

AMENDED IN ASSEMBLY AUGUST 22, 2011

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 prohibits a person, acting as a contractor, from bringing an action to collect compensation for performance of any act or contract requiring a license without alleging that he or she was licensed at all times during the performance of the act or contract, except as specified.* 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~~ *authorize a person who utilizes those services for the construction or improvement of residential property, as specified, to recover 2 times the amount of compensation paid for work performed during periods when the contractor was not duly licensed.* It would also authorize a

person who utilizes the services of 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. *The bill would authorize a contractor who was duly licensed with respect to a portion of work performed, as specified, to bring an action to recover compensation for that portion of the work. The bill would state the intent of the Legislature in this regard.*

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)~~ *subdivisions*
 4 *(e), (g), and (h)*, no person engaged in the business or acting in the
 5 capacity of a contractor may bring or maintain any action, or
 6 recover in law or equity in any action, in any court of this state for
 7 the collection of compensation for the performance of any act or
 8 contract where a license is required by this chapter without alleging
 9 that he or she was a duly licensed contractor at all times during
 10 the performance of that act or contract, regardless of the merits of
 11 the cause of action brought by the person, except that this
 12 prohibition shall not apply to contractors who are each individually
 13 licensed under this chapter but who fail to comply with Section
 14 7029.
 15 (b) Except as provided in ~~subdivision (e)~~ *subdivisions (e), (g),*
 16 *and (h)*:
 17 (1) A person that utilizes the services of an unlicensed contractor
 18 for the construction or improvement of residential property
 19 consisting of one to four units may bring an action in any court of
 20 competent jurisdiction in this state to recover ~~all~~ *two times the*
 21 *amount of any* compensation paid to the contractor for performance
 22 of any act or contract.
 23 (2) A person that utilizes the services of a contractor for the
 24 construction or improvement of property other than residential
 25 property consisting of one to four units may bring an action in any
 26 court of competent jurisdiction in this state to recover all

1 compensation paid to the contractor for performance of any act or
2 contract that occurred at anytime during which the contractor did
3 not possess a renewable license in accordance with this chapter,
4 or during which the contractor's license was under suspension or
5 expired.

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

11 (d) If licensure or proper licensure is controverted, then proof
12 of licensure pursuant to this section shall be made by production
13 of a verified certificate of licensure from the Contractors' State
14 License Board which establishes that the individual or entity
15 bringing the action was duly licensed in the proper classification
16 of contractors at all times during the performance of any act or
17 contract covered by the action. Nothing in this subdivision shall
18 require any person or entity controverting licensure or proper
19 licensure to produce a verified certificate. When licensure or proper
20 licensure is controverted, the burden of proof to establish licensure
21 or proper licensure shall be on the licensee.

22 (e) The judicial doctrine of substantial compliance shall not
23 apply under this section where the person who engaged in the
24 business or acted in the capacity of a contractor has never been a
25 duly licensed contractor in this state. However, notwithstanding
26 subdivision (b) of Section 143, the court may determine that there
27 has been substantial compliance with licensure requirements under
28 this section if it is shown at an evidentiary hearing that the person
29 who engaged in the business or acted in the capacity of a contractor
30 (1) had been duly licensed as a contractor in this state prior to the
31 performance of the act or contract, (2) acted reasonably and in
32 good faith to maintain proper licensure, (3) did not know or
33 reasonably should not have known that he or she was not duly
34 licensed when performance of the act or contract commenced, and
35 (4) acted promptly and in good faith to reinstate his or her license
36 upon learning it was invalid.

37 (f) The exceptions to the prohibition against the application of
38 the judicial doctrine of substantial compliance found in subdivision
39 (e) shall apply to all contracts entered into on or after January 1,
40 1992, and to all actions or arbitrations arising therefrom, except

1 that the amendments to subdivisions (e) and (f) enacted during the
2 1994 portion of the 1993–94 Regular Session of the Legislature
3 shall not apply to either of the following:

4 (1) Any legal action or arbitration commenced prior to January
5 1, 1995, regardless of the date on which the parties entered into
6 the contract.

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

10 (g) *If the contractor was duly licensed upon commencement of*
11 *an act or contract and reinstated a lapsed or suspended license*
12 *prior to completion of the act or contract, the contractor may bring*
13 *or maintain an action limited to recovery of compensation payable*
14 *for any portion of the work performed during periods when the*
15 *contractor was duly licensed. Any action authorized by subdivision*
16 *(b) may seek recovery of compensation previously paid to the*
17 *contractor only for that portion of the work performed during*
18 *periods when the contractor was not duly licensed.*

19 (h) *If the contractor was licensed during the performance of*
20 *the act or contract but contracted for or performed work outside*
21 *of his or her license classification, the contractor may bring or*
22 *maintain an action limited to recovery of compensation payable*
23 *for that portion of the work performed within the scope of work*
24 *authorized by his or her license classification. Any action*
25 *authorized by subdivision (b) may seek recovery of compensation*
26 *previously paid to the contractor for that portion of the work*
27 *performed that is not within the scope of work authorized by the*
28 *contractor’s license classification.*

29 SEC. 2. *It is the intent of the Legislature that amendments to*
30 *Section 7031 of the Business and Professions Code made by this*
31 *act shall affect only the rights of the parties to a contract to bring*
32 *a civil action under that section to recover compensation paid or*
33 *payable in connection with a work of improvement. This act shall*
34 *not be construed to limit or modify any civil action authorized to*
35 *be brought by the registrar of the Contractors’ State License Board*
36 *or other law enforcement agency to enforce any provision of the*
37 *Contractors’ State License Law.*

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