

AMENDED IN ASSEMBLY MAY 29, 2014

AMENDED IN SENATE APRIL 30, 2013

SENATE BILL

No. 315

Introduced by Senator Lieu

February 15, 2013

An act to amend ~~Section 367.5 of the Code of Civil Procedure, relating to civil procedure. Sections 7011.4, 7027.2, 7028, and 7110.5 of the Business and Professions Code, relating to contractors.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 315, as amended, Lieu. ~~Civil actions: telephonic appearances. Contractors.~~

(1) 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 act establishes an enforcement division within the board that is required to enforce prohibitions against unlicensed activity, as specified. The act authorizes persons employed as enforcement representatives in the division to issue written notices to appear in court, as specified.

This bill would additionally authorize these enforcement representatives to continue to participate in activities of the Joint Enforcement Strike Force on the Underground Economy, as specified.

(2) The act makes it a misdemeanor for a person to engage in the business of, or act in the capacity of, a contractor within this state without having a license, unless particularly exempted.

This bill would instead provide that, unless exempted, it is a misdemeanor for a person to engage in the business of, or act in the capacity of, a contractor within this state if the person is not licensed

in accordance with the act, or if the person performs acts covered by the act under a license that is under suspension for specified violations.

(3) The act provides that it is a misdemeanor for any person to advertise for construction or work of improvement unless that person holds a valid license in the classification so advertised, except as specified. However, the act authorizes a person who is not licensed as a contractor to advertise for construction work or work of improvement if he or she states in the advertisement that he or she is not licensed, as specified. The act also exempts from its application any work or operation on one undertaking or project by one or more contracts if the aggregate contract price for labor, materials, and all other items is less than \$500, and the work or operations are casual, minor, or inconsequential.

This bill would authorize a person who is not licensed as a contractor to advertise for construction work or a work of improvement only if the aggregate contract price is less than \$500 and the person states in the advertisement that he or she is not licensed. By expanding the scope of an existing crime, this bill would impose a state-mandated local program.

(4) The act authorizes the board to appoint a registrar of contractors. Existing law requires the registrar to initiate disciplinary action against a licensee within 30 days of notification by the Labor Commissioner of a finding of a willful or deliberate violation of the Labor Code.

This bill would instead authorize the registrar to initiate disciplinary action against a licensee within 180 days of notification by the Labor Commissioner.

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.

~~Existing law provides that courts should, to the extent feasible, permit parties to appear by telephone at appropriate conferences, hearings, and proceedings in civil cases to improve access to the courts and reduce litigation costs. Existing law permits a party to make appearances by telephone at specified conferences, hearings, and proceedings.~~

~~This bill would expand the circumstances under which a party may appear by telephone to include all conferences, hearings, and proceedings except a trial and a trial readiness conference.~~

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

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

1 SECTION 1. Section 7011.4 of the Business and Professions
2 Code is amended to read:

3 7011.4. (a) Notwithstanding Section 7011, there is in the
4 Contractors’ State License Board, a separate enforcement division
5 which shall rigorously enforce this chapter prohibiting all forms
6 of unlicensed activity.

7 (b) Persons employed as enforcement representatives in this
8 division and designated by the Director of Consumer Affairs are
9 not peace officers and are not entitled to safety member retirement
10 benefits. They do not have the power of arrest. However, they may
11 issue a written notice to appear in court pursuant to Chapter 5c
12 (commencing with Section 853.5) of Title 3 of Part 2 of the Penal
13 Code *and may continue to participate in activities of the Joint*
14 *Enforcement Strike Force on the Underground Economy to carry*
15 *out the duties specified in Section 329 of the Unemployment*
16 *Insurance Code independent of the Division of Labor Standards*
17 *Enforcement.*

18 SEC. 2. Section 7027.2 of the Business and Professions Code
19 is amended to read:

20 7027.2. Notwithstanding any other provision of this chapter,
21 ~~any person~~ *a person who is not licensed pursuant to this chapter*
22 *may advertise for construction work or a work of improvement*
23 *covered by this chapter, provided that only if the aggregate contract*
24 *price for labor, material, and all other items on a project or*
25 *undertaking is less than five hundred dollars (\$500), and he or she*
26 ~~shall state~~ *states in the advertisement that he or she is not licensed*
27 under this chapter.

28 SEC. 3. Section 7028 of the Business and Professions Code is
29 amended to read:

30 7028. (a) ~~It~~ *Unless exempted from this chapter, it is a*
31 *misdemeanor for a person to engage in the business of, or act in*
32 *the capacity of, a contractor within this state without having a*
33 *license therefor, unless the person is particularly exempted from*
34 ~~the provisions of this chapter.~~ *under either of the following*
35 *conditions:*

1 (1) *The person is not licensed in accordance with this chapter.*

2 (2) *The person performs acts covered by this chapter under a*
3 *license that is under suspension for failure to pay a civil penalty*
4 *or to comply with an order of correction, pursuant to Section*
5 *7090.1, or for failure to resolve all outstanding final liabilities,*
6 *pursuant to Section 7145.5.*

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

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

24 (d) A third or subsequent conviction for the offense described
25 in this section is punishable by a fine of not less than five thousand
26 dollars (\$5,000) nor more than the greater amount of ten thousand
27 dollars (\$10,000) or 20 percent of the contract price, or 20 percent
28 of the aggregate payments made to, or at the direction of, the
29 unlicensed ~~contractor,~~ *person*, and by imprisonment in a county
30 jail for not more than one year or less than 90 days. The penalty
31 provided by this subdivision is cumulative to the penalties available
32 under all other laws of this state.

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

37 (f) If the *unlicensed* person engaging in the business of or acting
38 in the capacity of ~~an unlicensed~~ *a contractor* has agreed to furnish
39 materials and labor on an hourly basis, “the contract price” for the
40 purposes of this section means the aggregate sum of the cost of

1 materials and labor furnished and the cost of completing the work
2 to be performed.

3 (g) Notwithstanding any other ~~provision of law~~, an indictment
4 for any violation of this section by ~~the~~ *an unlicensed contractor*
5 *person shall be found found*, or ~~an~~ *information or a complaint filed*
6 *shall be filed*, within four years from the date of the contract
7 proposal, contract, completion, or abandonment of the work,
8 whichever occurs last.

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

15 (i) *The changes made to this section by the act adding this*
16 *subdivision are declaratory of existing law.*

17 *SEC. 4. Section 7110.5 of the Business and Professions Code*
18 *is amended to read:*

19 7110.5. Upon receipt of a certified copy of the Labor
20 Commissioner’s finding of a willful or deliberate violation of the
21 Labor Code by a licensee, pursuant to Section 98.9 of the Labor
22 Code, the registrar ~~shall~~ *may* initiate disciplinary action against
23 the licensee within ~~30~~ *180* days of notification.

24 *SEC. 5. No reimbursement is required by this act pursuant to*
25 *Section 6 of Article XIII B of the California Constitution because*
26 *the only costs that may be incurred by a local agency or school*
27 *district will be incurred because this act creates a new crime or*
28 *infraction, eliminates a crime or infraction, or changes the penalty*
29 *for a crime or infraction, within the meaning of Section 17556 of*
30 *the Government Code, or changes the definition of a crime within*
31 *the meaning of Section 6 of Article XIII B of the California*
32 *Constitution.*

33 ~~SECTION 1. Section 367.5 of the Code of Civil Procedure is~~
34 ~~amended to read:~~

35 ~~367.5. (a) It is the intent of this section to promote uniformity~~
36 ~~in the procedures and practices relating to telephone appearances~~
37 ~~in civil cases. To improve access to the courts and reduce litigation~~
38 ~~costs, courts should, to the extent feasible, permit parties to appear~~
39 ~~by telephone at appropriate conferences, hearings, and proceedings~~
40 ~~in civil cases.~~

1 ~~(b) Except as provided in subdivision (c), in all general civil~~
2 ~~cases, as defined in the California Rules of Court, a party that has~~
3 ~~provided notice may appear by telephone at any conference,~~
4 ~~hearing, or proceeding, except a trial or trial readiness conference.~~

5 ~~(c) The court may require a party to appear in person at a~~
6 ~~hearing, conference, or proceeding if the court determines on a~~
7 ~~hearing-by-hearing basis that a personal appearance would~~
8 ~~materially assist in the determination of the proceedings or in the~~
9 ~~effective management or resolution of the particular case.~~

10 ~~(d) Consistent with its constitutional rulemaking authority, the~~
11 ~~Judicial Council shall adopt rules effectuating the policies and~~
12 ~~provisions in this section by January 1, 2008, and may adopt rules~~
13 ~~relating to matters not covered by subdivision (a). The rules may~~
14 ~~prescribe, but are not limited to prescribing, the notice to be given~~
15 ~~by a party requesting a telephone appearance under subdivision~~
16 ~~(a), the manner in which telephone appearances are to be~~
17 ~~conducted, the conditions required for a party to be permitted to~~
18 ~~appear by telephone, and provisions relating to the courts' use of~~
19 ~~private vendors to provide telephone services.~~

20 ~~(e) This section does not apply to any types of cases or types~~
21 ~~of conferences, hearings, and proceedings except those specified~~
22 ~~in subdivision (b). Consistent with its constitutional rulemaking~~
23 ~~authority, the Judicial Council may by rule provide for the~~
24 ~~procedures and practices, and for the administration of, telephone~~
25 ~~appearances for all types of cases and matters not specified in~~
26 ~~subdivision (b). For these other cases and matters, the Judicial~~
27 ~~Council may specify the types of cases and matters in which parties~~
28 ~~may appear by telephone, the types of cases and matters in which~~
29 ~~parties shall appear personally, the conditions under which a party~~
30 ~~may be permitted to appear by telephone, and any other rules~~
31 ~~governing telephone and personal appearances that are within its~~
32 ~~rulemaking authority.~~