

Department of Consumer Affairs

CALIFORNIA ARCHITECTS BOARD

INITIAL STATEMENT OF REASONS

Hearing Date: The California Architects Board has not scheduled a hearing on the proposed changes. However, a hearing will be scheduled upon request by any interested party if the request is received no later than 15 days prior to the close of the written comment period.

Subject Matter of Proposed Regulations: Citations containing orders of abatement and/or administrative fines against architects or unlicensed persons

Sections Affected: Section 152 of Article 8 of Division 2 of Title 16 of the California Code of Regulations (CCR)¹

Background and Problem Statement

Statutory Authority: The California Architects Board (Board) enforces the Architects Practice Act and licenses individuals in California as architects. The Board's highest priority when exercising its licensing, regulatory, and disciplinary authority is the protection of the health, safety and welfare, as mandated by Business and Professions Code (BPC) section 5510.5. To ensure such protection, the Board is mandated to investigate complaints against licensees, and unlicensed individuals who violate the Architects Practice Act, thus subjecting them to the Board's jurisdiction. Moreover, the Board is statutorily authorized to promulgate regulations as may be necessary and proper. (BPC § 5526.)

Background: It is a paramount function of the Board to respond quickly and constructively to consumer complaints to discourage unlawful activities by both licensed and unlicensed individuals. In investigating complaints, the Board utilizes internal staff to resolve less serious violations. In cases where violations do not warrant formal administrative action, a citation with an administrative fine is most efficient and appropriate.

A large number of complaints received by the Board are related to unlicensed practice. Roughly 25 percent of the complaints received by the Board relate to advertising. Although CCR section 152 classifies citations based on their severity and harm, as well as the corresponding amount of an administrative fine, the violations identified as Class "A" violations apply to unlicensed individuals but are currently limited because they do not allow the Board to cite unlicensed individuals directly for violations of Bus. & Prof. Code sections 5536.1, 5536.4, 5536.5, or CCR section 134.

¹ All CCR references are to title 16 unless otherwise noted.

At any given time, nearly half of the unlicensed practice complaints received by the Board' which result in a citation almost always include a violation of CCR section 134, but the Board cannot independently cite for violations of CCR section 134(a).

CCR section 152 was adopted in November 1986 and was later revised in September 2005, when BPC section 152(c)(1) was amended to allow issuance of a citation when the executive officer determines that the violations involve an unlicensed person who has violated any provision of BPC section 5536 regarding Practice Without License or Holding Self Out as Architect. That revision did not include some of the BPC and CCR section codes that could be used to cite unlicensed individuals. By amending the current language, the Board will be able to issue citations for additional code sections that encompass the common unlawful conduct of unlicensed individuals.

At the Board's November 5, 2020, Regulatory and Enforcement Committee (REC) meeting, the REC met to discuss amendments to CCR section 152. The REC discussed the benefits of proposing to amend this section to allow the Board to cite unlicensed individuals. The REC approved forwarding a recommendation to the Board to amend CCR section 152.

At the Board's December 11, 2020 meeting, the Board voted to approve the proposed language which would amend CCR section 152 to allow the Board to issue citations for violations of BPC section 5536 in conjunction with one of the other sections (BPC sections 5536.1, 5536.4, 5536.5, and CCR section 134) (December 11, 2020 Board Meeting Minutes, p. 10.) Accordingly, the proposal would make clear the specific BPC and CCR sections that could be used to cite unlicensed individuals.

Specific Changes: Purpose, Anticipated Benefit, and Rationale:

Amend CCR Section 152 – Citations

Amend CCR section 152, subdivision (c)(1)

Purpose: CCR section 152, subdivision (c)(1), is being revised to additionally specify violations of BPC sections 5536.1 (Signature and Stamp on Plans and Documents; Unauthorized Practice; Misdemeanor), 5536.4 (Instruments of Service—Consent), 5536.5 (State of Emergency; Practice Without License or Holding Self Out as Architect; Penalty), and CCR section 134 (Use of the Term Architect; Responsible Control within Business Entity). All of these sections of the BPC and CCR encompass actions by unlicensed individuals commonly reported in the complaints received and investigated by the Board. These sections to be added each encompass slightly different violations of the practice act by unlicensed individuals.

Anticipated Benefit: The Board anticipates that consumers will benefit from the amendment, which clarifies the Board's authority to cite unlicensed persons acting in the capacity of an architect or engaged in the practice of architecture. By adding the

violations set out in BPC sections 5536.1, 5536.4, and 5536.5 and CCR section 134, the public will be better informed as to the types of conduct and exact violations that may result in the Board's citations containing orders of abatement and/or administrative fines against unlicensed individuals. Currently, there is little incentive for unlicensed individuals to pay the fines associated with their citations because the types of Class A violations in the citations do not carry a large fine.

The changes to CCR section 152 would allow the Board to issue more accurate citations since the citations will be able to include the violations or aggravating conduct and factors that are specifically outlined in these sections. For example, the citations could include any or even all of these sections, such as BPC section 5535.1 – unauthorized use of the stamp of a licensed architect ; BPC section 5536.4 unlawful use of an architect's instruments of service without consent from the architect; BPC section 5536.5 - unlicensed practice during a state of emergency, which may result in greater punishment than that under BPC 5536, alone; and CCR section 134 – unlawful use of the term architect in a business title or service description when there is no licensed architect that is in management control of the professional services offered by the business, no licensed architect owns the business, or no licensed architect is in responsible control of the business and professional services offered. A citation would be able to include all of the possible violations of the Architects Practice Act and will be more inclusive of the violations involved in a specific citation when displayed on the Enforcement Actions Summary on the Board's website. In turn, the citations issued could be for a more substantial amount of money. Sharing this information with consumers works to protect them from potential future harm. The amendment will also help the Board be able to distinguish a pattern of behavior if an unlicensed individual continues to take the same illegal actions in the future. It will make the Board's case stronger if a case needs to be referred to the District Attorney's office for further criminal charges.

Rationale: The proposal is necessary to increase consumer protection. The sections being added each encompass slightly different violations of the practice act by unlicensed individuals. BPC section 5536.1 requires that plans, specifications, and instruments of service be signed and stamped by a licensed architect, with subdivision (c) specifically mentioning that violations of section 5536.1 by unlicensed individuals can be punished as provided in Section 5536. BPC section 5536.4 states no one may use an architect's instruments of service without a written contract, agreement, or license with the architect specifically authorizing the use. BPC section 5536.5 authorizes imposition of a fine of up to ten thousand dollars and/or imprisonment for unlicensed individuals who offer to or perform architectural services without a license to repair damaged residential or nonresidential structures where the damage was caused by a natural disaster for which a state of emergency was declared. CCR section 134 states that it is unlawful for any person to use a business name that includes the terms "architect," "architecture," or "architectural," or any abbreviations or confusingly similar variations of these terms, unless that person is a business entity where an architect is in management control of the professional services that are offered and provided by that business entity and is the owner, part-owner, an officer, or employee of the entity.

Amend CCR section 152, Note

The Authority and Reference citations in the regulation's Note are being updated to show the authority to cite unlicensed individuals and the types of violations referenced which the regulation, consistent with the current references.

Underlying Data

1. November 5, 2020, Regulatory and Enforcement Committee Meeting Agenda, Relevant Meeting Materials and Meeting Minutes
2. December 11, 2020, California Architects Board Meeting Agenda; Relevant Meeting Materials and Meeting Minutes

Business Impact

The Board has made a determination that the proposed regulatory change would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

This initial determination is based on the fact that the proposed amendment to CCR section 152 would only impact a small number of unlicensed individuals who are subject to a citation for violations of BPC section 5536 and who could, under the proposed regulatory action, be also cited for violations of BPC sections 5536.1, 5536.4, 5536.5, or CCR section 134.

Economic Impact Assessment

The Board has made the initial determination that this regulatory amendment will have the following effects:

- It is not likely to create or eliminate jobs or businesses within the State of California. This initial determination is based on the fact that the proposed amendments to CCR Section 152 would only impact a small number of unlicensed individuals that are subject to citation for violations under BPC section 5536. The proposed regulations do not alter the investigative process. This amendment to CCR section 152 will only impact the way the cases are investigated and closed by the Enforcement Unit which result in violations of BPC section 5536; and with this change could now include violations of BPC sections 5536.1, 5536.4, 5536.5, and CCR section 134. Many of the unlicensed cases are already fully investigated and result in a citation. The regulatory changes will allow the Enforcement Unit Staff to issue citations with more specific violations and may result in a higher citation amount.
- It is not likely to create new business. This regulatory proposal will not create new businesses or eliminate existing businesses within the State of California because the proposed amendment will not be a burden to businesses behaving

legally nor have any impact in creating businesses. Unlicensed individuals likely will not decide to become licensed and start a small business based on this regulatory change.

- It would not likely affect the expansion of businesses currently doing business within the State of California. This initial determination is based on the fact that the proposed amendments to CCR section 152 would only impact a small number of unlicensed individuals that are subject to a citation for violations under BPC section 5536. The proposed regulation should not impact businesses behaving legally because it relates solely to unlicensed individuals violating the law. Unlicensed individuals were already subject legal action for violations of BPC section 5536. The proposed amendment is unlikely to cost unlicensed individuals enough money to have an effect on creating or eliminating businesses.
- It would benefit the health and welfare of California consumers because the proposal updates CCR section 152 to clarify the BPC and CCR sections for which the Board has the authority to issue citations, but which were not originally included in CCR section 152. This, in turn, provides increased protection to the health and welfare of the public by ensuring the Board's recommendations for citations are more accurate and may include violations of multiple sections within a citation. The citation will include all of the possible violations of the Architects Practice Act and will be more inclusive of the violations in a citation when displayed on the Enforcement Actions Summary online. This is designed to deter unlicensed activity which can be the cause of harm to the public.
- It could impact worker safety because these changes could deter an unlicensed person from stamping plans when they are not a licensed architect, resulting in safer working conditions.
- It would not have an impact on the state's environment because the proposed amendments to CCR section 152 would simply allow the Board to cite specific unlicensed practice activities and thus improve consumer protection.

Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

The Board has initially determined that no reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

Any interested person may submit comments to the Board in writing relevant to the above determinations at California Architects Board, 2420 Del Paso Road, Suite 105, Sacramento, California 95834.