

AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 263

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

February 13, 2013

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

LEGISLATIVE COUNSEL'S DIGEST

SB 263, as amended, 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.~~ *require as a condition of bringing an action to collect payment for the performance of any act or contract that a contractor be duly licensed during the performance of the act or contract.* 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:

1 (1) The act was performed under a board-issued license during
2 a period in which the license was not inactive, expired, revoked,
3 or under suspension for any reason.

4 (2) The act falls within a license classification in which the
5 licensee was authorized to engage, or is incidental and
6 supplemental as provided under Section 7059, and defined in
7 Section 831 of Division 8 of Title 16 of the California Code of
8 Regulations.

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

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

14 7028. (a) Unless exempted from this chapter, it is a
15 misdemeanor for a person to engage in the business or act in the
16 capacity of a contractor within this state under either of the
17 following conditions:

18 (1) The person has never been licensed in accordance with this
19 chapter.

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

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

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

1 (d) A third or subsequent conviction for the offense described
2 in this section is punishable by a fine of not less than five thousand
3 dollars (\$5,000) nor more than the greater amount of ten thousand
4 dollars (\$10,000) or 20 percent of the contract price, or 20 percent
5 of the aggregate payments made to, or at the direction of, the
6 unlicensed person, and by imprisonment in a county jail for not
7 more than one year or less than 90 days. The penalty provided by
8 this subdivision is cumulative to the penalties available under all
9 other laws of this state.

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

14 (f) If the unlicensed person engaging in the business of or acting
15 in the capacity of a contractor has agreed to furnish materials and
16 labor on an hourly basis, “the contract price” for the purposes of
17 this section means the aggregate sum of the cost of materials and
18 labor furnished and the cost of completing the work to be
19 performed.

20 (g) Notwithstanding any other law, an indictment for any
21 violation of this section by an unlicensed person shall be found,
22 or an information or complaint filed, within four years from the
23 date of the contract proposal, contract, completion, or abandonment
24 of the work, whichever occurs last.

25 (h) For any conviction under this section, a person who utilized
26 the services of the unlicensed person is a victim of crime and is
27 eligible, pursuant to subdivision (f) of Section 1202.4 of the Penal
28 Code, for restitution for economic losses, regardless of whether
29 he or she had knowledge that the person was unlicensed.

30 ~~SEC. 3.—Section 7031 of the Business and Professions Code is~~
31 ~~amended to read:~~

32 ~~7031. —(a) Except as provided in subdivision (c), a person~~
33 ~~engaged in the business or acting in the capacity of a contractor,~~
34 ~~shall not bring or maintain any action, or recover in law or equity~~
35 ~~in any action, in any court of this state for the collection of~~
36 ~~compensation for the performance of any act or contract for which~~
37 ~~a license is required by this chapter without alleging that he or she~~
38 ~~was duly licensed during the performance of that act or contract~~
39 ~~for which the person is seeking compensation, regardless of the~~
40 ~~merits of the cause of action brought by the person, except that~~

1 ~~this prohibition shall not apply to contractors who are each~~
2 ~~individually licensed under this chapter but who fail to comply~~
3 ~~with Section 7029.~~

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

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

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

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

1 promptly and in good faith to reinstate his or her license upon
2 learning it was invalid.

3 (f) The exceptions to the prohibition against the application of
4 the judicial doctrine of substantial compliance found in subdivision
5 (e) shall apply to all contracts entered into on or after January 1,
6 1992, and to all actions or arbitrations arising therefrom, except
7 that the amendments to subdivisions (e) and (f) enacted during the
8 1994 portion of the 1993-94 Regular Session of the Legislature
9 shall not apply to either of the following:

10 (1) Any legal action or arbitration commenced prior to January
11 1, 1995, regardless of the date on which the parties entered into
12 the contract.

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

16 *SEC. 3. Section 7031 of the Business and Professions Code is*
17 *repealed.*

18 ~~7031. (a) Except as provided in subdivision (e), no person~~
19 ~~engaged in the business or acting in the capacity of a contractor,~~
20 ~~may bring or maintain any action, or recover in law or equity in~~
21 ~~any action, in any court of this state for the collection of~~
22 ~~compensation for the performance of any act or contract where a~~
23 ~~license is required by this chapter without alleging that he or she~~
24 ~~was a duly licensed contractor at all times during the performance~~
25 ~~of that act or contract, regardless of the merits of the cause of action~~
26 ~~brought by the person, except that this prohibition shall not apply~~
27 ~~to contractors who are each individually licensed under this chapter~~
28 ~~but who fail to comply with Section 7029.~~

29 ~~(b) Except as provided in subdivision (e), a person who utilizes~~
30 ~~the services of an unlicensed contractor may bring an action in~~
31 ~~any court of competent jurisdiction in this state to recover all~~
32 ~~compensation paid to the unlicensed contractor for performance~~
33 ~~of any act or contract.~~

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

39 ~~(d) If licensure or proper licensure is controverted, then proof~~
40 ~~of licensure pursuant to this section shall be made by production~~

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

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

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

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

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

38 *SEC. 4. Section 7031 is added to the Business and Professions*
39 *Code, to read:*

1 7031. (a) *Except as provided in subdivision (e), a contractor*
2 *shall be duly licensed at all times during the performance of any*
3 *act or contract in order to bring an action to collect payment for*
4 *the performance of that act or contract. This provision does not*
5 *apply to contractors who are each individually licensed under this*
6 *chapter but who fail to comply with Section 7029.*

7 (b) *Except as provided in subdivision (e), a person who utilizes*
8 *the services of an unlicensed person who engages in the business*
9 *or acts in the capacity of a contractor may recover all*
10 *compensation paid to that person.*

11 (c) *If a security interest is taken to secure payment for the*
12 *performance of any act or contract for which a license is required*
13 *by this chapter, the security interest is unenforceable if the person*
14 *performing the act or contract is not duly licensed at all times*
15 *during the performance of the act or contract.*

16 (d) *If licensure or proper licensure is disputed, it is the burden*
17 *of a purported licensee to provide proof of licensure by production*
18 *of a verified certificate of licensure from the board.*

19 (e) *Notwithstanding subdivision (b) of Section 143, a court may*
20 *determine that there has been substantial compliance with licensure*
21 *requirements under this section if the person who engaged in the*
22 *business or acted in the capacity of a contractor was duly licensed*
23 *at the time the contract was executed, but who subsequently*
24 *performed work in a classification for which the person was not*
25 *licensed, under license suspension, or using an expired or inactive*
26 *license. That person may pursue payment for any work that was*
27 *performed on the contract while duly licensed but shall be*
28 *precluded from pursuing payment for work performed on the*
29 *contract while found to be working in a classification for which*
30 *the person was not licensed, under license suspension, or under*
31 *an expired or inactive license. A person who utilized the services*
32 *of that person may recover the compensation paid to that person*
33 *for work performed on the contract while found to be working in*
34 *a classification for which that person was not licensed, under*
35 *license suspension, or under an expired or inactive license.*

36 ~~SEC. 4.~~

37 SEC. 5. Section 7114 of the Business and Professions Code is
38 amended to read:

39 7114. (a) All of the following shall constitute a cause for
40 disciplinary action pursuant to this chapter:

1 (1) Aiding or abetting an unlicensed person to evade the
2 provisions of this chapter.

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

5 (3) Allowing one’s license to be used by an unlicensed ~~person,~~
6 *person* with the intent to evade the provisions of this chapter.

7 (4) Acting as agent, partner, associate, or otherwise, of an
8 unlicensed person with the intent to evade the provisions of this
9 chapter.

10 (b) A licensee who is found by the registrar to have violated
11 subdivision (a) is subject, in accordance with this article, to the
12 registrar’s authority to order payment of a specified sum to an
13 injured party, including, but not limited to, payment for any injury
14 resulting from the acts of the unlicensed person.

15 (c) For the purposes of this section, the term “unlicensed person”
16 shall apply only to a person that has never been licensed in
17 accordance with this chapter, or has performed acts covered by
18 this chapter under a license that was inactive, expired, revoked, or
19 under suspension for any reason.

20 ~~SEC. 5.~~

21 *SEC. 6.* Section 7118 of the Business and Professions Code is
22 repealed.

23 ~~SEC. 6.~~

24 *SEC. 7.* Section 7118 is added to the Business and Professions
25 Code, to read:

26 7118. It is a cause for discipline for any licensee to enter into
27 a contract with any person that is not in compliance with paragraph
28 (1) of subdivision (a) of Section 7026.4, if the purpose of the
29 contract is for that person to perform an act that is subject to
30 licensure under this chapter.

31 ~~SEC. 7.~~

32 *SEC. 8.* No reimbursement is required by this act pursuant to
33 Section 6 of Article XIII B of the California Constitution because
34 the only costs that may be incurred by a local agency or school
35 district will be incurred because this act creates a new crime or
36 infraction, eliminates a crime or infraction, or changes the penalty
37 for a crime or infraction, within the meaning of Section 17556 of
38 the Government Code, or changes the definition of a crime within

- 1 the meaning of Section 6 of Article XIII B of the California
- 2 Constitution.

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