

**Introduced by Senator Margett**

February 21, 2008

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An act to amend Sections 7071.5, 7071.10, and 7071.11 of the Business and Professions Code, and to amend Section 116.220 of the Code of Civil Procedure, relating to contractors.

LEGISLATIVE COUNSEL'S DIGEST

SB 1432, as amended, Margett. Contractors.

~~(1) Existing law provides that specified persons, including, but not limited to, contractors, who contribute labor, skill, or services to a work of improvement, shall have a lien on the improved property. Existing law provides that where no action has been brought to enforce a claim of lien, the owner of the property or the owner of an interest therein may petition the court for a decree to release the property from the lien. Existing law permits the prevailing party to recover no more than \$2,000 in attorneys' fees.~~

~~Existing~~

~~(1) Existing law, the Contractors' State License Law, provides for licensure and regulation of contractors by the Contractors' State License Board and requires licensees to notify the registrar of contractors in writing of any unsatisfied judgment imposed on the licensee. Existing law requires that a licensee, or applicant for a license, and the qualifying individual of a licensee or applicant file or have on file a \$12,500 contractor's bond, except as specified. Existing law requires that these bonds be for the benefit of, among others, a homeowner contracting for home improvement upon the homeowner's personal family residence~~

damaged as a result of a violation of the Contractors' State License Law.

This bill would ~~instead~~ *also* require that the contractor's bond and the qualifying individual's bond be for the benefit of ~~a homeowner contracting for home improvement upon the homeowner's personal family residence, or a property owner contracting for the construction of a single-family dwelling to be retained by the owner for at least one year, who sustains financial injury~~ *is damaged* as a result of either a violation of the Contractors' State License Law ~~or the failure of a licensee to pay the lien release attorney's fees within a specified period of time if the licensee fails to notify the registrar of the judgment or fails to file or have on file a bond sufficient to pay the judgment, as specified if the dwelling is not intended or offered for sale at the time the damages were incurred.~~

(2) Existing law provides that a contractor, or a qualifying individual acting in the capacity of a contractor, shall provide a bond or deposit, as specified, for the benefit of homeowners and other persons damaged as a result of specified violations. Existing law provides that any action, other than to recover ~~wage~~ *wages* or fringe benefits, against a contractor's bond or the bond of a qualifying individual shall be brought within 2 years after the expiration of the license period during which the act or omission occurred or within 2 years of the date that the license was inactivated, canceled, or revoked, whichever first occurs. ~~In the case of a disciplinary bond, any action, other than to recover wage or fringe benefits, shall be brought within the preceding time periods or within 2 years after the last date for which the bond was required, whichever first occurs.~~

This bill would instead provide that the action, *other than to recover wages or fringe benefits*, against the contractor's bond or the bond of a qualifying individual must be brought within 2 years after the expiration of the license period during which the act or omission occurred or within 2 years of the date the license of the active licensee would have expired had the license not been inactivated, canceled, or revoked. ~~In the case of a disciplinary bond, the action shall be brought within the preceding time periods or within 2 years after the last date for which a bond was required, whichever first occurs.~~

(3) Existing law specifies that the jurisdiction of the small claims court includes various actions in which the demand does not exceed \$5,000, with specified exceptions. This jurisdiction includes (1) any action brought by a natural person against the Registrar of the

Contractors’ State License Board as the defendant guarantor if the demand does not exceed \$7,500, except as specified, (2) any action against a defendant guarantor that does not charge a fee for its guarantor or surety services, if the amount of the demand does not exceed \$2,500, and (3) any action against a defendant guarantor that charges a fee for its guarantor or surety services or an action brought by an entity other than a natural person against the Registrar of the Contractors’ State License Board as the defendant guarantor, if the amount of the demand does not exceed \$4,000.

This bill would increase the jurisdiction of the small claims court for any action brought by a natural person against a defendant guarantor that charges a fee for its guarantor or surety services from \$4,000 to ~~\$7,500~~ \$6,500.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

1 SECTION 1. Section 7071.5 of the Business and Professions  
2 Code is amended to read:  
3 7071.5. The contractor’s bond required by this article shall be  
4 executed by an admitted surety in favor of the State of California,  
5 in a form acceptable to the registrar and filed with the registrar by  
6 the licensee or applicant. The contractor’s bond shall be for the  
7 benefit of the following:  
8 (a) A homeowner contracting for home improvement upon the  
9 homeowner’s personal family residence, ~~or a property owner~~  
10 ~~contracting for the construction of a single-family dwelling to be~~  
11 ~~retained by the owner for at least one year, who sustains financial~~  
12 ~~injury as a result of either of the following:~~  
13 (1) ~~A violation of this chapter by the licensee.~~  
14 (2) ~~The failure of a licensee to pay the attorney’s fees imposed~~  
15 ~~pursuant to Section 3154 of the Civil Code within 90 days of the~~  
16 ~~final judgment ordering that payment if either of the following~~  
17 ~~applies:~~  
18 (A) ~~The licensee fails to notify the registrar of the judgment~~  
19 ~~within 90 days in accordance with subdivision (b) of Section~~  
20 ~~7071.17.~~

1 ~~(B) The licensee fails to file or have on file with the board a~~  
 2 ~~bond sufficient to guarantee payment of the judgment pursuant to~~  
 3 ~~subdivision (b) of Section 7071.17.~~

4 *damaged as a result of a violation of this chapter by the licensee.*

5 *(b) A property owner contracting for the construction of a*  
 6 *single-family dwelling who is damaged as a result of a violation*  
 7 *of this chapter by the licensee. That property owner shall only*  
 8 *recover under this subdivision if the single-family dwelling is not*  
 9 *intended for sale or offered for sale at the time the damages were*  
 10 *incurred.*

11 ~~(b)~~

12 *(c) A person damaged as a result of a willful and deliberate*  
 13 *violation of this chapter by the licensee, or by the fraud of the*  
 14 *licensee in the execution or performance of a construction contract.*

15 ~~(e)~~

16 *(d) An employee of the licensee damaged by the licensee’s*  
 17 *failure to pay wages.*

18 ~~(d)~~

19 *(e) A person or entity, including an express trust fund described*  
 20 *in Section 3111 of the Civil Code, to whom a portion of the*  
 21 *compensation of an employee of a licensee is paid by agreement*  
 22 *with that employee or the collective bargaining agent of that*  
 23 *employee, damaged as the result of the licensee’s failure to pay*  
 24 *fringe benefits for its employees, including, but not limited to,*  
 25 *employer payments described in Section 1773.1 of the Labor Code*  
 26 *and regulations thereunder (without regard to whether the work*  
 27 *was performed on a private or public work). Damage to an express*  
 28 *trust fund is limited to actual employer payments required to be*  
 29 *made on behalf of employees of the licensee, as part of the overall*  
 30 *compensation of those employees, which the licensee fails to pay.*

31 SEC. 2. Section 7071.10 of the Business and Professions Code  
 32 is amended to read:

33 7071.10. ~~(a)~~The qualifying individual’s bond required by this  
 34 article shall be executed by an admitted surety insurer in favor of  
 35 the State of California, in a form acceptable to the registrar and  
 36 filed with the registrar by the qualifying individual. *The qualifying*  
 37 *individual’s bond shall not be required in addition to the*  
 38 *contractor’s bond when the qualifying individual is himself or*  
 39 *herself the proprietor under this subdivision or a general partner*

1 *under subdivision (b) of Section 7068.* The qualifying individual's  
2 bond shall be for the benefit of the following persons:

3 (1)

4 (a) A homeowner contracting for home improvement upon the  
5 homeowner's personal family residence, ~~or a property owner~~  
6 ~~contracting for the construction of a single-family dwelling to be~~  
7 ~~retained by the owner for at least one year, who sustains financial~~  
8 ~~injury as a result of either of the following:~~

9 (A) ~~A violation of this chapter by the licensee.~~

10 (B) ~~The failure of a licensee to pay the attorney's fees imposed~~  
11 ~~pursuant to Section 3154 of the Civil Code within 90 days of the~~  
12 ~~final judgment ordering that payment if either of the following~~  
13 ~~applies:~~

14 (i) ~~The licensee fails to notify the registrar of the judgment~~  
15 ~~within 90 days in accordance with subdivision (b) of Section~~  
16 ~~7071.17.~~

17 (ii) ~~The licensee fails to file or have on file with the board a~~  
18 ~~bond sufficient to guarantee payment of the judgment pursuant to~~  
19 ~~subdivision (b) of Section 7071.17.~~

20 ~~damaged as a result of a violation of this chapter by the licensee.~~

21 (b) ~~A property owner contracting for the construction of a~~  
22 ~~single-family dwelling who is damaged as a result of a violation~~  
23 ~~of this chapter by the licensee. That property owner shall only~~  
24 ~~recover under this subdivision if the single-family dwelling is not~~  
25 ~~intended for sale or offered for sale at the time the damages were~~  
26 ~~incurred.~~

27 (2)

28 (c) A person damaged as a result of a willful and deliberate  
29 violation of this chapter by the licensee, or by the fraud of the  
30 licensee in the execution or performance of a construction contract.

31 (3)

32 (d) An employee of the licensee damaged by the licensee's  
33 failure to pay wages.

34 (4)

35 (e) A person or entity, including an express trust fund described  
36 in Section 3111 of the Civil Code, to whom a portion of the  
37 compensation of an employee of a licensee is paid by agreement  
38 with that employee or the collective bargaining agent of that  
39 employee, that is damaged as the result of the licensee's failure to  
40 pay fringe benefits for its employees including, but not limited to,

1 employer payments described in Section 1773.1 of the Labor Code  
2 and regulations adopted thereunder (without regard to whether the  
3 work was performed on a public or private work). Damage to an  
4 express trust fund is limited to employer payments required to be  
5 made on behalf of employees of the licensee, as part of the overall  
6 compensation of those employees, which the licensee fails to pay.

7 ~~(b) The qualifying individual's bond shall not be required in~~  
8 ~~addition to the contractor's bond when the qualifying individual~~  
9 ~~is himself or herself the proprietor under subdivision (a) or a~~  
10 ~~general partner under subdivision (b) of Section 7068.~~

11 SEC. 3. Section 7071.11 of the Business and Professions Code  
12 is amended to read:

13 7071.11. (a) The aggregate liability of a surety on a claim for  
14 wages and fringe benefits brought against any bond required by  
15 this article, other than a bond required by Section 7071.8, shall  
16 not exceed the sum of four thousand dollars (\$4,000). If any bond  
17 required by this article is insufficient to pay all claims in full, the  
18 sum of the bond shall be distributed to all claimants in proportion  
19 to the amount of their respective claims.

20 (b) No license may be renewed, reissued, or reinstated while  
21 any judgment or admitted claim in excess of the amount of the  
22 bond remains unsatisfied. ~~The following limitations periods apply~~  
23 ~~to bonds required by this article:~~

24 ~~(1) Any action, other than an action to recover wages or fringe~~  
25 ~~benefits, against a contractor's bond or a bond of a qualifying~~  
26 ~~individual filed by an active licensee shall be brought within two~~  
27 ~~years after the expiration of the license period during which the~~  
28 ~~act or omission occurred, or within two years of the date the license~~  
29 ~~of the active licensee would have expired had the license not been~~  
30 ~~inactivated, canceled, or revoked.~~

31 ~~(2) Any action, other than an action to recover wages or fringe~~  
32 ~~benefits, against a disciplinary bond filed by an active licensee~~  
33 ~~pursuant to Section 7071.8 shall be brought within two years after~~  
34 ~~the expiration of the license period during which the act or~~  
35 ~~omission occurred, or within two years of the date the license of~~  
36 ~~the active licensee would have expired had the license not been~~  
37 ~~inactivated, canceled, or revoked, or within two~~

38 *(c) Except for claims covered by subdivision (d), any action*  
39 *against a bond required under this article, excluding the judgment*

1 bond specified under Section 7071.17, shall be brought in  
2 accordance with the following:

3 (1) Within two years after the expiration of the license period  
4 during which the act or omission occurred. The provisions of this  
5 paragraph shall be applicable only if the license has not been  
6 inactivated, canceled, or revoked during the license period for  
7 which the bond was posted and accepted by the registrar as  
8 specified under Section 7071.7.

9 (2) If the license has been inactivated, canceled, or revoked, an  
10 action shall be brought within two years of the date the license of  
11 the active licensee would have expired had the license not been  
12 inactivated, canceled, or revoked. For the provisions of this  
13 paragraph to be applicable, the act or omission for which the  
14 action is filed must have occurred prior to the date the license was  
15 inactivated, canceled, or revoked.

16 (3) An action against a disciplinary bond filed by an active  
17 licensee pursuant to Section 7071.8 shall be brought in accordance  
18 with the provisions of paragraph (1) or (2), as applicable, or within  
19 two years after the last date for which a disciplinary bond filed  
20 pursuant to Section 7071.8 was required, whichever date is first.

21 ~~(3)~~

22 (d) A claim to recover wages or fringe benefits shall be brought  
23 within six months from the date that the wage or fringe benefit  
24 delinquencies were discovered, but in no event shall a civil action  
25 thereon be brought later than two years from the date the wage or  
26 fringe benefit contributions were due.

27 ~~(e)~~

28 (e) Whenever the surety makes payment on any claim against  
29 a bond required by this article, whether or not payment is made  
30 through a court action or otherwise, the surety shall, within 30  
31 days of the payment, provide notice to the registrar. The notice  
32 required by this subdivision shall provide the following information  
33 by declaration on a form prescribed by the registrar:

34 (1) The name and license number of the contractor.

35 (2) The surety bond number.

36 (3) The amount of payment.

37 (4) The statutory basis upon which the claim is made.

38 (5) The names of the person or persons to whom payments have  
39 been made.

1 (6) Whether or not the payments were the result of a good faith  
2 action by the surety.

3 The notice shall also clearly indicate whether or not the licensee  
4 filed a protest in accordance with this section.

5 ~~(d)~~

6 (f) Prior to the settlement of a claim through a good faith  
7 payment by the surety, a licensee shall have not less than 15 days  
8 in which to provide a written protest. This protest shall instruct  
9 the surety not to make payment from the bond on the licensee's  
10 account upon the specific grounds that the claim is opposed by the  
11 licensee, and provide the surety a specific and reasonable basis for  
12 the licensee's opposition to payment.

13 (1) Whenever a licensee files a protest in accordance with this  
14 subdivision, the board shall investigate the matter and file  
15 disciplinary action as set forth under this chapter if there is  
16 evidence that the surety has sustained a loss as the result of a good  
17 faith payment made for the purpose of mitigating any damages  
18 incurred by any person or entity covered under Section 7071.5.

19 (2) Any licensee that fails to file a protest as specified in this  
20 subdivision shall have 90 days from the date of notification by the  
21 board to submit proof of payment of the actual amount owed to  
22 the surety and, if applicable, proof of payment of any judgment or  
23 admitted claim in excess of the amount of the bond or, by operation  
24 of law, the license shall be suspended at the end of the 90 days. A  
25 license suspension pursuant to this subdivision shall be disclosed  
26 indefinitely as a failure to settle outstanding final liabilities in  
27 violation of this chapter. The disclosure specified by this  
28 subdivision shall also be applicable to all licenses covered by the  
29 provisions of subdivision ~~(d)~~ (g).

30 ~~(e)~~

31 (g) No license may be renewed, reissued, or reinstated while  
32 any surety remains unreimbursed for any loss or expense sustained  
33 on any bond issued for the licensee or for any entity of which any  
34 officer, director, member, partner, or qualifying person was an  
35 officer, director, member, partner, or qualifying person of the  
36 licensee while the licensee was subject to suspension or disciplinary  
37 action under this section.

38 ~~(f)~~

39 (h) The licensee may provide the board with a notarized copy  
40 of an accord, reached with the surety to satisfy the debt in lieu of

1 full payment. By operation of law, failure to abide by the accord  
2 shall result in the automatic suspension of any license to which  
3 this section applies. A license that is suspended for failure to abide  
4 by the accord may only be renewed or reinstated when proof of  
5 satisfaction of all debts is made.

6 ~~(g)~~

7 (i) Legal fees may not be charged against the bond by the board.

8 SEC. 4. Section 116.220 of the Code of Civil Procedure is  
9 amended to read:

10 116.220. (a) The small claims court has jurisdiction in the  
11 following actions:

12 (1) Except as provided in subdivisions (c), (e), and (f), for  
13 recovery of money, if the amount of the demand does not exceed  
14 five thousand dollars (\$5,000).

15 (2) Except as provided in subdivisions (c), (e), and (f), to enforce  
16 payment of delinquent unsecured personal property taxes in an  
17 amount not to exceed five thousand dollars (\$5,000), if the legality  
18 of the tax is not contested by the defendant.

19 (3) To issue the writ of possession authorized by Sections 1861.5  
20 and 1861.10 of the Civil Code if the amount of the demand does  
21 not exceed five thousand dollars (\$5,000).

22 (4) To confirm, correct, or vacate a fee arbitration award not  
23 exceeding five thousand dollars (\$5,000) between an attorney and  
24 client that is binding or has become binding, or to conduct a hearing  
25 de novo between an attorney and client after nonbinding arbitration  
26 of a fee dispute involving no more than five thousand dollars  
27 (\$5,000) in controversy, pursuant to Article 13 (commencing with  
28 Section 6200) of Chapter 4 of Division 3 of the Business and  
29 Professions Code.

30 (b) In any action seeking relief authorized by subdivision (a),  
31 the court may grant equitable relief in the form of rescission,  
32 restitution, reformation, and specific performance, in lieu of, or in  
33 addition to, money damages. The court may issue a conditional  
34 judgment. The court shall retain jurisdiction until full payment and  
35 performance of any judgment or order.

36 (c) Notwithstanding subdivision (a), the small claims court has  
37 jurisdiction over a defendant guarantor as follows:

38 (1) For any action brought by a natural person against a  
39 ~~defendant guarantor that charges a fee for its guarantor or surety~~  
40 ~~services or against~~ the Registrar of the Contractors' State License

1 Board as the defendant guarantor, the small claims jurisdictional  
2 limit stated in Section 116.221 shall apply.

3 (2) For any action against a defendant guarantor that does not  
4 charge a fee for its guarantor or surety services, if the amount of  
5 the demand does not exceed two thousand five hundred dollars  
6 (\$2,500).

7 (3) For any action brought by ~~an entity other than~~ a natural  
8 person against a defendant guarantor that charges a fee for its  
9 guarantor or surety services or ~~against the Registrar of the~~  
10 ~~Contractors' State License Board as the defendant guarantor~~, if  
11 the amount of the demand does not exceed ~~four thousand dollars~~  
12 ~~(\$4,000)~~ *six thousand five hundred dollars (\$6,500)*.

13 (4) *For any action brought by an entity other than a natural*  
14 *person against a defendant guarantor that charges a fee for its*  
15 *guarantor or surety services or against the Registrar of the*  
16 *Contractors' State License Board as the defendant guarantor, if*  
17 *the amount of the demand does not exceed four thousand dollars*  
18 *(\$4,000).*

19 (d) In any case in which the lack of jurisdiction is due solely to  
20 an excess in the amount of the demand, the excess may be waived,  
21 but any waiver is not operative until judgment.

22 (e) Notwithstanding subdivision (a), in any action filed by a  
23 plaintiff incarcerated in a Department of Corrections and  
24 Rehabilitation facility, the small claims court has jurisdiction over  
25 a defendant only if the plaintiff has alleged in the complaint that  
26 he or she has exhausted his or her administrative remedies against  
27 that department, including compliance with Sections 905.2 and  
28 905.4 of the Government Code. The final administrative  
29 adjudication or determination of the plaintiff's administrative claim  
30 by the department may be attached to the complaint at the time of  
31 filing in lieu of that allegation.

32 (f) In any action governed by subdivision (e), if the plaintiff  
33 fails to provide proof of compliance with the requirements of  
34 subdivision (e) at the time of trial, the judicial officer shall, at his  
35 or her discretion, either dismiss the action or continue the action  
36 to give the plaintiff an opportunity to provide that proof.

37 (g) For purposes of this section, "department" includes an  
38 employee of a department against whom a claim has been filed  
39 under this chapter arising out of his or her duties as an employee  
40 of that department.

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2 **CORRECTIONS:**  
3 **Text—Page 7.**  
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