

CONTRACTORS STATE LICENSE BOARD

Title 16, California Code of Regulations, Section 884

Section 100 CHANGE WITHOUT REGULATORY EFFECT

WRITTEN STATEMENT OF EXPLANATION REGARDING CHANGES WITHOUT REGULATORY EFFECT

Pursuant to Title 1, Division 1, Chapter 1, Article 2, Section 100(a), of the California Code of Regulations (CCR), the Department of Consumer Affairs (DCA), the Contractors State License Board (Board or CSLB) submits this written statement explaining why the proposed amendments to section 884 of Article 8, Division 8, of Title 16, CCR do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any CCR provision.

Any agency within DCA is authorized to adopt a system for the issuance of a citation to a licensee. The agency must adopt regulations in order to impose citations. The regulations may provide for an order of abatement or an order to pay an administrative fine when the licensee is in violation of the applicable licensing act or any regulation thereunder. (Bus. & Prof. Code, § 125.9, subd. (a).) Business and Professions Code (BPC) section 7008 authorizes the Board to adopt rules and regulations, in accordance with the Administrative Procedure Act, that are reasonably necessary to carry out the provisions of the chapter of the BPC. Section 7099.2 requires the Board to promulgate regulations covering the assessment of appropriate civil penalties and establishes maximum civil penalty amounts notwithstanding the provisions contained in BPC section 125.9.

Title 16, section 884 of the CCR establishes ranges of civil penalties the Board may assess against persons who have been cited for violation of the Contractors State License Law and sets forth the circumstances the Registrar must consider in determining the appropriate amount.

Subject to the approval of the Office of Administrative Law, the Board would add to, revise, or delete text in section 884 as follows:

Amend Section 884 as follows:

§884. Assessments of Civil Penalties

Subdivision (a)

Introductory sentence

This proposal would amend the introductory sentence in subdivision (a) by adding “State” to the “Contractors License Law” to accurately cite Chapter 9 of the BPC as the “Contractors State License Law” pursuant to BPC section 7000. This is a change without regulatory effect because it merely corrects a cross-reference error in citation of the statutory language. (Cal. Code Regs., tit. 1, § 100, subd. (a)(4).)

Subdivision (a), civil penalty ranges for violations of BPC sections 7028, 7028.1, 7028.5, 7030.1, 7058.7, 7068.1, 7107, 7108, 7109, 7109.5, 7110, 7113, 7115, 7116, 7117.5, 7117.6, 7118.4, 7118.5, 7118.6, 7123, 7158, 7159.5(a)(1), (a)(3), and (a)(5), 7159.14, and 7161

Assembly Bill (AB) 569 (Grayson, Chapter 94, Statutes of 2021), which becomes effective January 1, 2022, enacts amendments to BPC section 7099.2. Section 7099.2(b) will provide:

Notwithstanding Section 125.9, and except as otherwise provided by [Chapter 9], 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.

Consistent with AB 569’s increase of the maximum civil penalty amount from \$5,000 to \$8,000 in BPC section 7099.2(b), this proposal would amend the maximum civil penalties in the table contained in subdivision (a) from \$5,000 to \$8,000 for the above-referenced BPC sections. This is a change without regulatory effect because it makes a regulatory provision consistent with BPC section 7099.2, and (1) the regulatory provision is inconsistent with and superseded by section 7099.2, effective January 1, 2022, and (2) the Board has no discretion to adopt a change which differs in substance from the one chosen. (Cal. Code Regs., tit. 1, § 100, subd. (a)(6).)

Subdivision (a), civil penalties for violations of BPC sections 7114, 7118, and 7125.4

This proposal would amend subdivision (a) to increase the maximum civil penalty amounts in the table from \$15,000 to \$30,000 for violations of BPC sections 7114,

7118, and 7125.4 to be consistent with amendments made to BPC section 7099.2(b). This is a change without regulatory effect because it makes a regulatory provision consistent with BPC section 7099.2, and (1) the regulatory provision is inconsistent with and superseded by section 7099.2, effective January 1, 2022, and (2) the Board has no discretion to adopt a change which differs in substance from the one chosen. (Cal. Code Regs., tit. 1, § 100, subd. (a)(6).)

Subdivision (b)

Subdivision (b)(2), addition of “State” to “Contractors License Law”

This proposal would amend subdivision (b)(2) by adding “State” to the “Contractors License Law” to accurately cite Chapter 9 of the BPC as the “Contractors State License Law” pursuant to BPC section 7000. This is a change without regulatory effect because it merely corrects a cross-reference error in citation of the statutory language. (Cal. Code Regs., tit. 1, § 100, subd. (a)(4).)

Subdivision (b)(6), capitalization of “code”

This proposal would amend subdivision (b)(6) by revising the reference to BPC section 7158 to be consistent with the style of reference for other BPC sections contained elsewhere in CSLB’s regulations. Other Title 16, Division 8 regulations refer to sections “of the Code” with a capitalized “C,” and section 810 defines “the Code” as meaning “the Business and Professions Code.” This is a change without regulatory effect because it is a change that only capitalizes a letter in the regulation. (Cal. Code Regs., tit. 1, § 100, subd. (a)(4).)

Subdivision (c)

Subdivision (c), revision of statutory maximum for civil penalties

Existing BPC section 7099.2(b) provides: “(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.”

Consistent with existing section 7099.2(b), existing section 884(c) provides: “(c) Where a citation lists more than one violation and each of the violations relates to the same construction project, the total penalty assessment in each citation shall not exceed \$5,000, except as provided for violations of Sections 7028.7, 7114, or 7118.”

Section 884 presently clarifies BPC section 7099.2 in three respects:

1. Where BPC section 7099.2(b) prescribes the maximum civil penalty of \$5,000, section 884(c) provides this is the maximum penalty even when there is more than one violation relating to a single construction project (even if each violation itself could be assessed a maximum civil penalty of \$5,000 each).
2. Where BPC section 7099.2(b) provides the \$5,000 maximum civil penalty assessment applies “except as otherwise provided by this chapter,” section 884(c) identifies for clarity the only instance in Chapter 9 of the BPC where a citation maximum is prescribed at an amount higher than \$5,000 with a reference to BPC section 7028.7, which authorizes a \$15,000 civil penalty maximum assessment.
3. Where BPC section 7099.2(b) provides CSLB may assess a maximum \$15,000 civil penalty for a violation of either BPC section 7114 or 7118, section 884(c) provides BPC sections 7114 and 7118 exist as exceptions to the \$5,000 maximum penalty that can be assessed for a citation with multiple violations relating to the same construction project that includes violations of BPC section 7114 or 7118.

AB 569 adjusts the maximum civil penalty the Board can assess pursuant to BPC section 7099.2 from \$5,000 to \$8,000 (except where other amounts are provided by the chapter). The bill adjusts the maximum penalties for violations of sections 7114, 7118, and 7125.4 to \$30,000. AB 569 adds a fourth exception to the \$8,000 maximum civil penalty with the inclusion of BPC section 7125.4 as a violation qualifying for a maximum \$30,000 penalty. This proposal would amend subdivision (c) to add the section 7125.4 to the list of violations for which the total penalty assessment in each citation shall not exceed \$30,000. This is a change without regulatory effect because it amends the regulation to be consistent with the amended penalty provision in section 7099.2(b), and (1) the regulatory provision is inconsistent with and superseded by section 7099.2, effective January 1, 2022, and (2) the Board has no discretion to adopt a change which differs in substance from the one chosen. (Cal. Code Regs., tit. 1, § 100, subd. (a)(6).)

Subdivision (c), replacement of “5” with “8,” deletion of “s” from “Sections,” addition of “in which case the total penalty assessment in each citation shall not exceed \$15,000,” and addition of a comma

The proposal would replace “5” with “8” to reflect the increase in penalty amount for the violations amended in the table from \$5,000 to 8,000 as a result of AB 569.

The proposal would delete the “s” from the end of “Sections” before BPC section 7028.7 because it will, with the proposed amendments, only refer to a singular section. This is a

change without regulatory effect because it revises structure, syntax, cross-reference, grammar, or punctuation. (Cal. Code Regs., tit. 1, § 100, subd. (a)(4).)

The proposal would also add “in which case the total penalty assessment in each citation shall not exceed \$15,000” and a comma to set forth the maximum penalty for a violation of section 7028.7 to differentiate it from the penalties applicable to sections 7114, 7118, and 7125.4. This is a change without regulatory effect because it only clarifies the existing penalty for a violation of section 7028.7 as provided in section 7028.7(c). (Cal. Code Regs., tit. 1, § 100, subd. (a).)

Subdivision (c), addition of “and for violations of Section,” relocation of “or,” addition of “7125.4,” and addition of “in which case the total penalty assessment in each citation shall not exceed \$30,000”

The proposal would add “and for violations of Section,” relocate the word “or,” and add a comma after “7118.” These changes are necessitated by the series of BPC sections listed as exceptions to the \$8,000 maximum under section 884(c). The proposal would add BPC section 7125.4 to the list of exceptions to the \$8,000 maximum amount because AB 569 added BPC section 7125.4 to the list of code violations that have a maximum civil penalty amount of \$30,000 pursuant to BPC section 7099.2(b). The proposal would also add “in which case the total penalty assessment in each citation shall not exceed \$30,000” to reflect that BPC section 7125.4 is an exception to the now \$8,000 maximum because it has a maximum civil penalty amount of \$30,000. These are changes without regulatory effect because they make a regulatory provision consistent with BPC section 7099.2, and (1) the regulatory provision is inconsistent with and superseded by section 7099.2, effective January 1, 2022, and (2) the Board has no discretion to adopt a change which differs in substance from the one chosen. (Cal. Code Regs., tit. 1, § 100, subd. (a)(6).)

Note, Authority cited, addition of “and” and comma

This proposal would amend the Note portion of section 884 by deleting the comma after “7008,” relocating the word “and,” and deleting “, and 7115” from the Authority citation because BPC section 7115 does not provide authority for the development of regulations. This is a change without regulatory effect because it changes an “authority” citation for the regulation. (Cal. Code Regs., tit. 1, § 100, subd. (a)(5).)