

Amendment to 07-07-03

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Business and Professions Code section 22389 to read as follows:

1 §22389
2 Every invention developer rendering or offering to render invention development services in
3 this state shall maintain a bond issued by a surety company admitted to do business in this state. The
4 principal sum of the bond shall be 510 percent of the invention developer's gross income from the
5 invention development business in this state during the invention developer's last fiscal year, except
6 that the principal sum of the bond shall not be less than ~~twenty-five~~ one hundred thousand dollars (\$
7 ~~25,000~~ 100,000) in the first or any subsequent year of operations. A copy of such bond shall be
8 filed with the Secretary of State prior to the time the invention developer first commences business
9 in this state. The invention developer shall have 90 days after the end of each fiscal year within
10 which to change the bond as may be necessary to conform to the requirements of this section.

(Proposed new language underlined; language to be deleted stricken.)

RESOLUTION 7-07-03

DIGEST

Invention Development Services Contracts: Required Bond

Amends Business and Professions Code section 22389 and adds section 22389.1 to increase the invention developer’s minimum bond amount and set the bond term.

RESOLUTIONS COMMITTEE RECOMMENDATION

DISAPPROVE

History:

None known.

Reasons:

This resolution amends Business and Professions Code section 22389 and adds section 22389.1 to increase the invention developer’s minimum bond amount and set the bond term. This resolution should be disapproved because the proposed section 22389.1 conflicts with section 22389 and is otherwise ambiguous.

This resolution amends section 22389 to increase the bond amount required by an invention developer in order to do business in California from 5% to 10% of the developer’s gross income for the previous year and to increase the minimum bond amount from \$25,000 to \$100,000. Both increases are reasonable because the amounts have not been raised since 1975 and because these higher amounts will help dissuade disreputable companies from offering invention development services in California.

However, the proposed new section 22389.1 is irreparably flawed. The language is excessive in part because it places analysis into a statute that should merely set the bonding period; ambiguous in part because it does not define the date from which the two years of prior acts coverage should be judged or what “prior acts” are; and conflicts with section 22389 in part because section 22389 deals with the bond period for covering all of that invention developer’s service contract claims while section 22389.1 deals with the bond period for covering any one particular claim. This section may also be unnecessary, in light of the general bonding statutes at Code of Civil Procedure sections 995.420 and 995.430.

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Business and Professions Code section 22389 and to add Business and Professions Code section 22389.1 to read as follows:

- 1 §22389
- 2 Every invention developer rendering or offering to render invention development services in
- 3 this state shall maintain a bond issued by a surety company admitted to do business in this state. The
- 4 principal sum of the bond shall be 10 percent of the invention developer's gross income from the
- 5 invention development business in this state during the invention developer's last fiscal year, except
- 6 that the principal sum of the bond shall not be less than one hundred thousand dollars (\$100,000) in
- 7 the first or any subsequent year of operations. A copy of such bond shall be filed with the Secretary
- 8 of State prior to the time the invention developer first commences business in this state. The
- 9 invention developer shall have 90 days after the end of each fiscal year within which to change the
- 10 bond as may be necessary to conform to the requirements of this section.
- 11
- 12 §22389.1

13 (a) A customer entering into a contract with an invention developer typically contracts for
14 the services of a patent agent or attorney through the invention developer. Obtaining a patent can
15 usually exceed two years and the filing of the patent application may be more than a year after
16 entering into the contract. It is therefore necessary that the bond period cover a time from contract
17 formation to a reasonable time following issuance of a patent; i.e. 4 years.

18 (b) The bond issued by a surety shall provide coverage for a term of 4 years in addition to
19 covering prior acts of two years.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Ventura County Bar Association

STATEMENT OF REASONS

Existing Law: Does not clearly identify bond coverage and the minimum bond requirement has not been adjusted for inflation in 25 years.

This Resolution: Raises the minimum required bond from \$25,000 to \$100,000 and identifies the term of the bond as 4 years including 2 year prior acts coverage.

The Problem: The minimum bond amount has not been adjusted since 1975 and should be adjusted to account for inflation. The bond requirement, although well intentioned, is vague and open to multiple interpretation. The current minimum bond of \$25,000.00 typically costs less than \$500.00; presumably because few, if any bonds have been claimed in over twenty-five years this law has been in effect. This is not because fraudulent activity does not occur; fraudulent activity has been pervasive nationwide as evidenced by the Federal Trade Commission sting operation entitled Project Mousetrap conducted in the late 1990's. (See, www.ftc.gov/opa/1997/9707/mouse.htm.) The protection the bond affords is severely restricted because of time delays built-in to the process. A customer typically either will make a complete up-front payment or will agree to an installment payment plan. Little is done for the customer for nearly a year while appealing the customer that the work will be completed shortly. Even longer delays are built in when a patent application is filed since it usually takes the United States Patent and Trademark Office more than eighteen months to respond and the overall patenting process can take two years or longer. In the end, many customers find the work unsatisfactory. However, since a significant period of time has past, the insurance company will refuse to honor the bond because the contract was signed outside its two-year term. In order to protect the customer as has been the intent of the legislature, the bond term should be increased from two years to four years and include a two year prior acts provision. The prior acts provision would clear any confusion and would require the surety to cover any contracts which were entered into up to two years before the term of the present bond.

IMPACT STATEMENT

This resolution does not affect other law, statute or rule.

AUTHOR AND/OR PERMANENT CONTACT: Ralph D. Chabot, 2310 East Ponderosa Drive, Suite 4, Camarillo, CA 93010-4747; tel (805) 388-5028; e-mail rdc@chabotlaw.com

RESPONSIBLE FLOOR DELEGATE: Ralph D. Chabot