

AGENDA ITEM

54-112 MAY 9 2014

DATE: May 6, 2014

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

FROM: Joseph Dunn, CEO

SUBJECT: Sponsorship of AB 852 (Dickinson): Unauthorized Practice of Law

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 852 would allow the State Bar to obtain the same civil penalties and relief for consumers that courts may now award in civil enforcement actions by the Attorney General, district attorneys and city attorneys. Penalties received would go toward client restitution.

AB 852 is similar to last year's AB 888, which was vetoed by the Governor. AB 852 contains additional provisions to respond to the Governor's veto message, such as providing the Attorney General, district attorneys and city attorneys a right of first refusal.

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. AB 852 is also intended to protect against UPL being committed in the context of immigration reform.

Civil penalties, including penalties for violation of any injunction, cost of the investigation and attorney fees, as well as restitution and other relief to consumers, 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 852 would allow the State Bar to obtain the same relief of civil penalties and other relief 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 Governor's AB 888 veto message indicated that there are already mechanisms and remedies to stop the unauthorized practice of law through existing authorities, such as the ability of the Attorney General and local prosecutors to bring civil and criminal actions. However, law enforcement is simply unable to pursue every complaint concerning the unauthorized practice of law, as a result of finite resources and the need to prioritize. AB 852 would put a mechanism in place to address cases that may otherwise go unprosecuted.

AB 852 makes the following changes to address the Governor's concerns:

- Gives the Attorney General and local prosecutors a right of first refusal;
- Requires matters to involve injury or likelihood of imminent harm to clients or the public; and
- Eliminates the award of attorney's fees.

There is no known opposition to the measure.

ISSUE

Whether the State Bar of California should be the official sponsor of Assembly Bill 852 to allow the State Bar to obtain relief of civil penalties for consumers that courts may now award in civil enforcement actions by the Attorney General, district attorneys and city attorneys.

CONCLUSION

AB 852 (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 852 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 852.

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 852.

PROPOSED BOARD OF TRUSTEES RESOLUTION:

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

RESOLVED, that upon the recommendation of the Board Committee on Operations, the Board hereby agrees to be the sponsor of Assembly Bill 852.