

Senate Bill No. 1432

Passed the Senate May 8, 2008

Secretary of the Senate

Passed the Assembly June 30, 2008

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2008, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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, Margett. Contractors.

(1) Existing law, the Contractors' State License Law, provides for licensure and regulation of contractors by the Contractors' State License Board and requires a licensee 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 also require that the contractor's bond and the qualifying individual's bond be for the benefit of a property owner contracting for the construction of a single-family dwelling who is damaged as a result of a violation of the Contractors' State License Law, 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 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.

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.

(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 \$6,500.

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

SECTION 1. Section 7071.5 of the Business and Professions Code is amended to read:

7071.5. The contractor's bond required by this article shall be executed by an admitted surety in favor of the State of California, in a form acceptable to the registrar and filed with the registrar by the licensee or applicant. The contractor's bond shall be for the benefit of the following:

(a) A homeowner contracting for home improvement upon the homeowner's personal family residence damaged as a result of a violation of this chapter by the licensee.

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

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

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

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

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

7071.10. The qualifying individual's bond required by this article shall be executed by an admitted surety insurer in favor of the State of California, in a form acceptable to the registrar and filed with the registrar by the qualifying individual. The qualifying individual's bond shall not be required in addition to the contractor's bond when, as set forth under paragraph (1) of subdivision (b) of Section 7068, the individual proprietor has qualified for the license by his or her personal appearance, or the qualifier is a general partner as set forth under paragraph (2) of subdivision (b) of Section 7068. The qualifying individual's bond shall be for the benefit of the following persons:

(a) A homeowner contracting for home improvement upon the homeowner's personal family residence damaged as a result of a violation of this chapter by the licensee.

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

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

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

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

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

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

(b) No license may be renewed, reissued, or reinstated while any judgment or admitted claim in excess of the amount of the bond remains unsatisfied.

(c) Except for claims covered by subdivision (d), any action against a bond required under this article, excluding the judgment bond specified under Section 7071.17, shall be brought in accordance with the following:

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

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

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

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

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

- (1) The name and license number of the contractor.
- (2) The surety bond number.
- (3) The amount of payment.
- (4) The statutory basis upon which the claim is made.
- (5) The names of the person or persons to whom payments have been made.

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

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

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

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

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

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

(h) The licensee may provide the board with a notarized copy of an accord, reached with the surety to satisfy the debt in lieu of full payment. By operation of law, failure to abide by the accord shall result in the automatic suspension of any license to which this section applies. A license that is suspended for failure to abide by the accord may only be renewed or reinstated when proof of satisfaction of all debts is made.

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

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

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

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

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

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

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

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

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

(1) For any action brought by a natural person against the Registrar of the Contractors' State License Board as the defendant guarantor, the small claims jurisdictional limit stated in Section 116.221 shall apply.

(2) For 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 two thousand five hundred dollars (\$2,500).

(3) For any action brought by a natural person against a defendant guarantor that charges a fee for its guarantor or surety services, if the amount of the demand does not exceed six thousand five hundred dollars (\$6,500).

(4) For any action brought by an entity other than a natural person against a defendant guarantor that charges a fee for its guarantor or surety services or against the Registrar of the Contractors' State License Board as the defendant guarantor, if

the amount of the demand does not exceed four thousand dollars (\$4,000).

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

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

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

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

Approved _____, 2008

Governor