

AMENDED IN ASSEMBLY MARCH 23, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 370

Introduced by Assembly Member Eng

February 23, 2009

An act to amend Sections 7028 and 7028.16 of the Business and Professions Code, relating to contractors.

LEGISLATIVE COUNSEL'S DIGEST

AB 370, as amended, Eng. Unlicensed contractors.

Existing law, the Contractors' State License Law, provides for the licensure and regulation of contractors by the Contractors' State License Board. Existing law makes it a misdemeanor for a person to engage in the business or act in the capacity of a contractor without having a license and makes a first offense punishable by imprisonment in the county jail for no more than 6 months, or by a fine not exceeding \$1,000, or both. Existing law requires a court to impose upon a person who has been previously convicted of that offense a fine of 20% of the price of the contract, as specified, or \$4,500, whichever is greater, and imprisonment in the county jail for at least 90 days, except as specified. Existing law specifies that a 3rd or subsequent conviction is punishable by a fine of not less than \$4,500 nor more than the greater of \$10,000 or 20% of the contract price or by imprisonment in the county jail, as specified, or both, and applies those penalty provisions to a person who is named on a revoked license and is held responsible for the act or omission resulting in the revocation. Existing law requires a court to order a defendant convicted of a crime under those provisions, or under provisions related to the offering or performance of repairs caused by a natural disaster, to pay restitution to the victim, as specified.

This bill would make a first conviction punishable by a fine not exceeding \$5,000 or by imprisonment in a county jail for no more than 6 months, as specified, or both. The bill would require that the fine for a 2nd conviction be the greater of 20% of the price of the contract, 20% of the aggregate payments made to, or at the direction of, the unlicensed contractor, or \$5,000. In addition, the bill would require that a 3rd or subsequent conviction be punishable by both a fine and imprisonment in a county jail, as specified, and would require that the fine be no less than \$5,000 and no more than the greater of \$10,000, 20% of the price of the contract, or 20% of the aggregate payments made to, or at the direction of, the unlicensed contractor. By requiring 3rd or subsequent convictions to be punishable by imprisonment in a county jail, the bill would impose a state-mandated local program. Under the provisions described above, the bill would also provide that a person who used the services of an unlicensed contractor is a victim of crime, regardless of whether that person had knowledge that the contractor was unlicensed.

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: no. Fiscal committee: yes.
State-mandated local program: yes.

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

- 1 SECTION 1. Section 7028 of the Business and Professions
- 2 Code is amended to read:
- 3 7028. (a) It is a misdemeanor for a person to engage in the
- 4 business or act in the capacity of a contractor within this state
- 5 without having a license therefor, unless the person is particularly
- 6 exempted from the provisions of this chapter.
- 7 (b) A first conviction for the offense described in this section
- 8 is punishable by a fine not exceeding five thousand dollars (\$5,000)
- 9 or by imprisonment in a county jail not exceeding six months, or
- 10 by both that fine and imprisonment.
- 11 (c) If a person has been previously convicted of the offense
- 12 described in this section, unless the provisions of subdivision (d)
- 13 are applicable, the court shall impose a fine of 20 percent of the
- 14 price of the contract under which the unlicensed person performed

1 *or offered to perform* contracting work, or 20 percent of the
 2 aggregate payments made to, or at the direction of, the unlicensed
 3 contractor, or five thousand dollars (\$5,000), whichever is greater,
 4 and, unless the sentence prescribed in subdivision (d) is imposed,
 5 the person shall be confined in a county jail for not less than 90
 6 days, except in an unusual case where the interests of justice would
 7 be served by imposition of a lesser sentence or a fine. If the court
 8 imposes only a fine or a jail sentence of less than 90 days for
 9 second or subsequent convictions under this section, the court shall
 10 state the reasons for its sentencing choice on the record.

11 (d) A third or subsequent conviction for the offense described
 12 in this section is punishable by a fine of not less than five thousand
 13 dollars (\$5,000) nor more than the greater amount of ten thousand
 14 dollars (\$10,000) or 20 percent of the contract price under which
 15 the unlicensed person performed *or offered to perform* contracting
 16 work, or 20 percent of the aggregate payments made to, or at the
 17 direction of, the unlicensed contractor, and by imprisonment in a
 18 county jail for not more than one year or less than 90 days. The
 19 penalty provided by this subdivision is cumulative to the penalties
 20 available under all other laws of this state.

21 (e) A person who violates this section is subject to the penalties
 22 prescribed in subdivision (d) if the person was named on a license
 23 that was previously revoked and, either in fact or under law, was
 24 held responsible for any act or omission resulting in the revocation.

25 (f) If the person performing *or offering to perform* the
 26 contracting work has agreed to furnish materials and labor on an
 27 hourly basis, “the price of the contract” for the purposes of this
 28 section means the aggregate sum of the cost of materials and labor
 29 furnished, *or to be furnished*, and the cost of completing the work
 30 to be performed.

31 (g) Notwithstanding any other provision of law, an indictment
 32 for any violation of this section by the unlicensed contractor shall
 33 be found or an information or complaint filed within four years
 34 from the date of the contract proposal, contract, completion, or
 35 abandonment of the work, whichever occurs last.

36 (h) For any conviction under this section, a person who utilized
 37 the services of the unlicensed contractor is a victim of crime
 38 regardless of whether that person had knowledge that the contractor
 39 was unlicensed.

1 SEC. 2. Section 7028.16 of the Business and Professions Code
2 is amended to read:

3 7028.16. A person who engages in the business or acts in the
4 capacity of a contractor, without having a license therefor, in
5 connection with the offer or performance of repairs to a residential
6 or nonresidential structure for damage caused by a natural disaster
7 for which a state of emergency is proclaimed by the Governor
8 pursuant to Section 8625 of the Government Code, or for which
9 an emergency or major disaster is declared by the President of the
10 United States, shall be punished by a fine up to ten thousand dollars
11 (\$10,000), or by imprisonment in the state prison for 16 months,
12 or for two or three years, or by both that fine and imprisonment,
13 or by a fine up to one thousand dollars (\$1,000), or by
14 imprisonment in the county jail not exceeding one year, or by both
15 that fine and imprisonment. In addition, a person who utilized the
16 services of the unlicensed contractor is a victim of crime regardless
17 of whether that person had knowledge that the contractor was
18 unlicensed.

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