

AMENDED IN ASSEMBLY APRIL 10, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 834**

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**Introduced by Assembly Member Williams**

February 21, 2013

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An act to amend ~~Sections 17203, 17204, and 17206 of, and to add Section 7110.05 to, the Business and Professions Code, Section 25402.11 of the Public Resources Code,~~ relating to energy efficiency standards.

LEGISLATIVE COUNSEL'S DIGEST

AB 834, as amended, Williams. Energy efficiency standards: ~~unfair business practice: administrative enforcement.~~

*Existing law authorizes the State Energy Resources Conservation and Development Commission to establish an administrative enforcement process to enforce regulations establishing appliance efficiency standards. Existing law requires the commission to establish, by regulations, building construction and design standards and energy and water efficiency standards for new residential and new nonresidential buildings to increase the efficient use of energy and water.*

*This bill would additionally authorize the commission to establish an administrative enforcement process to enforce regulations establishing the building construction and design standards and energy and water efficiency standards.*

~~(1) Existing law, the Contractors' State License Law, provides for the licensure and regulation of contractors by the Contractors' State License Board. Existing law prohibits certain actions by licensed contractors and subjects a licensee to discipline for a violation thereof.~~

~~Existing law authorizes the board to issue a citation for a violation of the Contractors' State License Law and to issue civil penalties. Existing law provides for the State Energy Resources Conservation and Development Commission (Energy Commission) within state government and requires the Energy Commission proscribe energy efficiency standards.~~

~~This bill would subject a licensee to discipline for the failure to comply with specified energy efficiency standards under the California Code of Regulations. The bill would require the board to submit an annual report to the Legislature with regard to any civil penalties assessed against a licensee or unlicensed person for a violation of those standards. The bill would require the Energy Commission to collaborate with the board to identify and investigate the failure of licensees and unlicensed contractors to comply with those standards.~~

~~(2) Existing law defines an act of unfair competition as including an unlawful, unfair, or fraudulent business act or practice, an unfair, deceptive, untrue, or misleading advertisement, and other specified conduct relating to representations made to the public. Existing law authorizes the Attorney General, certain local prosecutors, a private plaintiff with an injury-in-fact, or a plaintiff representative who meets certain standing requirements to bring an action against any person who engages, has engaged, or proposes to engage in unfair competition, provides for injunctive relief, and authorizes the court to make any order or judgment that is necessary to restore to any person in interest any money or property that may have been acquired by means of the unfair competition. Civil penalties may also be collected by the Attorney General and the local prosecutors, as specified. A portion of the civil penalties collected by the Attorney General are deposited into the Unfair Competition Law Fund, and, upon appropriation by the Legislature, are used to support investigations and prosecutions of consumer protection laws.~~

~~The bill would authorize the Energy Commission to bring an action under the unfair competition laws to enforce any statute or regulation that the commission is directed to adopt, implement, administer, or enforce. The bill would authorize the Energy Commission to collect civil penalties for a violation thereof and, upon appropriation by the Legislature, would authorize the expenditure of those moneys by the commission for purposes of enforcement.~~

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

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

1     SECTION 1. Section 25402.11 of the Public Resources Code  
2     is amended to read:

3     25402.11. (a) (1) The commission may adopt regulations  
4     establishing an administrative enforcement process for a violation  
5     of a regulation adopted pursuant to ~~subdivision (e)~~ of Section  
6     25402 and for the assessment of an administrative civil penalty  
7     not to exceed two thousand five hundred dollars (\$2,500) for each  
8     violation. The process shall comply with the requirements of  
9     Chapter 4 (commencing with Section 11400) and Chapter 4.5  
10    (commencing with Section 11500) of Part 1 of Division 3 of Title  
11    2 of the Government Code.

12    (2) In assessing the amount of an administrative penalty, the  
13    commission shall consider all of the following factors:

- 14    (A) The nature and seriousness of the violation.
- 15    (B) The number of violations.
- 16    (C) The persistence of the violation.
- 17    (D) The length of time over which the violation occurred.
- 18    (E) The willfulness of the violation.
- 19    (F) The violator's assets, liabilities, and net worth.
- 20    (G) The harm to consumers and to the state that resulted from  
21    the amount of energy wasted due to the violation.

22    (b) If the commission finds that a violation of the regulations  
23    adopted pursuant to ~~subdivision (e)~~ of Section 25402 has occurred  
24    or is threatening to occur, the commission may refer the matter to  
25    the Attorney General to petition a court to enjoin the violation.  
26    The court may grant prohibitory or mandatory injunctive relief as  
27    warranted by issuing a temporary restraining order, preliminary  
28    injunction, or permanent injunction, and may assess a civil penalty  
29    not to exceed two thousand five hundred dollars (\$2,500) for each  
30    violation, considering the factors specified in paragraph (2) of  
31    subdivision (a).

32    (c) Penalties collected pursuant to this section shall be deposited  
33    into the Appliance Efficiency Enforcement Subaccount, which is  
34    hereby established in the Energy Resources Program Account.  
35    The moneys in the Appliance Efficiency Enforcement Subaccount  
36    may be expended by the commission, upon appropriation by the  
37    Legislature, for the education of the public regarding appliance

1 energy efficiency and for the enforcement of the regulations  
 2 adopted pursuant to subdivision (c) of Section 25402.

3 (d) An order imposing an administrative civil penalty shall be  
 4 subject to judicial review pursuant to subdivisions (a) and (b) of  
 5 Section 25534.2.

6 (e) A person shall not be liable for a civil penalty pursuant to  
 7 subdivision (b) if that person is subject to an administrative civil  
 8 penalty pursuant to subdivision (a).

9 (f) In a civil action brought on behalf of the commission  
 10 pursuant to this section, upon granting relief, the court shall award  
 11 to the commission the reasonable costs incurred by the commission  
 12 in investigating and prosecuting the action.

13 (g) The commission shall not initiate an administrative  
 14 enforcement process pursuant to the regulations adopted pursuant  
 15 to this section against an entity for the unlawful sale or the unlawful  
 16 offer for sale of an appliance if both of the following apply:

17 (1) The appliance fully complies with all of the requirements  
 18 of the regulations adopted pursuant to subdivision (c) of Section  
 19 25402.

20 (2) The only basis for the commission’s potential enforcement  
 21 action is that the appliance is not considered to be in compliance  
 22 because of the commission’s delay in reviewing and processing  
 23 information submitted to it that demonstrates full compliance.

24 (h) In addition to the prohibitions specified in subdivision (g),  
 25 the commission shall not initiate an administrative enforcement  
 26 process pursuant to the regulations adopted pursuant to this section  
 27 for a violation of a standard adopted pursuant to ~~subdivision (e)~~  
 28 ~~of~~ Section 25402 until both of the following occur:

29 (1) No fewer than 60 days have elapsed since the date when the  
 30 standard was published in the California Register.

31 (2) No fewer than 30 days have elapsed since the date when the  
 32 alleged violator received written notice of the alleged violation  
 33 and date when the commission provided public notice of the  
 34 standard.

35 ~~SECTION 1. It is the intent of the Legislature to enact~~  
 36 ~~legislation that maximizes the energy saved by the state’s various~~  
 37 ~~energy efficiency statutes, regulations, and programs.~~

38 ~~SEC. 2. The Legislature finds and declares all of the following:~~

39 ~~(a) California’s building energy efficiency standards, specified~~  
 40 ~~in Part 6 of Title 24 of, and Article 4 of Chapter 4 of Division 2~~

1 of Title 20 of, the California Code of Regulations, respectively,  
2 represent a state resource for accomplishing increased energy  
3 efficiency in newly constructed buildings, additions, and alterations  
4 to existing buildings, and in appliances. These standards are  
5 recognized as leading the nation in energy savings and serving as  
6 one of the primary energy policy tools that has resulted in  
7 California's per capita energy use staying essentially constant over  
8 the past 30 years while that of the rest of the United States  
9 increased steadily.

10 (b) The effectiveness of the building energy efficiency standards  
11 is dependent on the conscientious efforts of licensed contractors  
12 in California to build buildings and install components and  
13 equipment in compliance with the standards.

14 (c) The Governor and the Legislature recognize that many  
15 buildings are being retrofitted without required permits. Contractors  
16 operating in the underground economy are in flagrant violation of  
17 California contracting law. In particular, these are contractors  
18 operating without a license, and those, whether licensed or not,  
19 that willfully and deliberately fail to obtain a building permit and  
20 willfully and deliberately fail to comply with the building laws  
21 and other laws of the state. Unlicensed and licensed contractors  
22 who market their services with these underground practices engage  
23 in unfair competition, undercutting legitimate contractors who  
24 endeavor to conscientiously comply with contracting, building,  
25 and business laws. This underground activity denies state and local  
26 governments license and building permit revenue, diminishing the  
27 ability of state and local agencies to provide enforcement services  
28 intended to protect consumers by ensuring compliance with these  
29 laws. These practices particularly damage and diminish the  
30 potential for conscientious compliance with the building energy  
31 efficiency standards.

32 (d) The mission of the Contractors' State License Board is to  
33 protect consumers by regulating contractors to promote the health,  
34 safety, and general welfare of the public in matters related to  
35 construction. As a part of fulfilling this mission, it is important for  
36 the board's licensing program to include efforts to eradicate the  
37 underground practice of performing construction work without  
38 building permits and failing to comply with the building energy  
39 efficiency standards. It has become critically important for the  
40 board to send a strong, definitive message to those whose objective

1 is illegal financial gain at the expense of safe building practices  
2 and energy efficiency. In particular, the board should not tolerate  
3 illegal practices related to building energy efficiency standards.

4 (e) These violations result in a substantial financial loss to  
5 consumers who purchase energy efficiency goods and services,  
6 and represent unfair competition that dramatically impacts the  
7 economic viability of legitimate businesses. It is critical for  
8 California to maintain a business climate favorable to legitimate  
9 competition, so that conscientious contractors, manufacturers,  
10 distributors, retailers, Home Energy Rating System raters, and  
11 other businesses are able to sustain their businesses against unfair  
12 competition.

13 SEC. 3. Section 7110.05 is added to the Business and  
14 Professions Code, to read:

15 7110.05. (a) The failure of a licensee to comply with the  
16 building energy efficiency standards specified in Part 6 of Title  
17 24 of the California Code of Regulations constitutes a cause for  
18 disciplinary action.

19 (b) (1) Beginning with the fiscal year commencing on July 1,  
20 2014, and each fiscal year thereafter, the board shall compile the  
21 essential data necessary to create a report identifying the number  
22 of civil penalties that the board assessed during the previous fiscal  
23 year against licensees and unlicensed contractors for failure to  
24 comply with the standards described in subdivision (a) of this  
25 section and subdivision (b) of Section 7028.7. This report shall be  
26 submitted to the Legislature no later than the first business day in  
27 October of each year.

28 (2) The report to be submitted pursuant to this subdivision shall  
29 be submitted in compliance with Section 9795 of the Government  
30 Code.

31 (c) The State Energy Resources Conservation and Development  
32 Commission shall collaborate with the board to identify and  
33 investigate the failure of licensees and unlicensed contractors to  
34 comply with the building energy efficiency standards and to obtain  
35 building permits, and conduct an education and awareness  
36 campaign to increase knowledge of permitting requirements among  
37 contractors and consumers.

38 SEC. 4. Section 17203 of the Business and Professions Code  
39 is amended to read:

40 17203. Injunctive Relief—Court Orders

1 Any person who engages, has engaged, or proposes to engage  
2 in unfair competition may be enjoined in any court of competent  
3 jurisdiction. The court may make such orders or judgments,  
4 including the appointment of a receiver, as may be necessary to  
5 prevent the use or employment by any person of any practice which  
6 constitutes unfair competition, as defined in this chapter, or as may  
7 be necessary to restore to any person in interest any money or  
8 property, real or personal, which may have been acquired by means  
9 of such unfair competition. Any person may pursue representative  
10 claims or relief on behalf of others only if the claimant meets the  
11 standing requirements of Section 17204 and complies with Section  
12 382 of the Code of Civil Procedure, but these limitations do not  
13 apply to claims brought under this chapter by the Attorney General,  
14 by any district attorney, county counsel, city attorney, or city  
15 prosecutor in this state, or by the State Energy Resources  
16 Conservation and Development Commission to enforce any statute  
17 or regulation that the commission is directed to adopt, implement,  
18 administer, or enforce.

19 SEC. 5. Section 17204 of the Business and Professions Code  
20 is amended to read:

21 17204. Actions for Injunctions by Attorney General, District  
22 Attorney, County Counsel, City Attorneys, or the State Energy  
23 Resources Conservation and Development Commission

24 Actions for relief pursuant to this chapter shall be prosecuted  
25 exclusively in a court of competent jurisdiction by the Attorney  
26 General or a district attorney or by a county counsel authorized  
27 by agreement with the district attorney in actions involving  
28 violation of a county ordinance, or by a city attorney of a city  
29 having a population in excess of 750,000, or by a city attorney in  
30 a city and county or, with the consent of the district attorney, by  
31 a city prosecutor in a city having a full-time city prosecutor in the  
32 name of the people of the State of California upon their own  
33 complaint or upon the complaint of a board, officer, person,  
34 corporation, or association, or by the State Energy Resources  
35 Conservation and Development Commission, or by a person who  
36 has suffered injury in fact and has lost money or property as a  
37 result of the unfair competition.

38 SEC. 6. Section 17206 of the Business and Professions Code  
39 is amended to read:

40 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, by any city attorney of~~  
10 ~~any city and county, or, with the consent of the district attorney,~~  
11 ~~by a city prosecutor in any city having a full-time city prosecutor,~~  
12 ~~or by the State Energy Resources Conservation and Development~~  
13 ~~Commission to enforce any statute or regulation that the~~  
14 ~~commission is directed to adopt, implement, administer, or enforce,~~  
15 ~~in any court of competent jurisdiction.~~

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

25 (c) ~~If the action is brought by the Attorney General, one-half of~~  
26 ~~the penalty collected shall be paid to the treasurer of the county in~~  
27 ~~which the judgment was entered, and one-half to the General Fund.~~  
28 ~~If the action is brought by a district attorney or county counsel,~~  
29 ~~the penalty collected shall be paid to the treasurer of the county in~~  
30 ~~which the judgment was entered. Except as provided in subdivision~~  
31 ~~(c), if the action is brought by a city attorney or city prosecutor,~~  
32 ~~one-half of the penalty collected shall be paid to the treasurer of~~  
33 ~~the city in which the judgment was entered, and one-half to the~~  
34 ~~treasurer of the county in which the judgment was entered. The~~  
35 ~~forementioned funds shall be for the exclusive use by the Attorney~~  
36 ~~General, the district attorney, the county counsel, and the city~~  
37 ~~attorney for the enforcement of consumer protection laws. If the~~  
38 ~~action is brought by the State Energy Resources Conservation and~~  
39 ~~Development Commission, the penalties collected under this~~  
40 ~~section, upon appropriation to the commission by the Legislature,~~

1 shall be used by the commission to enforce any statute or regulation  
2 that the commission is directed to adopt, implement, administer,  
3 or enforce.

4 (d) ~~The Unfair Competition Law Fund is hereby created as a  
5 special account within the General Fund in the State Treasury. The  
6 portion of penalties that is payable to the General Fund or to the  
7 Treasurer recovered by the Attorney General from an action or  
8 settlement of a claim made by the Attorney General pursuant to  
9 this chapter or Chapter 1 (commencing with Section 17500) of  
10 Part 3 shall be deposited into this fund. Moneys in this fund, upon  
11 appropriation by the Legislature, shall be used by the Attorney  
12 General to support investigations and prosecutions of California's  
13 consumer protection laws, including implementation of judgments  
14 obtained from such prosecutions or investigations and other  
15 activities which are in furtherance of this chapter or Chapter 1  
16 (commencing with Section 17500) of Part 3. Notwithstanding  
17 Section 13340 of the Government Code, any civil penalties  
18 deposited in the fund pursuant to the National Mortgage Settlement,  
19 as provided in Section 12531 of the Government Code, are  
20 continuously appropriated to the Department of Justice for the  
21 purpose of offsetting General Fund costs incurred by the  
22 Department of Justice.~~

23 (e) ~~If the action is brought at the request of a board within the  
24 Department of Consumer Affairs or a local consumer affairs  
25 agency, the court shall determine the reasonable expenses incurred  
26 by the board or local agency in the investigation and prosecution  
27 of the action.~~

28 ~~Before any penalty collected is paid out pursuant to subdivision  
29 (e), the amount of any reasonable expenses incurred by the board  
30 shall be paid to the Treasurer for deposit in the special fund of the  
31 board described in Section 205. If the board has no such special  
32 fund, the moneys shall be paid to the Treasurer. The amount of  
33 any reasonable expenses incurred by a local consumer affairs  
34 agency shall be paid to the general fund of the municipality or  
35 county that funds the local agency.~~

36 (f) ~~If the action is brought by a city attorney of a city and county,  
37 the entire amount of the penalty collected shall be paid to the  
38 treasurer of the city and county in which the judgment was entered  
39 for the exclusive use by the city attorney for the enforcement of  
40 consumer protection laws. However, if the action is brought by a~~

1 ~~city attorney of a city and county for the purposes of civil~~  
2 ~~enforcement pursuant to Section 17980 of the Health and Safety~~  
3 ~~Code or Article 3 (commencing with Section 11570) of Chapter~~  
4 ~~10 of Division 10 of the Health and Safety Code, either the penalty~~  
5 ~~collected shall be paid entirely to the treasurer of the city and~~  
6 ~~county in which the judgment was entered or, upon the request of~~  
7 ~~the city attorney, the court may order that up to one-half of the~~  
8 ~~penalty, under court supervision and approval, be paid for the~~  
9 ~~purpose of restoring, maintaining, or enhancing the premises that~~  
10 ~~were the subject of the action, and that the balance of the penalty~~  
11 ~~be paid to the treasurer of the city and county.~~

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