

Introduced by Senator Monning
(Principal coauthor: Assembly Member Achadjian)

February 13, 2013

An act to amend Sections 7028, 7031, and 7114 of, to add Section 7026.4 to, and to repeal and add Section 7118 of, the Business and Professions Code, relating to contractors.

LEGISLATIVE COUNSEL'S DIGEST

SB 263, as introduced, Monning. Contractors: unlicensed activity.

The Contractors' State License Law provides for the licensure and regulation of contractors by the Contractors' State License Board within the Department of Consumer Affairs. The law prohibits a person engaged in the business or acting in the capacity of a contractor from bringing an action for collection of compensation for the performance of an act or contract for which a contractor's license is required without alleging that he or she was a duly licensed contractor at all times during the performance of that act or contract.

This bill, instead, would prohibit a person engaged in the business or acting in the capacity of a contractor from bringing an action for collection of compensation for the performance of an act or contract for which a contractor's license is required without alleging that he or she was duly licensed during the performance of that act or contract for which the person is seeking compensation. The bill would define "duly licensed" for purposes of these provisions, and would make other conforming changes.

The Contractors' State License 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, unless the person is particularly exempted.

This bill, instead, would provide that, unless exempted, it is a misdemeanor for a person to engage in the business or act in the capacity of a contractor if the person either has never been licensed pursuant to the Contractors' State License Law, or the person was a licensee, but performed acts covered by the law under a license that was inactive, expired, revoked, or under suspension for any reason. By changing the definition of a crime, the bill would impose a state-mandated local program.

The Contractors' State License Law provides that entering into a contract with a contractor while the contractor is not licensed constitutes a cause for disciplinary action. That law also provides that aiding or abetting an unlicensed person to evade the law, or engaging in specified acts with an unlicensed person with the intent to evade the law, constitutes a cause for disciplinary action.

This bill, instead, would provide that entering into a contract with any person that is performed during a period in which that person's license was inactive, expired, revoked, or under suspension is a cause for discipline if the purpose of the contract is for that person to perform an act subject to licensure under the law. The bill also would define "unlicensed person" for purposes of these provisions.

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 7026.4 is added to the Business and
- 2 Professions Code, to read:
- 3 7026.4. (a) A person shall be deemed "duly licensed" or "duly
- 4 licensed to act in the capacity of a contractor" for purposes of this
- 5 chapter if both of the following conditions are met:
- 6 (1) The act was performed under a board-issued license during
- 7 a period in which the license was not inactive, expired, revoked,
- 8 or under suspension for any reason.
- 9 (2) The act falls within a license classification in which the
- 10 licensee was authorized to engage, or is incidental and

1 supplemental as provided under Section 7059, and defined in
2 Section 831 of Division 8 of Title 16 of the California Code of
3 Regulations.

4 (b) Any person that does not meet the conditions specified in
5 paragraphs (1) and (2) of subdivision (a) shall be deemed
6 unlicensed, except as otherwise provided in this chapter.

7 SEC. 2. Section 7028 of the Business and Professions Code is
8 amended to read:

9 7028. (a) ~~It~~ *Unless exempted from this chapter, it is a*
10 *misdemeanor for a person to engage in the business or act in the*
11 *capacity of a contractor within this state without having a license*
12 *therefor, unless the person is particularly exempted from the*
13 *provisions of this chapter. under either of the following conditions:*

14 (1) *The person has never been licensed in accordance with this*
15 *chapter.*

16 (2) *The person was a licensee, as defined in Section 7096, but*
17 *performed acts covered by this chapter under a license that was*
18 *inactive, expired, revoked, or under suspension for any reason.*

19 (b) A first conviction for the offense described in this section
20 is punishable by a fine not exceeding five thousand dollars (\$5,000)
21 or by imprisonment in a county jail not exceeding six months, or
22 by both that fine and imprisonment.

23 (c) If a person has been previously convicted of the offense
24 described in this section, unless the provisions of subdivision (d)
25 are applicable, the court shall impose a fine of 20 percent of the
26 contract price, or 20 percent of the aggregate payments made to,
27 or at the direction of, the unlicensed ~~contractor~~ *person*, or five
28 thousand dollars (\$5,000), whichever is greater, and, unless the
29 sentence prescribed in subdivision (d) is imposed, the person shall
30 be confined in a county jail for not less than 90 days, except in an
31 unusual case where the interests of justice would be served by
32 imposition of a lesser sentence or a fine. If the court imposes only
33 a fine or a jail sentence of less than 90 days for second or
34 subsequent convictions under this section, the court shall state the
35 reasons for its sentencing choice on the record.

36 (d) A third or subsequent conviction for the offense described
37 in this section is punishable by a fine of not less than five thousand
38 dollars (\$5,000) nor more than the greater amount of ten thousand
39 dollars (\$10,000) or 20 percent of the contract price, or 20 percent
40 of the aggregate payments made to, or at the direction of, the

1 unlicensed ~~contractor~~ *person*, and by imprisonment in a county
 2 jail for not more than one year or less than 90 days. The penalty
 3 provided by this subdivision is cumulative to the penalties available
 4 under all other laws of this state.

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

9 (f) If the *unlicensed* person engaging in the business of or acting
 10 in the capacity of ~~an unlicensed~~ *a* contractor has agreed to furnish
 11 materials and labor on an hourly basis, “the contract price” for the
 12 purposes of this section means the aggregate sum of the cost of
 13 materials and labor furnished and the cost of completing the work
 14 to be performed.

15 (g) Notwithstanding any other ~~provision of~~ law, an indictment
 16 for any violation of this section by ~~the~~ *an unlicensed contractor*
 17 *person* shall be found, or an information or complaint filed, within
 18 four years from the date of the contract proposal, contract,
 19 completion, or abandonment of the work, whichever occurs last.

20 (h) For any conviction under this section, a person who utilized
 21 the services of the ~~unlicensed contractor~~ *person* is a victim of crime
 22 and is eligible, pursuant to subdivision (f) of Section 1202.4 of the
 23 Penal Code, for restitution for economic losses, regardless of
 24 whether ~~that person~~ *he or she* had knowledge that the ~~contractor~~
 25 *person* was unlicensed.

26 SEC. 3. Section 7031 of the Business and Professions Code is
 27 amended to read:

28 7031. (a) Except as provided in subdivision (e), ~~no~~ *a* person
 29 engaged in the business or acting in the capacity of a contractor,
 30 ~~may~~ *shall not* bring or maintain any action, or recover in law or
 31 equity in any action, in any court of this state for the collection of
 32 compensation for the performance of any act or contract ~~where~~
 33 *for which* a license is required by this chapter without alleging that
 34 he or she was ~~a duly licensed contractor at all times~~ during the
 35 performance of that act or contract *for which the person is seeking*
 36 *compensation*, regardless of the merits of the cause of action
 37 brought by the person, except that this prohibition shall not apply
 38 to contractors who are each individually licensed under this chapter
 39 but who fail to comply with Section 7029.

1 (b) Except as provided in subdivision (e), a person who utilizes
2 the services of an unlicensed ~~contractor~~ *person, as described in*
3 *subdivision (b) of Section 7026.4*, may bring an action in any court
4 of competent jurisdiction in this state to recover ~~all~~ compensation
5 paid to the unlicensed ~~contractor~~ *person* for performance of any
6 act or contract *that occurred during the period or periods in which*
7 *the person was unlicensed.*

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

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

25 (e) The judicial doctrine of substantial compliance shall not
26 apply under this section ~~where~~ *if* the person who engaged in the
27 business or acted in the capacity of a contractor has never been a
28 duly licensed contractor in this state. However, notwithstanding
29 subdivision (b) of Section 143 *and subdivision (b) of Section*
30 *7026.4*, the court may determine that there has been substantial
31 compliance with licensure requirements under this section if it is
32 shown at an evidentiary hearing that the person who engaged in
33 the business or acted in the capacity of a contractor (1) had been
34 duly licensed as a contractor in this state prior to the performance
35 of the act or contract, (2) acted reasonably and in good faith to
36 maintain proper licensure, (3) did not know or reasonably should
37 not have known that he or she was not duly licensed when
38 performance of the act or contract commenced, and (4) acted
39 promptly and in good faith to reinstate his or her license upon
40 learning it was invalid.

1 (f) The exceptions to the prohibition against the application of
 2 the judicial doctrine of substantial compliance found in subdivision
 3 (e) shall apply to all contracts entered into on or after January 1,
 4 1992, and to all actions or arbitrations arising therefrom, except
 5 that the amendments to subdivisions (e) and (f) enacted during the
 6 1994 portion of the 1993–94 Regular Session of the Legislature
 7 shall not apply to either of the following:

8 (1) Any legal action or arbitration commenced prior to January
 9 1, 1995, regardless of the date on which the parties entered into
 10 the contract.

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

14 SEC. 4. Section 7114 of the Business and Professions Code is
 15 amended to read:

16 7114. (a) *All of the following shall constitute a cause for*
 17 *disciplinary action pursuant to this chapter:* ~~Aiding~~

18 (1) *Aiding* or abetting an unlicensed person to evade the
 19 provisions of this chapter ~~or combining.~~

20 (2) *Combining* or conspiring with an unlicensed person, ~~or~~
 21 ~~allowing~~ *with the intent to evade the provisions of this chapter.*

22 (3) *Allowing* one's license to be used by an unlicensed person,
 23 ~~or acting~~ *with the intent to evade the provisions of this chapter.*

24 (4) *Acting* as agent ~~or~~, partner ~~or~~, associate, or otherwise, of an
 25 unlicensed person with the intent to evade the provisions of this
 26 chapter ~~constitutes a cause for disciplinary action.~~

27 (b) A licensee who is found by the registrar to have violated
 28 subdivision (a) ~~shall be subject~~, in accordance with the provisions
 29 of this article, ~~be subject~~ to the registrar's authority ~~pursuant to~~
 30 ~~Section 7099~~ to order payment of a specified sum to an injured
 31 party, including, but not limited to, payment for any injury resulting
 32 from the acts of the unlicensed person.

33 (c) *For the purposes of this section, the term "unlicensed*
 34 *person" shall apply only to a person that has never been licensed*
 35 *in accordance with this chapter, or has performed acts covered*
 36 *by this chapter under a license that was inactive, expired, revoked,*
 37 *or under suspension for any reason.*

38 SEC. 5. Section 7118 of the Business and Professions Code is
 39 repealed.

1 ~~7118. Entering into a contract with a contractor while such~~
2 ~~contractor is not licensed as provided in this chapter constitutes a~~
3 ~~cause for disciplinary action.~~

4 SEC. 6. Section 7118 is added to the Business and Professions
5 Code, to read:

6 7118. It is a cause for discipline for any licensee to enter into
7 a contract with any person that is not in compliance with paragraph
8 (1) of subdivision (a) of Section 7026.4, if the purpose of the
9 contract is for that person to perform an act that is subject to
10 licensure under this chapter.

11 SEC. 7. No reimbursement is required by this act pursuant to
12 Section 6 of Article XIII B of the California Constitution because
13 the only costs that may be incurred by a local agency or school
14 district will be incurred because this act creates a new crime or
15 infraction, eliminates a crime or infraction, or changes the penalty
16 for a crime or infraction, within the meaning of Section 17556 of
17 the Government Code, or changes the definition of a crime within
18 the meaning of Section 6 of Article XIII B of the California
19 Constitution.