

**Senate Bill No. 1557**

CHAPTER 712

An act to amend Sections 7028.1, 7108.5 and 7108.6 of the Business and Professions Code, and to amend Section 19851 of the Health and Safety Code, relating to contractors.

[Approved by Governor September 21, 1996. Filed with Secretary of State September 23, 1996.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1557, Mountjoy. Contractors: building permits.

(1) Existing law prohibits a contractor from bidding for the installation or removal of an underground storage tank unless the contractor has passed the hazardous substance removal certification examination or unless the work is to be performed by a contractor who has passed the examination. Violation of these provisions is a misdemeanor.

This bill would make technical, conforming changes to the penalty provisions.

(2) Existing law requires a contractor or subcontractor to pay a subcontractor or a dump truck carrier, the amount due to the subcontractor or carrier within a specified time. Failure of the licensee to comply with this provision constitutes cause for disciplinary action under the Contractors' State License Law and subjects the licensee to a penalty of 2% of the amount due per month for every month that payment is not made.

This bill would specify that the penalty is to be paid to the subcontractor or carrier.

(3) Existing law provides that the official copy of the plans maintained by the building department of a city or county, as specified, shall be open for inspection only on the premises of the building department as a public record, and may be duplicated only with the written permission of specified parties, or by order of a proper court.

This bill would further provide that the official copy of the building plans may be duplicated upon the request of any state agency.

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

SECTION 1. Section 7028.1 of the Business and Professions Code is amended to read:

7028.1. It is a misdemeanor for any contractor to perform or engage in asbestos-related work, as defined in Section 6501.8 of the Labor Code, without certification pursuant to Section 7058.5 of this



code, or to perform or engage in a removal or remedial action, as defined in subdivision (d) of Section 7058.7, or, unless otherwise exempted by this chapter, to bid for the installation or removal of, or to install or remove, an underground storage tank, without certification pursuant to Section 7058.7. A contractor in violation of this section is subject to one of the following penalties:

(a) Conviction of a first offense is punishable by a fine of not less than one thousand dollars (\$1,000) or more than three thousand dollars (\$3,000), and by possible revocation or suspension of any contractor's license.

(b) Conviction of a subsequent offense requires a fine of not less than three thousand dollars (\$3,000) or more than five thousand dollars (\$5,000), or imprisonment in the county jail not exceeding one year, or both the fine and imprisonment, and a mandatory action to suspend or revoke any contractor's license.

SEC. 2. Section 7108.5 of the Business and Professions Code is amended to read:

7108.5. A prime contractor or subcontractor shall pay to any subcontractor, not later than 10 days of receipt of each progress payment, unless otherwise agreed to in writing, the respective amounts allowed the contractor on account of the work performed by the subcontractors, to the extent of each subcontractor's interest therein. In the event that there is a good faith dispute over all or any portion of the amount due on a progress payment from the prime contractor or subcontractor to a subcontractor, then the prime contractor or subcontractor may withhold no more than 150 percent of the disputed amount.

Any violation of this section shall constitute a cause for disciplinary action and shall subject the licensee to a penalty, payable to the subcontractor, of 2 percent of the amount due per month for every month that payment is not made. In any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to his or her attorney's fees and costs.

The sanctions authorized under this section shall be separate from, and in addition to, all other remedies either civil, administrative, or criminal.

This section applies to all private works of improvement and to all public works of improvement, except where Section 10262 of the Public Contract Code applies.

SEC. 3. Section 7108.6 of the Business and Professions Code is amended to read:

7108.6. A licensed contractor is required to pay all transportation charges submitted by a duly authorized motor carrier of property in dump truck equipment by the 20th day following the last day of the calendar month in which the transportation was performed, if the charges, including all necessary documentation, are submitted by the fifth day following the last day of the calendar month in which the



transportation was performed. The payment shall be made unless otherwise agreed to in writing by the contractor and by the duly authorized motor carrier of property in dump truck equipment. In the event that there is a good faith dispute over a portion of the charges claimed, the contractor may withhold payment of up to 150 percent of the disputed amount or an amount otherwise agreed to by the parties. A violation of this section constitutes a cause for disciplinary action under Section 7120 and shall also subject the contractor licensee to a penalty, payable to the carrier, of 2 percent of the amount due per month for every month that payment is outstanding. In an action for the collection of moneys not paid in accordance with this section, the prevailing party shall be entitled to his or her attorney's fees and costs.

This section applies to all private works of improvement and to all public works of improvement.

SEC. 4. Section 19851 of the Health and Safety Code is amended to read:

19851. (a) The official copy of the plans maintained by the building department of the city or county provided for under Section 19850 shall be open for inspection only on the premises of the building department as a public record. The copy may not be duplicated in whole or in part except (1) with the written permission, which permission shall not be unreasonably withheld as specified in subdivision (f), of the certified, licensed or registered professional or his or her successor, if any, who signed the original documents and the written permission of the original or current owner of the building, or, if the building is part of a common interest development, with the written permission of the board of directors or governing body of the association established to manage the common interest development, or (2) by order of a proper court or upon the request of any state agency.

(b) Any building department of a city or county, which is requested to duplicate the official copy of the plans maintained by the building department, shall request written permission to do so from the certified, licensed, or registered professional, or his or her successor, if any, who signed the original documents and from (1) the original or current owner of the building or (2), if the building is part of a common interest development, from the board of directors or other governing body of the association established to manage the common interest development.

(c) The building department shall also furnish the form of an affidavit to be completed and signed by the person requesting to duplicate the official copy of the plans, which contains provisions stating all of the following:

(1) That the copy of the plans shall only be used for the maintenance, operation, and use of the building.



(2) That drawings are instruments of professional service and are incomplete without the interpretation of the certified, licensed, or registered professional of record.

(3) That subdivision (a) of Section 5536.25 of the Business and Professions Code states that a licensed architect who signs plans, specifications, reports, or documents shall not be responsible for damage caused by subsequent changes to, or use of, those plans, specifications, reports, or documents where the subsequent changes or uses, including changes or uses made by state or local governmental agencies, are not authorized or approved by the licensed architect who originally signed the plans, specifications, reports, or documents, provided that the architectural service rendered by the architect who signed the plans, specifications, reports, or documents was not also a proximate cause of the damage.

(d) The request by the building department to a licensed, registered, or certified professional may be made by the building department sending a registered letter to the licensed, registered, or certified professional requesting his or her permission to duplicate the official copy of the plans and sending with the registered letter, a copy of the affidavit furnished by the building department which has been completed and signed by the person requesting to duplicate the official copy of the plans. The registered letters shall be sent by the building department to the most recent address of the licensed, registered, or certified professional available from the California State Board of Architectural Examiners.

(e) The governing body of the city or county may establish a fee to be paid by any person who requests the building department of the city or county to duplicate the official copy of any plans pursuant to this section, in an amount which it determines is reasonably necessary to cover the costs of the building department pursuant to this section.

(f) The certified, licensed, or registered professional's refusal to permit the duplication of the plans is unreasonable if, upon request from the building department, the professional does either of the following:

(1) Fails to respond to the local building department within 30 days of receipt by the professional of the request. However, if the building department determines that professional is unavailable to respond within 30 days of receipt of the request due to serious illness, travel, or other extenuating circumstances, the time period shall be extended by the building department to allow the professional adequate time to respond, as determined to be appropriate to the individual circumstance, but not to exceed 60 days.



(2) Refuses to give his or her permission for the duplication of the plans after receiving the signed affidavit and registered letter specified in subdivisions (c) and (d).

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