

## CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES BILL ANALYSIS

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**BILL NUMBER:** SB 772                      **VERSION:** INTRODUCED FEBRUARY 19, 2021

**AUTHOR:** OCHOA BOGH                      **SPONSOR:** AUTHOR

**RECOMMENDED POSITION:** OPPOSE

**SUBJECT:** PROFESSIONS AND VOCATIONS: CITATIONS: MINOR VIOLATIONS

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### **Summary**

This bill would prohibit boards under the Department of Consumer Affairs (DCA) from fining a licensee for a minor violation if the violation meets certain specified criteria.

### **Existing Law:**

- 1) Allows DCA boards to establish a system for issuing citations to licensees. Citations may include an order of abatement or a fine. (Business and Professions Code (BPC) §125.9(a))
- 2) Requires citations to be in writing and to cite the specific provision of law violated. (BPC §125.9(b)(1))
- 3) When assessing a fine, requires boards to give due consideration to the appropriateness of the amount of the fine with respect to factors such as the gravity of the violation, the good faith of the licensee, and the history of previous violations. (BPC §125.9(b)(3))
- 4) Allows a licensee to contest the finding of a violation. The licensee must make the request to the board in writing within 30 days of the issuance of the citation or assessment. (BPC §125.9(b)(4))
- 5) Outlines the factors that the executive officer of the Board must consider when assessing a fine or issuing an order of abatement, as follows (California Code of Regulation (CCR) Title 16 §1886.30):
  - a) The gravity of the violation;
  - b) The good or bad faith exhibited by the cited person;
  - c) The history of previous violations of the same or similar nature;

- d) Evidence that the violation was or was not willful;
  - e) The extent to which the cited person has cooperated with the board's investigation;
  - f) The extent to which the cited person has mitigated or attempted to mitigate any damage or injury caused by the violation; and
  - g) Any other factors.
- 6) Outlines a process for a cited person to contest the citation by requesting an administrative hearing or an informal citation conference. (CCR Title 16 §1886.70)

**This Bill:**

- 1) Prohibits a DCA board from fining a licensee for a minor violation. (BPC §125.9(f))
- 2) Provides that a violation is considered minor if it satisfies all of the following (BPC §125.9(f)):
  - a) It did not pose a serious health or safety threat;
  - b) There is no evidence it was willful;
  - c) The licensee was not on probation at the time the violation occurred;
  - d) The licensee does not have a history of committing the violation; and
  - e) The licensee corrects the violation within 30 days of the date the notice of the violation is sent.

**Comments:**

- 1) **Author's Intent.** In their fact sheet, the author's office states that the goal of the bill is to provide financial relief to businesses and licensees by allowing them to correct minor violations without being fined. They note that small businesses make up 99% of all businesses in California, but unlike large corporations, they do not have the legal resources to navigate all the nuances of the law. Due to this, they may make minor mistakes due to misinterpretation or lack of awareness, rather than disregard for the law.
- 2) **"Serious Health or Safety Threat" Not Defined.** The bill allows a violation to be considered minor if it meets several criteria, one of which is it did not pose a "serious health or safety threat". However, staff has concerns that the bill does not specifically define a "serious health or safety threat."

The Board's Enforcement Unit issues citations and fines for several types of law violations. Some of these include practicing with a delinquent license, supervising

on a lapsed license, associates working as an independent contractor, associates accepting direct payments from clients, and failure to complete required continuing education. Any one of these may be considered minor and not a serious health or safety threat under the bill proposal; however, such violations have serious ramifications for the integrity of the profession and quality of services.

If, for example, the Board were unable to fine a licensee for practicing with a delinquent license, little incentive remains to keep a license current. If caught practicing with a delinquent license, the person could simply renew the license within 30 days with no consequences.

- 3) Board Discretion Already Permitted.** When considering issuing a citation and fine, the Board is already required by regulation to consider certain factors as described in Item #5 above. The factors that must be considered already provide built-in discretion for the Board to make a determination that a fine is not needed based on the circumstances of the case. An example of the Board doing this is with advertising violations. For violations that are inadvertent and very minor (i.e. failure to include a required piece of information in an advertisement) the Board might first ask the licensee to correct the advertisement, rather than issuing a citation and fine.
- 4) Contesting a Citation.** Board licensees also already have the ability to contest a citation and fine within 30 days of its issuance. The outcome of contesting may be affirmation, modification, or dismissal.
- 5) Policy and Advocacy Committee Recommendation.** At its April 16, 2021 meeting, the Policy and Advocacy Committee recommended the Board consider taking an “oppose” position on this bill.
- 6) Status.** The author’s office recently indicated that this will be a two-year bill.
- 7) Support and Opposition.**

**Support:**

- National Federation of Independent Business
- Professional Beauty Federation of California
- Southwest California Legislative Council

**Oppose**

- Board for Professional Engineers, Land Surveyors, and Geologists
- California Acupuncture Board
- California Board of Psychology

**8) History.**

04/19/21 April 19 set for second hearing canceled at the request of author.  
03/16/21 Set for hearing April 19.

03/15/21 March 22 set for first hearing canceled at the request of author.  
03/11/21 Set for hearing March 22.  
03/03/21 Referred to Com. on B., P. & E.D.  
02/22/21 Joint Rule 55 suspended. (Ayes 32. Noes 4.)  
02/22/21 (Ayes 32. Noes 4.)  
02/22/21 Art. IV. Sec. 8(a) of the Constitution dispensed with.  
02/22/21 Read first time.  
02/22/21 From printer. May be acted upon on or after March 24.  
02/19/21 Introduced. To Com. on RLS. for assignment. To print.

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**Introduced by Senator Ochoa Bogh  
(Coauthor: Senator Borgeas)**

February 19, 2021

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An act to amend Section 125.9 of the Business and Professions Code, relating to professions and vocations.

**legislative counsel's digest**

SB 772, as introduced, Ochoa Bogh. Professions and vocations: citations: minor violations.

Existing law authorizes the State Board of Chiropractic Examiners, the Osteopathic Medical Board of California, and any board within the Department of Consumer Affairs to issue a citation to a licensee, which may contain an order of abatement or an order to pay an administrative fine assessed by the board.

This bill would prohibit the assessment of an administrative fine for a minor violation, and would specify that a violation shall be considered minor if it meets specified conditions, including that the violation did not pose a serious health or safety threat and there is no evidence that the violation was willful.

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 125.9 of the Business and Professions
- 2 Code is amended to read:
- 3 125.9. (a) Except with respect to persons regulated under
- 4 Chapter 11 (commencing with Section 7500), any board, bureau,
- 5 or commission within the department, the State Board of

1 Chiropractic Examiners, and the Osteopathic Medical Board of  
2 California, may establish, by regulation, a system for the issuance  
3 to a licensee of a citation which may contain an order of abatement  
4 or an order to pay an administrative fine assessed by the board,  
5 bureau, or commission where the licensee is in violation of the  
6 applicable licensing act or any regulation adopted pursuant thereto.

7 (b) The system shall contain the following provisions:

8 (1) Citations shall be in writing and shall describe with  
9 particularity the nature of the violation, including specific reference  
10 to the provision of law determined to have been violated.

11 (2) Whenever appropriate, the citation shall contain an order of  
12 abatement fixing a reasonable time for abatement of the violation.

13 (3) In no event shall the administrative fine assessed by the  
14 board, bureau, or commission exceed five thousand dollars (\$5,000)  
15 for each inspection or each investigation made with respect to the  
16 violation, or five thousand dollars (\$5,000) for each violation or  
17 count if the violation involves fraudulent billing submitted to an  
18 insurance company, the Medi-Cal program, or Medicare. In  
19 assessing a fine, the board, bureau, or commission shall give due  
20 consideration to the appropriateness of the amount of the fine with  
21 respect to factors such as the gravity of the violation, the good  
22 faith of the licensee, and the history of previous violations.

23 (4) A citation or fine assessment issued pursuant to a citation  
24 shall inform the licensee that if the licensee desires a hearing to  
25 contest the finding of a violation, that hearing shall be requested  
26 by written notice to the board, bureau, or commission within 30  
27 days of the date of issuance of the citation or assessment. If a  
28 hearing is not requested pursuant to this section, payment of any  
29 fine shall not constitute an admission of the violation charged.  
30 Hearings shall be held pursuant to Chapter 5 (commencing with  
31 Section 11500) of Part 1 of Division 3 of Title 2 of the Government  
32 Code.

33 (5) Failure of a licensee to pay a fine or comply with an order  
34 of abatement, or both, within 30 days of the date of assessment or  
35 order, unless the citation is being appealed, may result in  
36 disciplinary action being taken by the board, bureau, or  
37 commission. Where a citation is not contested and a fine is not  
38 paid, the full amount of the assessed fine shall be added to the fee  
39 for renewal of the license. A license shall not be renewed without  
40 payment of the renewal fee and fine.

- 1 (c) The system may contain the following provisions:  
2 (1) A citation may be issued without the assessment of an  
3 administrative fine.  
4 (2) Assessment of administrative fines may be limited to only  
5 particular violations of the applicable licensing act.  
6 (d) Notwithstanding any other provision of law, if a fine is paid  
7 to satisfy an assessment based on the finding of a violation,  
8 payment of the fine and compliance with the order of abatement,  
9 if applicable, shall be represented as satisfactory resolution of the  
10 matter for purposes of public disclosure.  
11 (e) Administrative fines collected pursuant to this section shall  
12 be deposited in the special fund of the particular board, bureau, or  
13 commission.  
14 (f) *A licensee shall not be assessed an administrative fine for a*  
15 *violation of the applicable licensing act or any regulation adopted*  
16 *pursuant to the act if the violation is a minor violation. A violation*  
17 *shall be considered minor if all of the following conditions are*  
18 *satisfied:*  
19 (1) *The violation did not pose a serious health or safety threat.*  
20 (2) *There is no evidence that the violation was willful.*  
21 (3) *The licensee was not on probation at the time of the*  
22 *violation.*  
23 (4) *The licensee does not have a history of committing the*  
24 *violation.*  
25 (5) *The licensee corrects the violation within 30 days from the*  
26 *date notice of the violation is sent to the licensee.*

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