

AGENDA ITEM

54-112 MAY 10 13

DATE: April 30, 2013

TO: Members, Board Committee on Operations
Members, Board of Trustees

FROM: Joseph Dunn, Executive Director/CEO

SUBJECT: Support Position Re Unauthorized Practice of Law (AB 888
Dickinson)

EXECUTIVE SUMMARY

The unauthorized practice of law is already a crime (see Bus. & Prof. Code, § 6125), but the State Bar has little authority to stop the practice because it cannot prosecute and enforce criminal laws. While the State Bar has the power to bring a civil action in the superior court to enjoin any violation (Bus. & Prof. Code, § 6030), the action is limited because it does not allow the State Bar to recover civil penalties, including sanctions for violating an injunction. Assembly Bill 888 would allow the State Bar to obtain the same relief of civil penalties, costs and attorneys fees, and remedies for consumers that courts may now award in civil enforcement actions by the Attorney General, district attorneys and city attorneys.

BACKGROUND

The State Bar's limited authority to stop the unlicensed practice of law was recently highlighted by a post-foreclosure scam occurring in Assemblyman Roger Dickinson's district, where businesses would promise to help homeowners remain in their homes for a period of time after they had already been foreclosed on. The perpetrators would act as attorneys and accept payment for services that they did not provide. Assemblyman Dickinson's office approached the State Bar following news coverage that reported the State Bar had issued a cease and desist order in the case. While the State Bar has the power to bring a civil action in the superior court to enjoin this unlicensed activity, it cannot recover civil penalties, including sanctions for violating the injunction. In these types of schemes, perpetrators simply set up a different entity and continue to operate as normal. Assemblyman Dickinson expressed interest in enhancing the State Bar's ability to pursue the unlicensed practice of law as one way to address this problem.

Civil penalties, including penalties for violation of any injunction, cost of the investigation and attorney fees, may be awarded against the perpetrator only if the enforcement action has been brought under the Unfair Practices Act (commencing at Bus. & Prof.

Code, § 17200) by the Attorney General, a district attorney, or a city attorney acting as a local prosecutor. (Bus. & Prof. Code, § 6126.5.) AB 888 would allow the State Bar to obtain the same relief of civil penalties, costs and attorney's fees, and remedies for consumers that courts may now award in civil enforcement actions by the Attorney General, district attorneys and city attorneys. If the State Bar turns over its investigation to the Attorney General, a DA or some other local prosecutor, the State Bar would also be among the licensing entities that could recover the costs of its investigation.

The Attorney General's office expressed concern that there could be Proposition 64 problems if AB 888 allowed the State Bar to bring a case under the State Bar Act but obtain penalties under the Unfair Practices Act (commencing at Bus. & Prof. Code, § 17200). Proposition 64 was approved by voters in 2004 and limited California's unfair competition law by restricting private lawsuits against a company to those where an individual is actually injured by and suffers a financial loss due to the unfair business practice. Proposition 64 provided that only public prosecutors may file lawsuits charging unfair business practices. Because it could be interpreted that AB 888's provisions implicate the Unfair Practices Act therefore requiring voter approval, the bill will be amended to have its own, but similar penalty provisions in proposed new section 6126.6 in order to avoid Proposition 64 concerns.

There is no known opposition to the measure.

ISSUE

Whether the State Bar of California should be the official sponsor of Assembly Bill 888 to allow the State Bar to obtain relief of civil penalties, costs and attorneys fees, and remedies for consumers that courts may now award in civil enforcement actions by the Attorney General, district attorneys and city attorneys.

CONCLUSION

AB 888 (Dickinson) would assist the State Bar in investigating and regulating the unlicensed practice of law.

DISCUSSION

Sponsorship of a piece of legislation means that the sponsoring entity is considered the source of the proposal and the primary stakeholder.

FISCAL / PERSONNEL IMPACT:

None.

RULE AMENDMENTS:

None.

BOARD BOOK IMPACT:

None.

RECOMMENDATION

Because AB 888 would enhance the State Bar’s ability to investigate and regulate the unlicensed practice of law, the Board should adopt the recommendation to sponsor AB 888.

PROPOSED BOARD COMMITTEE RESOLUTION:

Should the Board Committee on Operations agree with the above recommendation, the following resolution would be appropriate:

RESOLVED, that the Board Committee on Operations recommends that the Board sponsor Assembly Bill 888.

PROPOSED BOARD OF TRUSTEES RESOLUTION:

Should the Board of Trustees concur with the Board Committee on Operations recommendation, the following resolution would be in order:

RESOLVED, that upon the recommendation of the Board Committee on Operations, the Board of Trustees hereby agrees to be the sponsor of Assembly Bill 888.