

AMENDED IN SENATE JUNE 29, 2009

AMENDED IN ASSEMBLY MARCH 23, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 370

Introduced by Assembly Member Eng

(Coauthors: Assembly Members Blumenfield, Huffman, and Nestande)

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~~ *price*, 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~~ *price*, 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 *and eligible for restitution for economic losses*, 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.

1 (c) If a person has been previously convicted of the offense
2 described in this section, unless the provisions of subdivision (d)
3 are applicable, the court shall impose a fine of 20 percent of the
4 ~~price of the contract under which the unlicensed person performed~~
5 ~~or offered to perform contracting work~~ *contract price*, or 20 percent
6 of the aggregate payments made to, or at the direction of, the
7 unlicensed contractor, or five thousand dollars (\$5,000), whichever
8 is greater, and, unless the sentence prescribed in subdivision (d)
9 is imposed, the person shall be confined in a county jail for not
10 less than 90 days, except in an unusual case where the interests of
11 justice would be served by imposition of a lesser sentence or a
12 fine. If the court imposes only a fine or a jail sentence of less than
13 90 days for second or subsequent convictions under this section,
14 the court shall state the reasons for its sentencing choice on the
15 record.

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

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

30 (f) If the person ~~performing or offering to perform the~~
31 ~~contracting work~~ *engaging in the business of or acting in the*
32 *capacity of an unlicensed contractor* has agreed to furnish materials
33 and labor on an hourly basis, “~~the price of the contract~~” *contract*
34 *price*” for the purposes of this section means the aggregate sum
35 of the cost of materials and labor furnished, ~~or to be furnished~~, and
36 the cost of completing the work to be performed.

37 (g) Notwithstanding any other provision of law, an indictment
38 for any violation of this section by the unlicensed contractor shall
39 be found or an information or complaint filed within four years

1 from the date of the contract proposal, contract, completion, or
2 abandonment of the work, whichever occurs last.

3 (h) For any conviction under this section, a person who utilized
4 the services of the unlicensed contractor is a victim of crime *and*
5 *is eligible, pursuant to subdivision (f) of Section 1202.4 of the*
6 *Penal Code, for restitution for economic losses*, regardless of
7 whether that person had knowledge that the contractor was
8 unlicensed.

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

11 7028.16. A person who engages in the business or acts in the
12 capacity of a contractor, without having a license therefor, in
13 connection with the offer or performance of repairs to a residential
14 or nonresidential structure for damage caused by a natural disaster
15 for which a state of emergency is proclaimed by the Governor
16 pursuant to Section 8625 of the Government Code, or for which
17 an emergency or major disaster is declared by the President of the
18 United States, shall be punished by a fine up to ten thousand dollars
19 (\$10,000), or by imprisonment in the state prison for 16 months,
20 or for two or three years, or by both that fine and imprisonment,
21 or by a fine up to one thousand dollars (\$1,000), or by
22 imprisonment in the county jail not exceeding one year, or by both
23 that fine and imprisonment. In addition, a person who utilized the
24 services of the unlicensed contractor is a victim of crime regardless
25 of whether that person had knowledge that the contractor was
26 unlicensed.

27 SEC. 3. No reimbursement is required by this act pursuant to
28 Section 6 of Article XIII B of the California Constitution because
29 the only costs that may be incurred by a local agency or school
30 district will be incurred because this act creates a new crime or
31 infraction, eliminates a crime or infraction, or changes the penalty
32 for a crime or infraction, within the meaning of Section 17556 of
33 the Government Code, or changes the definition of a crime within
34 the meaning of Section 6 of Article XIII B of the California
35 Constitution.