

Amendment to 07-08-03

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Business and Professions Code section 22391.1 to read as follows:

1 §22391.1

2 (a) The Secretary of State shall enforce the provisions of this title that govern the filing and
3 maintenance of bonds and deposits in lieu of bonds.

4 (b) The Secretary of State shall charge and collect a filing fee not to exceed the cost of filing
5 the bond or the deposit in lieu of a bond pursuant to Section 995.710 of the Code of Civil Procedure.

6 (c) The Secretary of State shall create and maintain a section on its website specifically
7 listing those invention developers in compliance with Section 22389, the date the bond was posted
8 and the date the bond is due to expire.

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

RESOLUTION 7-08-03

DIGEST

Invention Development Services Contracts: Developer's Advertising

Amends Business and Professions Code section 22391.1 and adds section 22391.2 to require the Secretary of State to list bonded invention developers on a website and to require that media outlets cease running an invention developer's advertisements upon notice that it is not properly bonded.

RESOLUTIONS COMMITTEE RECOMMENDATION

DISAPPROVE

History:

None known.

Reasons:

Amends Business and Professions Code section 22391.1 and adds section 22391.2 to require the Secretary of State to list bonded invention developers on a website and to require that media outlets cease running an invention developer's advertisements upon notice that it is not properly bonded. This resolution should be disapproved because it creates an unwarranted burden on the Secretary of State and interferes disproportionately with the rights of the media and invention developers to advertise.

This resolution amends section 22391.1 to require the Secretary of State to create a website listing invention developers who are in compliance with the bonding requirements of section 22389. It is unclear whether the financial burden of such website could be supported by the \$30.00 fee the Secretary of State currently charges invention developers who file their required annual proof of bond. (Bus. & Prof. Code § 22391.1, subd. (b); Form SFSB-409, Rev. 1/03.) The expense of maintaining this website might be very high if the amendments proposed for section 22391.2 are enacted. Clerical mistakes or even late postings could result in canceled advertisements and lost business for innocent invention developers. Without more information about the cost of the website, and given the current fiscal crisis, this burden on the Secretary appears too high.

This resolution also adds section 22391.2 to require media outlets to cease running an invention developer's advertisement upon "written notice" from any citizen that the developer has not posted the required bond. The media outlet may only resume running the advertisement once it "verifies" that the invention developer is properly bonded. This proposed new statute is excessive in part because subdivision (a) places "findings"-type language in a statute that should merely state what acts the state requires; is ambiguous in part because subdivision (b) is missing "not" at line 16 and does not define "notice" any more than that it must be in writing; and is unrealistic in part because subdivision (c) makes private media outlets into private attorney generals by requiring them to "verify" that an invention developer "is in compliance" with the bonding statute.

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 22391.1 and add Business and Professions Code section 22391.2 to read as follows:

- 1 §22391.1
- 2 (a) The Secretary of State shall enforce the provisions of this title that govern the filing and
- 3 maintenance of bonds and deposits in lieu of bonds.
- 4 (b) The Secretary of State shall charge and collect a filing fee not to exceed the cost of filing
- 5 the bond or the deposit in lieu of a bond pursuant to Section 995.710 of the Code of Civil Procedure.

6 (c) The Secretary of State shall create and maintain a section on its website specifically
7 listing those invention developers in compliance with Section 22389, the date the bond was posted
8 and the date the bond is due to expire.

9
10 §22391.2

11 (a) Some invention developers have advertised their services in this state even though they
12 have not complied with Section 22389. In order to best serve the public, the following may be used
13 by any citizen of this state to preclude illegal advertising by an invention developer.

14 (b) If a newspaper, television, or radio station located in this state runs an advertisement for
15 an invention developer who has complied with Section 22389, upon receiving written notice by any
16 citizen of this State, the advertiser shall discontinue the running of said advertisements within four
17 business days.

18 (c) If a newspaper, television, or radio station located in this State discontinues an
19 advertisement pursuant to subdivision (b), above, it may not resume the running of the advertisement
20 until it verifies that the invention developer is in compliance with Section 22389 by the posting
21 described in Section 22391.1(c).

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

PROPONENT: Ventura County Bar Association

STATEMENT OF REASONS

Existing Law: Fails to enforce the bond requirement of Section 22389 upon invention developers who do business in this state.

This Resolution: Requires the Secretary of State to create a website for listing of invention developers who have complied with Section 22389 and requires advertisers to cancel or remove any advertising of an invention developer upon proper notice and verification.

The Problem: The legislative intent for protecting the public by creation of this section has been ineffective in curbing the fraudulent business practices of some invention developers. Although Section 22389 sets forth bond requirements to be satisfied by invention developers, the Secretary of State has no enforcement mechanism to enforce this provision. Invention developers are therefore free to contract with local television, radio and newspapers to advertise their services even though they are in violation of the law. Without a bond in place, it is possible that an invention developer upon being sued could simply go out of business with any sort of recovery being speculative at best.

It is understood that it would be an undue burden for advertisers to monitor all legal requirements for each of their clients. Understanding this dilemma, this resolution attempts to balance the public's need for protection with the burden to be placed on advertisers. With the creation of the internet, access to information, particularly government information, can be readily accessed. This resolution would require the Secretary of State to maintain a website where a listing of all invention developers who have complied with the bond requirements will be posted.

Invention developers are believed to generate a significant amount of their income from advertising in newspapers and on television and radio stations in this state. Should an invention developer advertise in this state, any citizen would be able to access the Secretary of State website and determine whether that invention developer has indeed complied with Section 22389. If the invention developer has not complied, the citizen may then notify the advertiser in writing that the invention developer is in violation of Section 22389 and that the advertising should be pulled or canceled. Upon receipt of such a letter, the advertiser would have four business days to verify compliance with Section 22389. Verification would be a simple process. The advertiser would access the Secretary of State website and see for itself whether the invention developer is listed on the website. If the advertiser verifies the invention developer has not

complied with Section 22389, the advertiser would be required to discontinue the advertisement until the invention developer has complied with the law.

The minimal amount of effort required on the part an advertiser is believed to be outweighed by the benefits to the general public. The advertiser would be doing a public service in that discontinuing the advertisements will encourage the invention developer to post the necessary bond so its advertisement can resume; or if it doesn't, the public is protected from viewing advertising of a business not complying with the law.

IMPACT STATEMENT

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

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