

Introduced by Senator Ridley-ThomasFebruary 23, 2007

An act to amend Sections 7026.1 and 7028 of the Business and Professions Code, relating to contractors, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 797, as introduced, Ridley-Thomas. Contractors.

Existing law, the Contractors' State License Law, creates the Contractors' State License Board within the Department of Consumer Affairs and provides for the licensure and regulation of contractors. Existing law defines "contractor" and includes certain persons who perform tree removal, tree pruning, stump removal, and tree or limb cabling or guying, except as specified, within that definition. Existing law requires contractors to pay specified fees, which are deposited into the continuously appropriated Contractors' License Fund, and requires the deposit of fines collected under the Contractors' State License Law into the fund. Existing law, makes it a misdemeanor for any person to engage in the business or act in the capacity of a contractor without having a license, and subjects a person who violates this prohibition to specified fines and imprisonment.

This bill would also define "contractor" to include a person who offers to perform, purport to have the capacity to perform, or submits a bid to perform tree removal, tree pruning, stump removal, or tree or limb cabling or guying, except as specified. The bill would revise the penalties provisions accordingly and would apply specified penalty provisions to a person named on a revoked license and held responsible for the act or omission resulting the in the revocation. Because the bill would increase moneys deposited into the continuously appropriated

Contractors’ License Fund, the bill would make an appropriation. Because the bill would expand the definition of a contractor and thereby create new crimes, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: yes. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 7026.1 of the Business and Professions
2 Code is amended to read:

3 7026.1. The term “contractor” includes all of the following:

4 (a) Any person not exempt under Section 7053 who maintains
5 or services air-conditioning, heating, or refrigeration equipment
6 that is a fixed part of the structure to which it is attached.

7 (b) Any person, consultant to an owner-builder, firm,
8 association, organization, partnership, business trust, corporation,
9 or company, who or which undertakes, offers to undertake, purports
10 to have the capacity to undertake, or submits a bid, to construct
11 any building or home improvement project, or part thereof.

12 (c) A temporary labor service agency that, as the employer,
13 provides employees for the performance of work covered by this
14 chapter. The provisions of this subdivision shall not apply if there
15 is a properly licensed contractor who exercises supervision in
16 accordance with Section 7068.1 and who is directly responsible
17 for the final results of the work. Nothing in this subdivision shall
18 require a qualifying individual, as provided in Section 7068, to be
19 present during the supervision of work covered by this chapter. A
20 contractor requesting the services of a temporary labor service
21 agency shall provide his or her license number to that temporary
22 labor service agency.

23 (d) Any person not otherwise exempt by this chapter, who
24 performs, *offers to perform, purports to have the capacity to*
25 *perform, or submits a bid to perform* tree removal, tree pruning,
26 stump removal, or ~~engages in~~ tree or limb cabling or guying. The
27 term contractor does not include a person performing the activities

1 of a nursery person who in the normal course of routine work
2 performs incidental pruning of trees, or guying of planted trees
3 and their limbs. The term contractor does not include a gardener
4 who in the normal course of routine work performs incidental
5 pruning of trees measuring less than 15 feet in height after planting.

6 (e) Any person engaged in the business of drilling, digging,
7 boring, or otherwise constructing, deepening, repairing,
8 re-perforating, or abandoning any water well, cathodic protection
9 well, or monitoring well.

10 SEC. 2. Section 7028 of the Business and Professions Code is
11 amended to read:

12 7028. (a) It is a misdemeanor for any person to engage in the
13 business or act in the capacity of a contractor within this state
14 without having a license therefor, unless the person is particularly
15 exempted from the provisions of this chapter.

16 (b) If a person has been previously convicted of the offense
17 described in this section, unless the provisions of subdivision (c)
18 are applicable, the court shall impose a fine of 20 percent of the
19 price of the contract under which the unlicensed person performed,
20 *or offered to perform*, contracting work, or four thousand five
21 hundred dollars (\$4,500), whichever is greater, and, unless the
22 sentence prescribed in subdivision (c) is imposed, the person shall
23 be confined in a county jail for not less than 90 days, except in an
24 unusual case where the interests of justice would be served by
25 imposition of a lesser sentence or a fine. If the court imposes only
26 a fine or a jail sentence of less than 90 days for second or
27 subsequent convictions under this section, the court shall state the
28 reasons for its sentencing choice on the record.

29 (c) A third or subsequent conviction for the offense described
30 in this section is punishable by a fine of not less than four thousand
31 five hundred dollars (\$4,500) nor more than the greater amount of
32 either ten thousand dollars (\$10,000) or 20 percent of the contract
33 price under which the unlicensed person performed, *or offered to*
34 *perform*, contracting work or by imprisonment in a county jail for
35 not more than one year or less than 90 days, or by both that fine
36 and imprisonment. The penalty provided by this subdivision is
37 cumulative to the penalties available under all other laws of this
38 state.

39 (d) *A person who violates this section is subject to the penalties*
40 *prescribed in subdivision (c) if the person was named on a license*

1 *that was previously revoked and, either in fact or under law, was*
2 *held responsible for any act or omission resulting in the revocation.*

3 ~~(d)~~

4 (e) In the event the person performing the contracting work has
5 agreed to furnish materials and labor on an hourly basis, “the price
6 of the contract” for the purposes of this section means the aggregate
7 sum of the cost of materials and labor furnished and the cost of
8 completing the work to be performed.

9 ~~(e)~~

10 (f) Notwithstanding any other provision of law to the contrary,
11 an indictment for any violation of this section by the unlicensed
12 contractor shall be found or an information or complaint filed
13 within four years from the date of the contract proposal, contract,
14 completion, or abandonment of the work, whichever occurs last.

15 SEC. 3. No reimbursement is required by this act pursuant to
16 Section 6 of Article XIII B of the California Constitution because
17 the only costs that may be incurred by a local agency or school
18 district will be incurred because this act creates a new crime or
19 infraction, eliminates a crime or infraction, or changes the penalty
20 for a crime or infraction, within the meaning of Section 17556 of
21 the Government Code, or changes the definition of a crime within
22 the meaning of Section 6 of Article XIII B of the California
23 Constitution.