

AMENDED IN ASSEMBLY APRIL 4, 2011
AMENDED IN ASSEMBLY MARCH 15, 2011
CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

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 amended, 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 limit the action for recovery of compensation paid to services for the construction or improvement of residential property, as specified. It would also authorize a person who utilizes the services of ~~an unlicensed~~ a contractor for the construction or improvement of property other than specified residential property 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:

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

14 (b) Except as provided in subdivision (e):

15 (1) A person ~~who~~ *that* utilizes the services of an unlicensed
 16 contractor for the construction or improvement of residential
 17 property consisting of one to four units may bring an action in any
 18 court of competent jurisdiction in this state to recover all
 19 compensation paid to the contractor for performance of any act or
 20 contract.

21 (2) A person ~~who~~ *that* utilizes the services of ~~an unlicensed a~~
 22 contractor for ~~any~~ *the* construction or improvement of property
 23 other than residential property consisting of one to four units may
 24 bring an action in any court of competent jurisdiction in this state
 25 to recover all compensation paid to the contractor for performance
 26 of any act or contract ~~during the time the contractor was not~~
 27 ~~properly licensed;~~ *that occurred at anytime during which the*
 28 *contractor did not possess a renewable license in accordance with*
 29 *this chapter, or during which the contractor's license was under*
 30 *suspension or expired.*

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

36 (d) If licensure or proper licensure is controverted, then proof
 37 of licensure pursuant to this section shall be made by production
 38 of a verified certificate of licensure from the Contractors' State

1 License Board which establishes that the individual or entity
2 bringing the action was duly licensed in the proper classification
3 of contractors at all times during the performance of any act or
4 contract covered by the action. Nothing in this subdivision shall
5 require any person or entity controverting licensure or proper
6 licensure to produce a verified certificate. When licensure or proper
7 licensure is controverted, the burden of proof to establish licensure
8 or proper licensure shall be on the licensee.

9 (e) The judicial doctrine of substantial compliance shall not
10 apply under this section where the person who engaged in the
11 business or acted in the capacity of a contractor has never been a
12 duly licensed contractor in this state. However, notwithstanding
13 subdivision (b) of Section 143, the court may determine that there
14 has been substantial compliance with licensure requirements under
15 this section if it is shown at an evidentiary hearing that the person
16 who engaged in the business or acted in the capacity of a contractor
17 (1) had been duly licensed as a contractor in this state prior to the
18 performance of the act or contract, (2) acted reasonably and in
19 good faith to maintain proper licensure, (3) did not know or
20 reasonably should not have known that he or she was not duly
21 licensed when performance of the act or contract commenced, and
22 (4) acted promptly and in good faith to reinstate his or her license
23 upon learning it was invalid.

24 (f) The exceptions to the prohibition against the application of
25 the judicial doctrine of substantial compliance found in subdivision
26 (e) shall apply to all contracts entered into on or after January 1,
27 1992, and to all actions or arbitrations arising therefrom, except
28 that the amendments to subdivisions (e) and (f) enacted during the
29 1994 portion of the 1993–94 Regular Session of the Legislature
30 shall not apply to either of the following:

31 (1) Any legal action or arbitration commenced prior to January
32 1, 1995, regardless of the date on which the parties entered into
33 the contract.

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

O