

ASSEMBLY BILL

No. 249

Introduced by Assembly Member Bill Berryhill

February 3, 2011

An act to amend Section 7031 of the Business and Professions Code, relating to contractors.

LEGISLATIVE COUNSEL'S DIGEST

AB 249, as introduced, Bill Berryhill. 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 authorizes a person who utilizes an unlicensed contractor to bring an action in any court of competent jurisdiction in this state for recovery of all compensation paid to the unlicensed contractor for performance of any act or contract.

This bill would, instead, authorize a person who utilizes the services of an unlicensed contractor for the construction or improvement of residential property, as specified, to bring an action in any court of competent jurisdiction in this state to recover all compensation paid to the contractor for performance of any act or contract during the time the contractor was not properly licensed.

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 7031 of the Business and Professions
- 2 Code is amended to read:

1 7031. (a) Except as provided in subdivision (e), no person
 2 engaged in the business or acting in the capacity of a contractor;
 3 may bring or maintain any action, or recover in law or equity in
 4 any action, in any court of this state for the collection of
 5 compensation for the performance of any act or contract where a
 6 license is required by this chapter without alleging that he or she
 7 was a duly licensed contractor at all times during the performance
 8 of that act or contract, regardless of the merits of the cause of action
 9 brought by the person, except that this prohibition shall not apply
 10 to contractors who are each individually licensed under this chapter
 11 but who fail to comply with Section 7029.

12 (b) Except as provided in subdivision (e), a person who utilizes
 13 the services of an unlicensed contractor *for the construction or*
 14 *improvement of residential property consisting of one to four units*
 15 may bring an action in any court of competent jurisdiction in this
 16 state to recover all compensation paid to the ~~unlicensed~~ contractor
 17 for performance of any act or contract *during the time the*
 18 *contractor was not properly licensed.*

19 (c) A security interest taken to secure any payment for the
 20 performance of any act or contract for which a license is required
 21 by this chapter is unenforceable if the person performing the act
 22 or contract was not a duly licensed contractor at all times during
 23 the performance of the act or contract.

24 (d) If licensure or proper licensure is controverted, then proof
 25 of licensure pursuant to this section shall be made by production
 26 of a verified certificate of licensure from the Contractors' State
 27 License Board which establishes that the individual or entity
 28 bringing the action was duly licensed in the proper classification
 29 of contractors at all times during the performance of any act or
 30 contract covered by the action. Nothing in this subdivision shall
 31 require any person or entity controverting licensure or proper
 32 licensure to produce a verified certificate. When licensure or proper
 33 licensure is controverted, the burden of proof to establish licensure
 34 or proper licensure shall be on the licensee.

35 (e) The judicial doctrine of substantial compliance shall not
 36 apply under this section where the person who engaged in the
 37 business or acted in the capacity of a contractor has never been a
 38 duly licensed contractor in this state. However, notwithstanding
 39 subdivision (b) of Section 143, the court may determine that there
 40 has been substantial compliance with licensure requirements under

1 this section if it is shown at an evidentiary hearing that the person
2 who engaged in the business or acted in the capacity of a contractor
3 (1) had been duly licensed as a contractor in this state prior to the
4 performance of the act or contract, (2) acted reasonably and in
5 good faith to maintain proper licensure, (3) did not know or
6 reasonably should not have known that he or she was not duly
7 licensed when performance of the act or contract commenced, and
8 (4) acted promptly and in good faith to reinstate his or her license
9 upon learning it was invalid.

10 (f) The exceptions to the prohibition against the application of
11 the judicial doctrine of substantial compliance found in subdivision
12 (e) shall apply to all contracts entered into on or after January 1,
13 1992, and to all actions or arbitrations arising therefrom, except
14 that the amendments to subdivisions (e) and (f) enacted during the
15 1994 portion of the 1993–94 Regular Session of the Legislature
16 shall not apply to either of the following:

17 (1) Any legal action or arbitration commenced prior to January
18 1, 1995, regardless of the date on which the parties entered into
19 the contract.

20 (2) Any legal action or arbitration commenced on or after
21 January 1, 1995, if the legal action or arbitration was commenced
22 prior to January 1, 1995, and was subsequently dismissed.