

AMENDED IN ASSEMBLY APRIL 24, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 993

Introduced by Assembly Member Linder

February 22, 2013

An act to amend Section 7085.5 of the Business and Professions Code, relating to contractors.

LEGISLATIVE COUNSEL'S DIGEST

AB 993, as amended, Linder. Contractors: arbitration.

The Contractors' State License Law provides for licensing and regulation of contractors by the Contractors' State License Board. Existing law establishes an arbitration process administered by the board to resolve disputes between contractors and consumers. Existing law requires that if a dispute goes to arbitration, the arbitrator or arbitrator association be approved by the board.

Existing law imposes certain duties and requirements on private arbitration companies that conduct arbitration proceedings, including, among other things, a prohibition against administering a consumer arbitration if the company has a financial interest in any party or attorney for a party to the proceedings, as specified.

The bill would apply these provisions to an appointed arbitration association handling disputes between consumers and contractors, as specified.

Existing law prohibits a person from serving as an arbitrator for contractor complaints in which that person has any financial or personal interest in the result of the arbitration.

This bill would require a prospective arbitrator to comply with certain disclosure requirements prior to accepting an appointment as an

arbitrator and would specify grounds upon which an arbitrator may be disqualified.

Existing law authorizes an arbitrator to grant any remedy or relief deemed just and equitable and within the scope of the board's referral to the arbitrator and the requirements of the board, including costs and expenses.

This bill would prohibit the arbitrator from awarding specific performance of any project, and from making a determination relative to any remedy not expressly authorized under these provisions, including attorney's fees, monetary damages for personal injury, and punitive damages; but would authorize the release of a mechanics lien or the return of tools or materials. The bill would also provide that a party that submits a dispute to arbitration waives any right to recover attorney's fees or to challenge an arbitrator's award of attorney's fees in a civil action related to the dispute.

Existing law requires the board or appointed arbitration association to provide the parties with a list of the times, dates, and locations of the hearing to be held, and requires the parties to notify the arbitrator of the convenient times and dates. A record is not required to be taken of the hearing proceedings.

This bill would delete the requirement to notify the arbitrator of the convenient times and dates of the hearing; instead require the parties to notify the arbitrator of times, dates, and locations convenient to each party, as specified, and require the arbitrator to fix the time, place, and location of the hearing after considering the responses of the parties. The bill would require a party making a recording of a hearing to supply the recording to the arbitrator at the party's expense.

Existing law provides that any person having a direct interest in the arbitration is entitled to attend the hearing, but that it shall be discretionary with the arbitrator to determine the propriety of the attendance of any other person.

This bill would provide that the arbitrator shall not exclude any other person from attendance at the hearing without good cause, consistent with the public nature of the proceeding.

Existing law authorizes the hearing to be reopened on the arbitrator's own motion, and provides that service of any papers or process in connection with these proceedings shall be by personal service or by regular mail on a party at the last known address.

This bill would authorize the hearing to be reopened on the arbitrator's motion prior to the rendering of an award, and would provide that

service by first class mail is complete upon deposit into specified mail receptacles.

Existing law requires the registrar of contractors to advise the parties that names of industry experts may be obtained by requesting this information from the registrar.

This bill would ~~delete this requirement.~~ *instead require the arbitrator to advise the parties that the names of industry experts may be obtained by requesting this information from the registrar.*

The bill would make other related changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

1 SECTION 1. Section 7085.5 of the Business and Professions
2 Code is amended to read:

3 7085.5. Arbitrations of disputes arising out of cases filed with
4 or by the board shall be conducted in accordance with the following
5 rules:

6 (a) All “agreements to arbitrate” shall include the names,
7 addresses, and telephone numbers of the parties to the dispute, the
8 issue in dispute, and the amount of monetary damages sought.
9 ~~Except for the release of a mechanics lien or the return of tools or~~
10 ~~materials, monetary damages are the only remedy available~~
11 ~~pursuant to this article.~~ The arbitrator shall not order or provide
12 for the specific performance of any project, including, but not
13 limited to, the completion of work, repairs, or ~~corrections.~~
14 *corrections, but may order the release of a mechanics lien or the*
15 *return of tools or materials.* The appropriate fee for arbitration
16 services shall be paid to the appointed arbitration association by
17 the board from the Contractors’ License Fund. *The appointed*
18 *arbitration association shall comply with all of the duties and*
19 *requirements applicable to private arbitration companies pursuant*
20 *to Title 9 (commencing with Section 1280) of Part 3 of the Code*
21 *of Civil Procedure.*

22 (b) (1) The board or appointed arbitration association shall
23 appoint an arbitrator in the following manner: immediately after
24 the filing of the agreement to arbitrate, the board or appointed
25 arbitration association shall submit simultaneously to each party
26 to the dispute, an identical list of names of persons chosen from

1 the panel. Each party to the dispute shall have seven days from
2 the mailing date in which to cross off any names to which it objects,
3 number the remaining names to indicate the order of preference,
4 and return the list to the board or appointed arbitration association.
5 If a party does not return the list within the time specified, all
6 persons named in the list are acceptable. From among the persons
7 who have been approved on both lists, and in accordance with the
8 designated order of mutual preference, the board or appointed
9 arbitration association shall appoint an arbitrator to serve. If the
10 parties fail to agree on any of the parties named, if acceptable
11 arbitrators are unable to act, or if, for any other reason, the
12 appointment cannot be made from the submitted lists, the board
13 or appointed arbitration association shall have the power to make
14 the appointment from among other members of the panel without
15 the submission of any additional lists. Each dispute shall be heard
16 and determined by one arbitrator unless the board or appointed
17 arbitration association, in its discretion, directs that a greater
18 number of arbitrators be appointed.

19 (2) In all cases in which a complaint has been referred to
20 arbitration pursuant to subdivision (b) of Section 7085, the board
21 or the appointed arbitration association shall have the power to
22 appoint an arbitrator to hear the matter.

23 (3) The board shall adopt regulations setting minimum
24 qualification standards for listed arbitrators based upon relevant
25 training, experience, and performance.

26 (c) A person shall not serve as an arbitrator in any arbitration
27 in which that person has any financial or personal interest in the
28 result of the arbitration. Prior to accepting an appointment, the
29 prospective arbitrator shall ~~disclose to the appointed arbitration~~
30 ~~association any circumstances likely to prevent a prompt hearing~~
31 ~~or to create a presumption of bias. Upon receipt of that information,~~
32 ~~the board or appointed arbitration association shall immediately~~
33 ~~replace the arbitrator or communicate the information to the parties~~
34 ~~for their comments. Thereafter, the board or appointed arbitration~~
35 ~~association shall determine whether the arbitrator should be~~
36 ~~disqualified and shall inform the parties of its decision, which shall~~
37 ~~be conclusive. comply with Sections 1281.9 and 1281.95 of the~~
38 ~~Code of Civil Procedure. An arbitrator shall be subject to~~
39 ~~disqualification pursuant to Sections 1291.91 and 1281.95 of the~~
40 ~~Code of Civil Procedure.~~

1 (d) The board or appointed arbitration association may appoint
2 another arbitrator if a vacancy occurs, or if an appointed arbitrator
3 is unable to serve in a timely manner.

4 (e) ~~(1)~~The board or appointed arbitration association shall
5 provide the parties with *a list* of the times, dates, and locations of
6 the hearing to be held. *The parties shall notify the arbitrator of*
7 *the times, dates, and locations convenient to each party within*
8 *seven calendar days of the mailing of the list. The arbitrator shall*
9 *fix the time, date, and location of the hearing after considering*
10 *the responses of the parties. Any party that fails to respond to the*
11 *arbitrator within the seven-day period waives any objection to the*
12 *time, date, and location of the hearing.* An arbitrator may, at the
13 arbitrator's sole discretion, make an inspection of the construction
14 site ~~which~~ *that* is the subject of the arbitration. The arbitrator shall
15 notify the parties of the time and date set for the inspection. Any
16 party who so desires may be present at the inspection.

17 ~~(2)~~The board or appointed arbitration association shall fix the
18 time, date, and location of the hearing for all cases referred to
19 arbitration pursuant to subdivision (b) of Section 7085. An
20 arbitrator may, at the arbitrator's sole discretion, make an
21 inspection of the construction site that is the subject of the
22 arbitration. The arbitrator shall notify the parties of the time and
23 date set for the inspection. Any party who desires may be present
24 at the inspection.

25 (f) A person having a direct interest in the arbitration is entitled
26 to attend the hearing. The arbitrator ~~shall otherwise have the power~~
27 ~~to require the exclusion of~~ *may exclude* any witness, other than a
28 party or other essential person, during the testimony of any other
29 witness. ~~It is in the discretion of the arbitrator to determine the~~
30 ~~propriety of the attendance of any other person.~~ *The arbitrator*
31 *shall not exclude any other person from attendance at the hearing*
32 *without good cause, consistent with the public nature of the*
33 *proceeding.*

34 (g) A hearing shall be adjourned by the arbitrator *only* for good
35 cause.

36 (h) A record is not required to be taken of the proceedings.
37 However, any party to the proceeding may have a record made at
38 its own expense. A party making a recording of a hearing shall
39 supply the recording to the arbitrator at the party's own expense.
40 The parties may make appropriate notes of the proceedings.

1 (i) The hearing shall be conducted by the arbitrator in any
2 manner that will permit full and expeditious presentation of the
3 case by both parties. Consistent with the expedited nature of
4 arbitration, the arbitrator shall establish the extent of, and schedule
5 for, the production of relevant documents and other information,
6 the identification of any witnesses to be called, and a schedule for
7 any hearings to elicit facts solely within the knowledge of one
8 party. The complaining party shall present its claims, proofs, and
9 witnesses, who shall submit to questions or other examination.
10 The defending party shall then present its defenses, proofs, and
11 witnesses, who shall submit to questions or other examination.
12 The arbitrator has discretion to vary this procedure, but shall afford
13 full and equal opportunity to the parties for the presentation of any
14 material or relevant proofs.

15 (j) The arbitration may proceed in the absence of any party who,
16 after due notice, fails to be present. The arbitrator shall require the
17 attending party to submit supporting evidence in order to make an
18 award. An award for the attending party shall not be based solely
19 on the fact that the other party has failed to appear at the arbitration
20 hearing.

21 (k) The arbitrator shall be the sole judge of the relevancy and
22 materiality of the evidence offered, and conformity to legal rules
23 of evidence shall not be required.

24 (l) The arbitrator may receive and consider documentary
25 evidence. Documents to be considered by the arbitrator may be
26 submitted prior to the hearing. However, a copy shall be
27 simultaneously transmitted to all other parties and to the board or
28 appointed arbitration association for transmittal to the arbitrator
29 or board appointed arbitrator.

30 (m) The arbitrator shall specifically inquire of the parties
31 whether they have any further proofs to offer or witnesses to be
32 heard. Upon receiving negative replies, the arbitrator shall declare
33 the hearing closed and minutes thereof shall be recorded. If briefs
34 are to be filed, the hearing shall be declared closed as of the final
35 date set by the arbitrator for the receipt of briefs. If documents are
36 to be filed as requested by the arbitrator and the date set for their
37 receipt is later than that set for the receipt of briefs, the later date
38 shall be the date of closing the hearing. The time limit within which
39 the arbitrator is required to make the award shall commence to

1 run, in the absence of other agreements by the parties, upon the
2 closing of the hearing.

3 (n) The hearing may be reopened on the arbitrator's own motion
4 prior to the rendering of an award.

5 (o) A party who proceeds with the arbitration after knowledge
6 that any provision or requirement of these rules has not been
7 complied with, and who fails to state his or her objections to the
8 arbitrator in writing, within 10 calendar days of close of the
9 hearing, shall be deemed to have waived his or her right to object.

10 (p) (1) Except as provided in paragraph (2), any papers or
11 process necessary or proper for the initiation or continuation of an
12 arbitration under these rules, and for any court action in connection
13 therewith, or for the entry of judgment on an award made
14 thereunder, may be served upon a party by first-class mail
15 addressed to that party or his or her attorney at the party's last
16 known address, or by personal service. Service by first-class mail
17 is complete upon deposit in a post office, mailbox, subpost office,
18 substation, or mail chute, or other like facility regularly maintained
19 by the United States Postal Service in a sealed addressed envelope,
20 with postage paid.

21 (2) Notwithstanding paragraph (1), in all cases referred to
22 arbitration pursuant to subdivision (b) of Section 7085 in which
23 the contractor fails or refuses to return an executed copy of the
24 notice to arbitrate within the time specified, any papers or process
25 specified in paragraph (1) to be sent to the contractor, including
26 the notice of hearing, shall be mailed by certified mail to the
27 contractor's address of record.

28 (q) The award shall be made promptly by the arbitrator. Unless
29 otherwise agreed by the parties, the award shall be made no later
30 than 30 calendar days from the date of closing the hearing, from
31 closing a reopened hearing, or if oral hearing has been waived,
32 from the date of transmitting the final statements and proofs to the
33 arbitrator.

34 The arbitrator may for good cause extend any period of time
35 established by these rules, except the time for making the award.
36 The arbitrator shall notify the parties of any extension and the
37 reason therefor.

38 (r) (1) The arbitrator may grant any remedy or relief ~~authorized~~
39 ~~pursuant to this section~~ that the arbitrator deems just and equitable
40 ~~, and that is~~ *and* within the scope of the board's referral and the

1 requirements of the board. The arbitrator, in his or her sole
 2 discretion, may award costs or ~~expenses, but shall not award~~
 3 ~~specific performance of any project or make a determination~~
 4 ~~relative to any remedy not expressly authorized under this article,~~
 5 ~~including, but not limited to, attorney’s fees, monetary damages~~
 6 ~~for personal injury, and punitive damages.~~ *expenses.*

7 (2) An arbitrator may award all direct costs and expenses for
 8 the completion or repair of the project.

9 (3) *A party that submits a dispute to arbitration pursuant to this*
 10 *section waives any right to recover attorney’s fees, or to challenge*
 11 *an arbitrator’s award of attorney’s fees, in a civil action regarding*
 12 *the dispute.*

13 (s) (1) The award shall become final 30 calendar days from the
 14 date the arbitration award is ~~issued, notwithstanding the actual~~
 15 ~~date either party receives the award.~~ *issued.* The arbitrator, upon
 16 written application of a party to the arbitration, may correct the
 17 award upon the following grounds:

18 (A) There was an evident miscalculation of figures or an evident
 19 mistake in the description of any person, things, or property
 20 referred to in the award.

21 (B) There is any other clerical error in the award, not affecting
 22 the merits of the controversy.

23 (2) An application for correction of the award shall be made
 24 within 10 calendar days of the date of service of the award by
 25 serving a copy of the application on the arbitrator, and all other
 26 parties to the arbitration. A party to the arbitration may make a
 27 written objection to the application for correction by serving a
 28 copy of the written objection on the arbitrator, the board, and all
 29 other parties to the arbitration, within 10 calendar days of the date
 30 of service of the application for correction.

31 (3) The arbitrator shall either deny the application or correct
 32 the award within 30 calendar days of the date of service of the
 33 original award by mailing a copy of the denial or correction to all
 34 parties to the arbitration. Any appeal from the denial or correction
 35 shall be filed with a court of competent jurisdiction and a true copy
 36 thereof shall be filed with the appointed arbitration association
 37 within 30 calendar days after the award has become final. The
 38 award shall be in writing, and shall be signed by the arbitrator or
 39 a majority of them. If no request for correction is filed within the
 40 30-calendar day period, it shall become a final order of the registrar.

1 (t) Service of the award by certified mail shall be effective if a
2 certified letter containing the award, or a true copy thereof, is
3 mailed by the arbitration association to each party or to a party's
4 attorney of record at their last known address, address of record,
5 or by personally serving any party. Service by certified mail is
6 complete upon deposit in a post office, mailbox, subpost office,
7 substation, or mail chute, or other like facility regularly maintained
8 by the United States Postal Service in a sealed addressed envelope,
9 with postage paid.

10 (u) (1) The board shall pay the expenses of one expert witness
11 appointed by the board if both of the following apply:

12 (A) The services of an expert witness are requested by either
13 party involved in arbitration pursuant to this article.

14 (B) The case involves workmanship issues that are itemized in
15 the complaint and have not been repaired or replaced.

16 (2) A party that chooses to present the findings of another expert
17 witness as evidence shall pay for those services. Payment for expert
18 witnesses appointed by the board shall be limited to the expert
19 witness costs for inspection of the problem at the construction site,
20 preparation of the expert witness' report, and expert witness fees
21 for appearing or testifying at a hearing. All requests for payment
22 to an expert witness shall be submitted on a form that has been
23 approved by the registrar. All requests for payment to an expert
24 witness shall be reviewed and approved by the board prior to
25 payment. *The arbitrator shall advise the parties that names of*
26 *industry experts may be obtained by requesting this information*
27 *from the registrar.*

28 (v) The arbitrator shall interpret and apply these rules insofar
29 as they relate to his or her powers and duties.

30 (w) The following shall apply as to court procedure and
31 exclusion of liability:

32 (1) The board, the appointed arbitration association, or any
33 arbitrator in a proceeding under these rules is not a necessary party
34 in judicial proceedings relating to the arbitration.

35 (2) Parties to these rules shall be deemed to have consented that
36 judgment upon the arbitration award may be entered in any federal
37 or state court having jurisdiction thereof.

1 (3) The board, the appointed arbitration association, or any
2 arbitrator is not liable to any party for any act or omission in
3 connection with any arbitration conducted under these rules.

O