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AB-569 Contractors: civil penalties: letters of admonishment. (2021-2022)

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Assembly Bill No. 569

CHAPTER 94

An act to amend Sections 7099.2 and 7099.9 of the Business and Professions Code, relating to contractors.

[Approved by Governor July 16, 2021. Filed with Secretary of State July 16, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

AB 569, Grayson. Contractors: civil penalties: letters of admonishment.

Existing law, except as specified, authorizes any board, bureau, or commission within the Department of Consumer Affairs (DCA) to establish, by regulation, a system for the issuance to a licensee of a citation which may contain an order of abatement or an order to pay an administrative fine assessed by the board, bureau, or commission where the licensee is in violation of the applicable licensing act or regulation adopted under the act. Existing law prohibits an administrative fine assessed by the board, bureau, or commission from exceeding \$5,000 for each inspection or each investigation made with respect to the violation, or, if the violation involves fraudulent billing submitted to an insurance company, the Medi-Cal program, or Medicare, \$5,000 for each violation or count (administrative fine maximum).

Other existing law, the Contractors State License Law, provides for the licensure and regulation of contractors by the Contractors State License Board in the DCA. Existing law provides for related disciplinary proceedings and requires the board to promulgate regulations covering the assessment of civil penalties under those disciplinary provisions, as prescribed. Existing law, except as specified, prohibits the assessment of a civil penalty in an amount greater than \$5,000. Existing law, notwithstanding the administrative fine maximum, authorizes a civil penalty not to exceed \$15,000 for certain violations relating to unlicensed persons.

This bill would increase the civil penalty limit from \$5,000 to \$8,000, notwithstanding the administrative fine maximum, and would increase the enhanced civil penalty limit from \$15,000 to \$30,000. The bill would expand the enhanced civil penalty limit to apply to certain violations relating to workers' compensation insurance coverage.

Existing law requires the board, by and with the approval of the Director of Consumer Affairs, to appoint a registrar of contractors to administer existing law. Existing law authorizes the registrar or a designee to issue a letter of admonishment to an applicant, licensee, or registrant in lieu of issuing a citation, as prescribed, 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. Existing law prohibits the board from issuing a letter of admonishment if any of several factors is present, including the factor that multiple violations have been established.

This bill would delete the multiple violations factor.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

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

SECTION 1. 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) Notwithstanding Section 125.9, and except as otherwise provided by this chapter, no civil penalty shall be assessed in an amount greater than eight thousand dollars (\$8,000). Notwithstanding Section 125.9, a civil penalty not to exceed thirty thousand dollars (\$30,000) may be assessed for a violation of Section 7114, 7118, or 7125.4

SEC. 2. Section 7099.9 of the Business and Professions Code is amended to read:

7099.9. (a) 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 their 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.

(b) 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:

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

(A) 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.

(B) 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.

(C) 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).

(D) After the office conference, the registrar, or their designee, may affirm, modify, or withdraw the letter of admonishment. Within 14 calendar days from the date of the office conference, the registrar, or their 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.

(E) 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.

(2) 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.

(c) The letter of admonishment shall be served upon the licensee, registrant, or applicant personally or by certified mail at their 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.

(d) 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.

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

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

(2) Institute disciplinary proceedings pursuant to this article.

(f) 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.

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

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

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

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

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

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

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