

AMENDED IN ASSEMBLY SEPTEMBER 2, 1997

AMENDED IN ASSEMBLY JULY 3, 1997

AMENDED IN SENATE JUNE 2, 1997

AMENDED IN SENATE MAY 15, 1997

AMENDED IN SENATE MAY 7, 1997

SENATE BILL

No. 857

Introduced by Senator Polanco

February 26, 1997

An act to amend Section 7057 of, and to add Section 7019.1 to, the Business and Professions Code, relating to contractors.

LEGISLATIVE COUNSEL'S DIGEST

SB 857, as amended, Polanco. Contractors.

(1) The Contractors' State License Law defines a general building contractor as a contractor whose principal contracting business is in connection with any structure built, being built, or to be built, for the support, shelter and enclosure of persons, animals, chattels or movable property of any kind, requiring in its construction the use of more than 2 unrelated building trades or crafts, or to do or superintend the whole or any part thereof, with specified exception.

~~This bill would prohibit, on and after January 1, 1998, a general building contractor from taking a prime contract for any project, excluding a project involving only framing and carpentry, unless it requires at least 3 unrelated building trades or crafts, or unless the general building contractor~~

~~holds the appropriate specialty license or subcontract with an appropriately licensed specialty contractor to perform the work and would make related changes~~ *revise this definition to instead refer to the use of at least 2 unrelated building trades or crafts. It would also allow a general building contractor to take a prime contract or a subcontract for a framing or carpentry project, but would provide that a general building contractor may not take a prime contract involving other trades unless the prime contract requires at least 2 unrelated trades or crafts other than framing or carpentry or unless the general building contractor holds the appropriate specialty license or subcontracts, as specified. The bill would enact related provisions applicable to a general building contractor taking a subcontract, and would also specify the legislative intent with respect to the enactment of these provisions.*

(2) Existing law provides that if funding is made available for that purpose, the Contractors' State License Board may contract with licensed professionals, as appropriate, for the site investigation of consumer complaints.

On and after July 1, 1998, this bill would require the board to furnish a copy of any opinion prepared by the licensed professional, including any contractor, retained pursuant to the above provision, to the complainant, to the licensee against whom the complaint has been made, and, upon request, to other specified persons. The bill would also require the opinion to include prescribed information. *The bill would include related findings and declarations.*

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

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

- 1 SECTION 1. Section 7019.1 is added to the Business
- 2 and Professions Code, to read:
- 3 7019.1. (a) On and after July 1, 1998, the board shall
- 4 furnish a copy of any opinion prepared by the licensed
- 5 professional, including any contractor, retained pursuant
- 6 to Section 7019, to the complainant, to the licensee against
- 7 whom the complaint has been made, and, upon request,



1 to the successors, receivers, trustees, executors,
2 administrators, assignees, or guarantors of either party, if
3 directly or collaterally interested under this chapter or
4 otherwise as provided by law.

5 (b) The opinion specified in subdivision (a) shall
6 include all of the following:

7 (1) An identification of the nature of the condition that
8 produced the complaint and the ~~proximate~~ cause or basis
9 or contributing cause of that condition.

10 (2) Whether the cause or basis of the condition
11 complained of constituted a departure from plans, codes,
12 or accepted trade standards.

13 (3) What the code provisions or trade standards
14 specified in paragraph (2) are.

15 ~~(4) The extent of the damages, if any, suffered by the~~
16 ~~complainant as a result of the work that produced the~~
17 ~~condition complained of and the cost to correct each~~
18 ~~item.~~

19 *(4) The cost to correct each item identified under*
20 *paragraph (2) as being the result of a departure from*
21 *plans, specifications, codes, or accepted trade standards.*

22 (5) The cost to correct the damages specified in
23 paragraph (4) was established on the following basis:

- 24 ~~_____ Time and Materials~~
- 25 _____
- 26 ~~_____ Unit Cost~~
- 27 _____
- 28 ~~_____ Other (identify) _____~~
- 29 _____
- 30 _____

- 31
- 32 *Time and Materials*
- 33
- 34 *Unit Cost*
- 35
- 36 *Other (identify) _____*
- 37

38 and was calculated from standards provided by

- 39
- 40 Means Data Systems



- 1 Dodge Data Systems
- 2 National Construction Estimator
- 3 Marshall-Swift
- 4 Software Program (identify) _____
- 5 Other (identify) _____

6

7 ~~(e) The opinion shall also provide the name,~~
 8 ~~identification, and address of the professional who~~
 9 ~~prepared the opinion, a statement listing the licenses,~~
 10 ~~including specialty licenses related to the work or~~
 11 ~~condition that is the subject of the complaint, and a~~
 12 ~~statement of any other qualifications that the professional~~
 13 ~~asserts he or she relied upon as stated in the industry~~
 14 ~~expert report submitted to the board. This information on~~
 15 ~~licenses or qualifications may be provided on a separate~~
 16 ~~form.~~

17 *(c) The opinion shall also provide the name,*
 18 *identification, address, license number, and license*
 19 *classification or classifications of the professional who*
 20 *prepared the opinion, and a statement of any other*
 21 *qualifications that the professional asserts he or she relied*
 22 *upon as stated in the industry expert report submitted to*
 23 *the board. The license and other information required to*
 24 *be furnished under this subdivision may be provided on*
 25 *a form prescribed by the registrar.*

26 The opinion shall also state the date or dates of any
 27 inspection of the site or other investigation and the date
 28 of the report. The board shall endeavor to assure that all
 29 items in subdivision (b) that are subject to the pertinent
 30 cause of action are completed on the report.

31 (d) The board shall make the opinion available on, or
 32 promptly following, the earliest date upon which the
 33 opinion or the information from it is available for the
 34 purpose of mediation or the purpose of preparing a
 35 citation pursuant to Section 7099, or to any arbitrator or
 36 arbitration panel, or the date of service of any accusation
 37 pursuant to Section 11505 of the Government Code on
 38 any matter upon which the opinion relates.

39 (e) The board may impose a charge for furnishing a
 40 copy of an opinion pursuant to this section to any person



1 except the complainant or the licensee against whom the
2 complaint has been made. The charge shall be reasonably
3 related to the cost of preparing and transmitting that
4 copy and of processing the request.

5 SEC. 2. Section 7057 of the Business and Professions
6 Code is amended to read:

7 7057. (a) Except as provided in this section, a
8 general building contractor is a contractor whose
9 principal contracting business is in connection with any
10 structure built, being built, or to be built, for the support,
11 shelter, and enclosure of persons, animals, chattels, or
12 movable property of any kind, requiring in its
13 construction the use of ~~more than~~ *at least* two unrelated
14 building trades or crafts, or to do or superintend the
15 whole or any part thereof.

16 This does not include anyone who merely furnishes
17 materials or supplies under Section 7045 without
18 fabricating them into, or consuming them in the
19 performance of the work of the general building
20 contractor.

21 ~~(b) On and after January 1, 1998, no general building~~
22 ~~contractor shall take a prime contract for any project,~~
23 ~~excluding a project involving only framing and~~
24 ~~carpentry, unless it requires at least three unrelated~~
25 ~~building trades or crafts, or unless the general building~~
26 ~~contractor holds the appropriate specialty license or~~
27 ~~subcontracts with the appropriately licensed specialty~~
28 ~~contractor to perform the work. A general building~~
29 ~~contractor shall not take a subcontract, excluding framing~~
30 ~~or carpentry, involving less than three unrelated trades~~
31 ~~or crafts unless he or she holds the required specialty~~
32 ~~licenses.~~

33 *(b) A general building contractor may take a prime*
34 *contract or a subcontract for a framing or carpentry*
35 *project. However, a general building contractor shall not*
36 *take a prime contract for any project involving trades*
37 *other than framing or carpentry unless the prime*
38 *contract requires at least two unrelated building trades or*
39 *crafts other than framing or carpentry, or unless the*
40 *general building contractor holds the appropriate*



1 *specialty license or subcontracts with an appropriately*
2 *licensed specialty contractor to perform the work. A*
3 *general building contractor shall not take a subcontract*
4 *involving trades other than framing or carpentry, unless*
5 *the subcontract requires at least two unrelated trades or*
6 *crafts other than framing or carpentry, or unless the*
7 *general building contractor holds the required specialty*
8 *license. The general building contractor may not count*
9 *framing or carpentry in calculating the two unrelated*
10 *trades necessary in order for the general building*
11 *contractor to be able to take a prime contract or*
12 *subcontract for a project involving other trades.*

13 (c) No general building contractor shall contract for
14 any project that includes the “C-16” Fire Protection
15 classification as provided for in Section 7026.12 or the
16 “C-57” Well Drilling classification as provided for in
17 Section 13750.5 of the Water Code, unless the general
18 building contractor holds the specialty license, or
19 subcontracts with the appropriately licensed specialty
20 contractor.

21 SEC. 3. (a) It is the intent of the Legislature to
22 amend Section 7057 of the Business and Professions Code
23 in order to modify the ~~holding~~ *holdings* in Home Depot,
24 U.S.A., Inc. v. Contractors’ State License Bd., 41 Cal. App.
25 4th 1592, and Hazard, Jr., Enterprises, Inc. v. Insurance
26 Co. of the West, 52 Cal. App. 4th 1088, to the extent the
27 courts’ holdings, or the courts’ statutory construction of
28 Section 7057 of the Business and Professions Code, are
29 inconsistent with this act.

30 ~~The~~

31 (b) *The* limitations applicable to general building
32 contractors performing in the role of specified specialty
33 building contractors for which other standards and
34 criteria have been established, are necessary to serve as
35 a means of protecting the public against contractors who
36 have not demonstrated competence in specified specialty
37 aspects of work for which a specialty license is required
38 and as a means of facilitating the selection and provision
39 of contracting services by and for the public that provides
40 recognition to those persons or entities that have



1 demonstrated experience, competence, and appropriate
2 qualifications in those specialties specified in Section 7057
3 of the Business and Professions Code. In addition,
4 experience has shown that consumers need and deserve
5 to be protected against work being performed by
6 contractors not licensed in specialty areas, and that the
7 majority of consumer abuses occur and the focus of
8 enforcement is needed most in these areas.

9 ~~The~~

10 (c) *The* Legislature finds and declares that the
11 administrative regulation adopted by the Contractors'
12 State License Board as subdivision (b) of Section 834 of
13 Title 16 of the California Code of Regulations had, for over
14 four decades, served the public good by prohibiting
15 general building contractors from undertaking certain
16 projects in aspects of construction work in which specialty
17 licenses had been established, until that regulation was
18 ruled invalid as a result of the Home Depot and Hazard
19 cases. It is the intent of the Legislature by enacting this
20 ~~bill~~ *act* to statutorily establish the standard promulgated
21 as subdivision (b) of Section 834 of Title 16 of the
22 California Code of Regulations, with changes
23 incorporated in this enactment, on the basis that the
24 experience of license enforcement has demonstrated that
25 the majority of consumer abuses occur and the focus of
26 enforcement is most needed in smaller jobs involving one
27 or two specialty trades that typically comprise service or
28 repair functions and home improvement jobs. The
29 Legislature also reiterates its previously stated intent that
30 the Contractors' State License Law should be
31 administered to "promote and protect the interests of
32 consumers as well as law-abiding competitive licensed
33 contractors" (Section 34.5 as contained in Chapter 1013
34 of the Statutes of 1979).

35 *SEC. 4. The Legislature finds and declares that the*
36 *program of furnishing opinions of industry experts on the*
37 *cause or basis of a condition that has produced a consumer*
38 *complaint arising from a contractor's alleged failure to*
39 *comply with the license law, and on the cost to correct*
40 *that condition, was established in 1987 to provide the*



1 *parties to those disputes with an opinion of a disinterested*
2 *professional to facilitate the resolution of those disputes*
3 *quickly and inexpensively. While generically this is an*
4 *expert witness program, it is unique and focused on the*
5 *particular industry practices and problems in*
6 *contracting, and the provisions made by this act are*
7 *designed to improve and facilitate its availability, and the*
8 *Legislature does not intend to provide for, or to provide*
9 *any precedent for, any expert witness program in any*
10 *other context or any other industry, trade, or profession.*

