

AMENDED IN ASSEMBLY JUNE 5, 2013

AMENDED IN SENATE APRIL 22, 2013

AMENDED IN SENATE APRIL 1, 2013

**SENATE BILL**

**No. 263**

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**Introduced by Senator Monning**

(Principal coauthor: Assembly Member Achadjian)

February 13, 2013

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An act to amend ~~Sections Section 7028 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 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 would define "duly licensed" for purposes of this provision and purposes of the Contractors' state License Law, 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~~ *failure to pay a civil penalty or comply with an order of correction, or failure to resolve all outstanding final liabilities, as specified.* ~~By changing the definition of a crime, the bill would impose a state-mandated local program.~~

~~The Contractors' State License Law provides that it is a cause for disciplinary action for a person licensed pursuant to that law to enter into a contract with a contractor while the contractor is not licensed. 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 when that contract 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-no*.  
State-mandated local program: *yes-no*.

*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.

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

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

9 ~~SEC. 2.~~

10 *SECTION 1.* Section 7028 of the Business and Professions  
11 Code is amended to read:

12 7028. (a) Unless exempted from this chapter, it is a  
13 misdemeanor for a person to engage in the business or act in the  
14 capacity of a contractor within this state under either of the  
15 following conditions:

16 (1) The person has never been licensed in accordance with this  
17 chapter.

18 (2) The person was a licensee, as defined in Section 7096, but  
19 performed acts covered by this chapter under a license that was  
20 ~~inactive, expired, revoked, or under suspension for any reason~~  
21 *failure to pay a civil penalty or comply with an order of correction,*  
22 *pursuant to Section 7090.1, or failure to resolve all outstanding*  
23 *final liabilities, pursuant to Section 7145.5.*

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

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

32 ~~SEC. 3.—Section 7114 of the Business and Professions Code is~~  
33 ~~amended to read:~~

34 ~~7114.—(a) All of the following shall constitute a cause for~~  
35 ~~disciplinary action pursuant to this chapter:~~

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

38 ~~(2) Combining or conspiring with an unlicensed person with~~  
39 ~~the intent to evade the provisions of this chapter.~~

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

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

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

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

16 ~~SEC. 4. Section 7118 of the Business and Professions Code is~~  
17 ~~repealed.~~

18 ~~SEC. 5. Section 7118 is added to the Business and Professions~~  
19 ~~Code, to read:~~

20 ~~7118. It is a cause for discipline for any licensee to enter into~~  
21 ~~a contract with any person that is not in compliance with paragraph~~  
22 ~~(1) of subdivision (a) of Section 7026.4, if the purpose of the~~  
23 ~~contract is for that person to perform an act that is subject to~~  
24 ~~licensure under this chapter.~~

25 ~~SEC. 6. No reimbursement is required by this act pursuant to~~  
26 ~~Section 6 of Article XIII B of the California Constitution because~~  
27 ~~the only costs that may be incurred by a local agency or school~~  
28 ~~district will be incurred because this act creates a new crime or~~  
29 ~~infraction, eliminates a crime or infraction, or changes the penalty~~  
30 ~~for a crime or infraction, within the meaning of Section 17556 of~~  
31 ~~the Government Code, or changes the definition of a crime within~~  
32 ~~the meaning of Section 6 of Article XIII B of the California~~  
33 ~~Constitution.~~