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SB-486 Contractors' State License Law: letter of admonishment. (2017-2018)

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Date Published: 09/26/2017 09:00 PM

Senate Bill No. 486

CHAPTER 308

An act to amend Sections 7099.2 and 7124.6 of the Business and Professions Code, relating to professions and vocations.

[Approved by Governor September 26, 2017. Filed with Secretary of State September 26, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

SB 486, Monning. Contractors' State License Law: letter of admonishment.

(1) Existing law, the Contractors' State License Law, provides for the licensure and regulation of contractors by the Contractors' State License Board. Existing law also provides for the registration and regulation of home improvement salespersons by the board. Existing law requires the board to appoint a registrar of contractors who is the executive officer and secretary of the board and is responsible for carrying out specified administrative duties. If, upon investigation, the registrar has probable cause to believe that a licensee or an applicant for a license under existing law has committed any acts or omissions that are grounds for denial, revocation, or suspension of license, he or she, in lieu of a specified proceeding, may issue a citation to the licensee or applicant.

This bill would authorize the registrar to issue a written and detailed letter of admonishment to an applicant, licensee, or registrant instead of issuing a citation if, upon investigation, the registrar has probable cause to believe that a licensee, registrant, or applicant has committed acts or omissions that are grounds for denial, suspension, or revocation of a license or registration. The bill would require the letter to inform the applicant, licensee, or registrant that he or she may submit a written request for an office conference to contest the letter of admonishment, subject to specified procedures, including a process to appeal a decision, or comply with the letter, as provided. The bill would prohibit the board from issuing a letter of admonishment when specified factors are present. The bill would authorize the board to adopt regulations to further define the circumstances under which a letter of admonishment may be issued.

Existing law requires the registrar to make available to members of the public the date, nature, and status of all complaints on file against a licensee that meet specific qualifications. Under existing law, complaints resolved in favor of the contractor are not subject to disclosure.

The bill would distinguish a letter of admonishment from a complaint resolved in favor of the contractor and would require a letter of admonishment to be disclosed for a year.

(2) Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. It is the intent of the Legislature that the Contractors' State License Board only issue letters of admonishment to applicants, licensees, or registrants for minor violations that do not involve financial harm to the consumer and do not result in serious illness or injury.

SEC. 2. Section 7099.2 of the Business and Professions Code is amended to read:

7099.2. (a) The board shall promulgate regulations covering the assessment of civil penalties under this article that give due consideration to the appropriateness of the penalty with respect to the following factors:

- (1) The gravity of the violation.
- (2) The good faith of the licensee or applicant for licensure being charged.
- (3) The history of previous violations.

(b) Except as otherwise provided by this chapter, no civil penalty shall be assessed in an amount greater than five thousand dollars (\$5,000). Notwithstanding Section 125.9, a civil penalty not to exceed fifteen thousand dollars (\$15,000) may be assessed for a violation of Section 7114 or 7118.

(c) If, upon investigation, the registrar has probable cause to believe that a licensee, registrant, or applicant has committed acts or omissions that are grounds for denial, suspension, or revocation of a license or registration, the registrar, or his or her designee, may issue a letter of admonishment to an applicant, licensee, or registrant in lieu of issuing a citation. Nothing in this article shall in any way limit the registrar's discretionary authority or ability to issue a letter of admonishment as prescribed by this subdivision.

(1) The letter of admonishment shall be in writing and shall describe in detail the nature and facts of the violation, including a reference to the statutes or regulations violated. The letter of admonishment shall inform the licensee, registrant, or applicant that within 30 days of service of the letter of admonishment the licensee, registrant, or applicant may do either of the following:

(A) Submit a written request for an office conference to the registrar to contest the letter of admonishment. Upon a timely request, the registrar, or his or her designee, shall hold an office conference with the licensee, registrant, or applicant and, if applicable, his or her legal counsel or authorized representative.

(i) No individual other than the legal counsel or authorized representative of the licensee, registrant, or applicant may accompany the licensee, registrant, or applicant to the office conference.

(ii) Prior to or at the office conference, the licensee, registrant, or applicant may submit to the registrar declarations and documents pertinent to the subject matter of the letter of admonishment.

(iii) The office conference is intended to be informal and shall not be subject to the Administrative Procedure Act (Chapter 4.5 (commencing with Section 11400) or Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code).

(iv) After the office conference, the registrar, or his or her designee, may affirm, modify, or withdraw the letter of admonishment. Within 14 calendar days from the date of the office conference, the registrar, or his or her designee, shall personally serve or send the written decision by certified mail to the licensee's, registrant's, or applicant's address of record. This decision shall be deemed the final administrative decision concerning the letter of admonishment.

(v) Judicial review of the decision may be had by filing a petition for a writ of mandate in accordance with the provisions of Section 1094.5 of the Code of Civil Procedure within 30 days after the date the decision was personally served or sent by certified mail. The judicial review shall extend to the question of whether or not there was a prejudicial abuse of discretion in the issuance of the letter of admonishment or in the decision after the office conference.

(B) Comply with the letter of admonishment and, if required, submit a written corrective action plan to the registrar documenting compliance. If an office conference is not requested pursuant to this section, compliance with the letter of admonishment shall not constitute an admission of the violation noted in the letter of admonishment.

(2) The letter of admonishment shall be served upon the licensee, registrant, or applicant personally or by certified mail at his or her address of record with the board. If the licensee, registrant, or applicant is served by certified mail, service shall be effective upon deposit in the United States mail.

(3) The licensee, registrant, or applicant shall maintain and have readily available a copy of the letter of admonishment and corrective action plan, if any, for at least one year from the date of issuance of the letter of admonishment.

(4) Nothing in this subdivision shall in any way limit the board's authority or ability to do either of the following:

(A) Issue a citation pursuant to Section 125.9, 148, or 7099.

(B) Institute disciplinary proceedings pursuant to this article.

(5) The issuance of a letter of admonishment shall not be construed as a disciplinary action or discipline for purposes of licensure or the reporting of discipline for licensure.

(6) The board shall not issue a letter of admonishment when any one of the following factors is present:

(A) The licensee, registrant, or applicant was unlicensed at the time of the violation.

(B) Multiple violations have been established.

(C) The licensee, registrant, or applicant has a history of the same or similar violations.

(D) The violation resulted in financial harm to another.

(E) The victim is an elder or dependent adult as defined in Section 368 of the Penal Code.

(F) The violation is related to the repair of damage caused by a natural disaster.

(7) The board may adopt regulations to further define the circumstances under which a letter of admonishment may be issued.

SEC. 3. Section 7124.6 of the Business and Professions Code is amended to read:

7124.6. (a) The registrar shall make available to members of the public the date, nature, and status of all complaints on file against a licensee that do either of the following:

(1) Have been referred for accusation.

(2) Have been referred for investigation after a determination by board enforcement staff that a probable violation has occurred, and have been reviewed by a supervisor, and regard allegations that if proven would present a risk of harm to the public and would be appropriate for suspension or revocation of the contractor's license or criminal prosecution.

(b) The board shall create a disclaimer that shall accompany the disclosure of a complaint that shall state that the complaint is an allegation. The disclaimer may also contain any other information the board determines would be relevant to a person evaluating the complaint.

(c) (1) A complaint resolved in favor of the contractor shall not be subject to disclosure.

(2) A complaint resolved by issuance of a letter of admonishment pursuant to Section 7099.2 shall not be deemed resolved in favor of the contractor for the purposes of this section. A letter of admonishment issued to a licensee shall be disclosed for a period of one year from the date described in paragraph (2) of subdivision (c) of Section 7099.2.

(d) Except as described in subdivision (e), the registrar shall make available to members of the public the date, nature, and disposition of all legal actions.

(e) Disclosure of legal actions shall be limited as follows:

(1) (A) Citations shall be disclosed from the date of issuance and for five years after the date of compliance if no additional disciplinary actions have been filed against the licensee during the five-year period. If additional disciplinary actions were filed against the licensee during the five-year period, all disciplinary actions shall be disclosed for as long as the most recent disciplinary action is subject to disclosure under this section. At the end of the specified time period, those citations shall no longer be disclosed.

(B) Any disclosure pursuant to this paragraph shall also appear on the license record of any other license identified as a qualifier as defined in Section 7025 who is listed in the members of the personnel of record as defined in Section 7025 of the license that was issued the citation.

(C) The disclosure described in subparagraph (B) shall be for the period of disclosure of the citation.

(2) Accusations that result in suspension, stayed suspension, or stayed revocation of the contractor's license shall be disclosed from the date the accusation is filed and for seven years after the accusation has been settled, including the terms and

conditions of probation if no additional disciplinary actions have been filed against the licensee during the seven-year period. If additional disciplinary actions were filed against the licensee during the seven-year period, all disciplinary actions shall be posted for as long as the most recent disciplinary action is subject to disclosure under this section. At the end of the specified time period, those accusations shall no longer be disclosed.

(3) All revocations that are not stayed shall be disclosed indefinitely from the effective date of the revocation.

SEC. 4. The Legislature finds and declares that Section 3 of this act, which amends Section 7124.6 of the Business and Professions Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

In order to allow the Contractors' State License Board to fully accomplish its regulatory and disciplinary goals for minor violations, it is necessary to limit access to the letters of admonishment.