1
7 (commencing with Section 17500) of Part 3. Notwithstanding
8 Section 13340 of the Government Code, any civil penalties
9 deposited in the fund pursuant to the National Mortgage Settlement,
10 as provided in Section 12531 of the Government Code, are
11 continuously appropriated to the Department of Justice for the
12 purpose of offsetting General Fund costs incurred by the
13 Department of Justice.

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

19 Before any penalty collected is paid out pursuant to subdivision
20 (c), the amount of any reasonable expenses incurred by the board
21 shall be paid to the Treasurer for deposit in the special fund of the
22 board described in Section 205. If the board has no such special
23 fund, the moneys shall be paid to the Treasurer. The amount of
24 any reasonable expenses incurred by a local consumer affairs
25 agency shall be paid to the general fund of the municipality or
26 county that funds the local agency.

27 (f) If the action is brought by a city attorney of a city and county,
28 the entire amount of the penalty collected shall be paid to the
29 treasurer of the city and county in which the judgment was entered
30 for the exclusive use by the city attorney for the enforcement of
31 consumer protection laws. However, if the action is brought by a
32 city attorney of a city and county for the purposes of civil
33 enforcement pursuant to Section 17980 of the Health and Safety
34 Code or Article 3 (commencing with Section 11570) of Chapter
35 10 of Division 10 of the Health and Safety Code, either the penalty
36 collected shall be paid entirely to the treasurer of the city and
37 county in which the judgment was entered or, upon the request of
38 the city attorney, the court may order that up to one-half of the
39 penalty, under court supervision and approval, be paid for the
40 purpose of restoring, maintaining, or enhancing the premises that

1 were the subject of the action, and that the balance of the penalty
2 be paid to the treasurer of the city and county.

3 ~~SECTION 1. Section 66499.7 of the Government Code is~~
4 ~~amended to read:~~

5 ~~66499.7. The security furnished by the subdivider shall be~~
6 ~~released in whole or in part in the following manner:~~

7 ~~(a) Security given for faithful performance of any act or~~
8 ~~agreement shall be released upon the performance of the act or~~
9 ~~final completion and acceptance of the required work. The~~
10 ~~legislative body may provide for the partial release of the security~~
11 ~~upon the partial performance of the act or the acceptance of the~~
12 ~~work as it progresses, consistent with the provisions of this section.~~
13 ~~The security may be a surety bond, a cash deposit, a letter of credit,~~
14 ~~escrow account, or other form of performance guarantee required~~
15 ~~as security by the legislative body that meets the requirements as~~
16 ~~acceptable security pursuant to law. If the security furnished by~~
17 ~~the subdivider is a documentary evidence of security such as a~~
18 ~~surety bond or a letter of credit, the legislative body shall release~~
19 ~~the documentary evidence and return the original to the issuer upon~~
20 ~~performance of the act or final completion and acceptance of the~~
21 ~~required work. In the event that the legislative body is unable to~~
22 ~~return the original documentary evidence to the issuer, the security~~
23 ~~shall be released by written notice sent by certified mail to the~~
24 ~~subdivider and issuer of the documentary evidence within 30 days~~
25 ~~of the acceptance of the work. The written notice shall contain a~~
26 ~~statement that the work for which the security was furnished has~~
27 ~~been performed or completed and accepted by the legislative body,~~
28 ~~a description of the project subject to the documentary evidence~~
29 ~~and the notarized signature of the authorized representative of the~~
30 ~~legislative body.~~

31 ~~(b) At the time that the subdivider believes that the obligation~~
32 ~~to perform the work for which security was required is complete,~~
33 ~~the subdivider may notify the local agency in writing of the~~
34 ~~completed work, including a list of work completed. Upon receipt~~
35 ~~of the written notice, the local agency shall have 45 days to review~~
36 ~~and comment or approve the completion of the required work. If~~
37 ~~the local agency does not agree that all work has been completed~~
38 ~~in accordance with the plans and specifications for the~~
39 ~~improvements, it shall supply a list of all remaining work to be~~
40 ~~completed.~~

1 ~~(e) Within 45 days of receipt of the list of remaining work from~~
 2 ~~the local agency, the subdivider may then provide cost estimates~~
 3 ~~for all remaining work for review and approval by the local agency.~~
 4 ~~Upon receipt of the cost estimates, the local agency shall then have~~
 5 ~~45 days to review, comment, and approve, modify, or disapprove~~
 6 ~~those cost estimates. No local agency shall be required to engage~~
 7 ~~in this process of partial release more than once between the start~~
 8 ~~of work and completion and acceptance of all work; however,~~
 9 ~~nothing in this section prohibits a local agency from allowing for~~
 10 ~~a partial release as it otherwise deems appropriate.~~

11 ~~(d) If the local agency approves the cost estimate, the local~~
 12 ~~agency shall release all performance security except for security~~
 13 ~~in an amount up to 200 percent of the cost estimate of the~~
 14 ~~remaining work. The process allowing for a partial release of~~
 15 ~~performance security shall occur when the cost estimate of the~~
 16 ~~remaining work does not exceed 20 percent of the total original~~
 17 ~~performance security unless the local agency allows for a release~~
 18 ~~at an earlier time. Substitute bonds or other security may be used~~
 19 ~~as a replacement for the performance security, subject to the~~
 20 ~~approval of the local agency. If substitute bonds or other security~~
 21 ~~is used as a replacement for the performance security released, the~~
 22 ~~release shall not be effective unless and until the local agency~~
 23 ~~receives and approves that form of replacement security. A~~
 24 ~~reduction in the performance security, authorized under this section,~~
 25 ~~is not, and shall not be deemed to be, an acceptance by the local~~
 26 ~~agency of the completed improvements, and the risk of loss or~~
 27 ~~damage to the improvements and the obligation to maintain the~~
 28 ~~improvements shall remain the sole responsibility of the subdivider~~
 29 ~~until all required public improvements have been accepted by the~~
 30 ~~local agency and all other required improvements have been fully~~
 31 ~~completed in accordance with the plans and specifications for the~~
 32 ~~improvements.~~

33 ~~(e) The subdivider shall complete the works of improvement~~
 34 ~~until all remaining items are accepted by the local agency.~~

35 ~~(f) Upon the completion of the improvements, the subdivider,~~
 36 ~~or his or her assigns, shall be notified in writing by the local agency~~
 37 ~~within 45 days.~~

38 ~~(g) Within 45 days of the issuance of the notification by the~~
 39 ~~local agency, the release of any remaining performance security~~
 40 ~~shall be placed upon the agenda of the legislative body of the local~~

1 agency for approval of the release of any remaining performance
2 security. If the local agency delegates authority for the release of
3 performance security to a public official or other employee, any
4 remaining performance security shall be released within 60 days
5 of the issuance of the written statement of completion.

6 (h) ~~Security securing the payment to the contractor, his or her~~
7 ~~subcontractors and to persons furnishing labor, materials or~~
8 ~~equipment shall, after passage of the time within which claims of~~
9 ~~lien are required to be recorded pursuant to Article 2 (commencing~~
10 ~~with Section 8410) of Chapter 4 of Title 2 of Part 6 of Division 4~~
11 ~~of the Civil Code and after acceptance of the work, be reduced to~~
12 ~~an amount equal to the total claimed by all claimants for whom~~
13 ~~claims of lien have been recorded and notice thereof given in~~
14 ~~writing to the legislative body, and if no claims have been recorded,~~
15 ~~the security shall be released in full.~~

16 (i) ~~The release shall not apply to any required guarantee and~~
17 ~~warranty period required by Section 66499.9 for the guarantee or~~
18 ~~warranty nor to the amount of the security deemed necessary by~~
19 ~~the local agency for the guarantee and warranty period nor to costs~~
20 ~~and reasonable expenses and fees, including reasonable attorney's~~
21 ~~fees.~~

22 (j) ~~The legislative body may authorize any of its public officers~~
23 ~~or employees to authorize release or reduction of the security in~~
24 ~~accordance with the conditions hereinabove set forth and in~~
25 ~~accordance with any rules that it may prescribe.~~

26 ~~SEC. 2. If the Commission on State Mandates determines that~~
27 ~~this act contains costs mandated by the state, reimbursement to~~
28 ~~local agencies and school districts for those costs shall be made~~
29 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~
30 ~~4 of Title 2 of the Government Code.~~