

Senate Bill No. 857

Passed the Senate September 11, 1997

Secretary of the Senate

Passed the Assembly September 9, 1997

Chief Clerk of the Assembly

This bill was received by the Governor this ____ day
of _____, 1997, at ____ o'clock __M.

Private Secretary of the Governor

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CHAPTER ____

An act to amend Sections 7000.5, 7011, 7057, 7155.5, 7156, 7157, and 7159 of, and to add and repeal Section 7019.1 of, the Business and Professions Code, relating to contractors.

LEGISLATIVE COUNSEL'S DIGEST

SB 857, 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 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 for the creation of the Contractors' State License Board in the Department of Consumer Affairs. The board is charged with administering the provisions that govern persons licensed under the Contractors' State License Law. The board is also required to appoint a registrar of contractors with specified duties. The provisions authorizing the existence



of the board and the appointment of the registrar will become inoperative on July 1, 1998, and will be repealed on January 1, 1999.

This bill would extend the inoperative dates to July 1, 2000, and the repeal dates to January 1, 2001.

(3) Existing law requires the Joint Legislative Sunset Review Committee to perform various functions and duties in evaluating and determining whether a board or regulatory program has demonstrated a public need for the board's or program's continued existence, and to report its findings and recommendations to the Department of Consumer Affairs for review.

This bill, until July 1, 2000, would provide that the review of the Contractors' State License Board by the department shall be limited to only those unresolved issues identified by the Joint Legislative Sunset Review Committee.

(4) 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. These provisions would remain operative until July 1, 2000, and would be repealed on January 1, 2001.

The bill would require the board, before January 1, 1999, to consult with specified persons concerning potential administrative regulations to implement a similar program.

(5) The bill would require the board to identify those "C" license classifications that present a risk and to report to the Legislature and the Department of Consumer



Affairs by October 1, 1998, as to which specialty licensing classification may be appropriate for consolidation, redefinition, or elimination. The board would be required, not later than July 1, 1999, to take regulatory action to implement the recommendations of the report, as specified.

(6) The bill would require the board to report to the Legislature and the Department of Consumer Affairs on whether revising specialty licensing contractor classifications is appropriate, and to report on whether a separate classification or certification of home improvement contractors is appropriate.

(7) The bill would also make technical and clarifying changes.

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

SECTION 1. Section 7000.5 of the Business and Professions Code is amended to read:

7000.5. (a) There is in the Department of Consumer Affairs a Contractors' State License Board, which consists of 13 members.

(b) The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473). However, the review of this board by the department shall be limited to only those unresolved issues identified by the Joint Legislative Sunset Review Committee.

(c) This section shall become inoperative on July 1, 2000, and, as of January 1, 2001, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2001, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 2. Section 7011 of the Business and Professions Code is amended to read:

7011. The board by and with the approval of the director shall appoint a registrar of contractors and fix his or her compensation.

The registrar shall be the executive officer and secretary of the board and shall carry out all of the



administrative duties as provided in this chapter and as delegated to him or her by the board.

For the purpose of administration of this chapter, there may be appointed a deputy registrar, a chief reviewing and hearing officer and, subject to Section 159.5, other assistants and subordinates as may be necessary.

Appointments shall be made in accordance with the provisions of civil service laws.

This section shall become inoperative on July 1, 2000, and, as of January 1, 2001, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2001, deletes or extends the dates on which it becomes inoperative and is repealed.

Section 7019.1 is added to the Business and Professions Code, to read:

7019.1. (a) On and after July 1, 1998, the board shall furnish a copy of any opinion prepared by the licensed professional, including any contractor, retained pursuant to Section 7019, to the complainant, to the licensee against whom the complaint has been made, and, upon request, to the successors, receivers, trustees, executors, administrators, assignees, or guarantors of either party, if directly or collaterally interested under this chapter or otherwise as provided by law.

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

(1) An identification of the nature of the condition that produced the complaint and the cause or basis or contributing cause of that condition.

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

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

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

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



- Time and Materials
- Unit Cost
- Other (identify) _____

and was calculated from standards provided by

- Means Data Systems
- Dodge Data Systems
- National Construction Estimator
- Marshall-Swift
- Software Program (identify) _____
- Other (identify) _____

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

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

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

(e) The board may impose a charge for furnishing a copy of an opinion pursuant to this section to any person except the complainant or the licensee against whom the



complaint has been made. The charge shall be reasonably related to the cost of preparing and transmitting that copy and of processing the request.

(f) This section shall become inoperative on July 1, 2000, and, as of January 1, 2001, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2001, deletes or extends the dates on which it becomes inoperative and is repealed.

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

7057. (a) Except as provided in this section, a general building contractor is 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 at least two unrelated building trades or crafts, or to do or superintend the whole or any part thereof.

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

(b) A general building contractor may take a prime contract or a subcontract for a framing or carpentry project. However, a general building contractor shall not take a prime contract for any project involving trades other than framing or carpentry unless the prime contract requires at least two unrelated building trades or crafts other than framing or carpentry, or unless the general building contractor holds the appropriate specialty license or subcontracts with an appropriately licensed specialty contractor to perform the work. A general building contractor shall not take a subcontract involving trades other than framing or carpentry, unless the subcontract requires at least two unrelated trades or crafts other than framing or carpentry, or unless the general building contractor holds the required specialty license. The general building contractor may not count framing or carpentry in calculating the two unrelated



trades necessary in order for the general building contractor to be able to take a prime contract or subcontract for a project involving other trades.

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

SEC. 5. Section 7155.5 of the Business and Professions Code is amended to read:

7155.5. Violations of any provisions of this chapter by a home improvement salesperson, likewise constitutes a cause for disciplinary action against the contractor, whether or not he or she had knowledge of or participated in the act or omission constituting violations of this chapter.

SEC. 6. Section 7156 of the Business and Professions Code is amended to read:

7156. It shall be a misdemeanor and a cause for disciplinary action to commit any of the following acts:

(a) For any salesperson to fail to account for or to remit to his or her employing contractor any payment received in connection with any home improvement transaction or any other transaction involving a work of improvement.

(b) For any person to use a contract form in connection with any home improvement transaction or any other transaction involving a work of improvement if the form fails to disclose the name of the contractor principal by whom he or she is employed.

SEC. 7. Section 7157 of the Business and Professions Code is amended to read:

7157. (a) Except as otherwise provided in subdivision (b), as a part of or in connection with the inducement to enter into any home improvement contract or other contract, which may be performed by a contractor, no person may promise or offer to pay,



credit, or allow to any owner, compensation or reward for the procurement or placing of home improvement business with others.

(b) A contractor or his or her agent or salesperson may give tangible items to prospective customers for advertising or sales promotion purposes where the gift is not conditioned upon obtaining a contract for home improvement work if the gift does not exceed a value of five dollars (\$5) and only one such gift is given in connection with any one transaction.

(c) No salesperson or contractor's agent may accept any compensation of any kind, for or on account of a home improvement transaction, or any other transaction involving a work of improvement, from any person other than the contractor whom he or she represents with respect to the transaction, nor shall the salesperson or agent make any payment to any person other than his or her employer on account of the sales transaction.

(d) No contractor shall pay, credit, or allow any consideration or compensation of any kind to any other contractor or salesperson other than a licensee for or on account of the performance of any work of improvement or services, including, but not limited to, home improvement work or services, except: (1) where the person to or from whom the consideration is to be paid is not subject to or is exempted from the licensing requirements of this chapter, or (2) where the transaction is not subject to the requirements of this chapter.

As used in this section "owners" shall also mean "tenant."

Commission of any act prohibited by this section is a misdemeanor and constitutes a cause for disciplinary action.

SEC. 8. Section 7159 of the Business and Professions Code is amended to read:

7159. This section applies only to home improvement contracts, as defined in Section 7151.2, between a contractor, whether a general contractor or a specialty contractor, who is licensed or subject to be licensed



pursuant to this chapter with regard to the transaction and who contracts with an owner or tenant for work upon a residential building or structure, or upon land adjacent thereto, for proposed repairing, remodeling, altering, converting, modernizing, or adding to the residential building or structure or land adjacent thereto, and where the aggregate contract price specified in one or more improvement contracts, including all labor, services, and materials to be furnished by the contractor, exceeds five hundred dollars (\$500).

Every home improvement contract and every contract, the primary purpose of which is the construction of a swimming pool, is subject to this section. Every contract and any changes in the contract subject to this section shall be evidenced by a writing and shall be signed by all the parties to the contract. The writing shall contain all of the following:

(a) The name, address, and license number of the contractor, and the name and registration number of any salesperson who solicited or negotiated the contract.

(b) The approximate dates when the work will begin and on which all construction is to be completed.

(c) A plan and scale drawing showing the shape, size, dimensions, and construction and equipment specifications for a swimming pool and for other home improvements, a description of the work to be done and description of the materials to be used and the equipment to be used or installed, and the agreed consideration for the work.

(d) If the payment schedule contained in the contract provides for a downpayment to be paid to the contractor by the owner or the tenant before the commencement of work, the downpayment may not exceed two hundred dollars (\$200) or 2 percent of the contract price for swimming pools, or one thousand dollars (\$1,000) or 10 percent of the contract price for other home improvements, excluding finance charges, whichever is less.

(e) A schedule of payments showing the amount of each payment as a sum in dollars and cents. In no event



may the payment schedule provide for the contractor to receive, nor may the contractor actually receive, payments in excess of 100 percent of the value of the work performed on the project at any time, excluding finance charges, except that the contractor may receive an initial downpayment authorized by subdivision (d). With respect to a swimming pool contract, the final payment may be made at the completion of the final plastering phase of construction, provided that any installation or construction of equipment, decking, or fencing required by the contract is also completed. A failure by the contractor without lawful excuse to substantially commence work within 20 days of the approximate date specified in the contract when work will begin shall postpone the next succeeding payment to the contractor for that period of time equivalent to the time between when substantial commencement was to have occurred and when it did occur. The schedule of payments shall be stated in dollars and cents, and shall be specifically referenced to the amount of work or services to be performed and to any materials and equipment to be supplied. With respect to a contract that provides for a schedule of monthly payments to be made by the owner or tenant and for a schedule of payments to be disbursed to the contractor by a person or entity to whom the contractor intends to assign the right to receive the owner's or tenant's monthly payments, the payments referred to in this subdivision mean the payments to be disbursed by the assignee and not those payments to be made by the owner or tenant.

(f) A statement that, upon satisfactory payment being made for any portion of the work performed, the contractor shall, prior to any further payment being made, furnish to the person contracting for the home improvement or swimming pool a full and unconditional release from any claim or mechanic's lien pursuant to Section 3114 of the Civil Code for that portion of the work for which payment has been made.

(g) The requirements set forth in subdivisions (d), (e), and (f) do not apply when the contract provides for



the contractor to furnish a performance and payment bond, lien and completion bond, bond equivalent, or joint control approved by the registrar covering full performance and completion of the contract and the bonds or joint control is or are furnished by the contractor, or when the parties agree for full payment to be made upon or for a schedule of payments to commence after satisfactory completion of the project. The contract shall contain, in close proximity to the signatures of the owner and contractor, a notice in at least 10-point type stating that the owner or tenant has the right to require the contractor to have a performance and payment bond.

(h) No extra or change-order work may be required to be performed without prior written authorization of the person contracting for the construction of the home improvement or swimming pool. No change-order is enforceable against the person contracting for home improvement work or swimming pool construction unless it clearly sets forth the scope of work encompassed by the change-order and the price to be charged for the changes. Any change-order forms for changes or extra work shall be incorporated in, and become a part of, the contract. Failure to comply with the requirements of this subdivision does not preclude the recovery of compensation for work performed based upon quasi-contract, quantum meruit, restitution, or other similar legal or equitable remedies designed to prevent unjust enrichment.

(i) If the contract provides for a payment of a salesperson's commission out of the contract price, that payment shall be made on a pro rata basis in proportion to the schedule of payments made to the contractor by the disbursing party in accordance with subdivision (e).

(j) The language of the notice required pursuant to Section 7018.5.

(k) What constitutes substantial commencement of work pursuant to the contract.

(l) A notice that failure by the contractor without lawful excuse to substantially commence work within 20



days from the approximate date specified in the contract when work will begin is a violation of the Contractors' State License Law.

(m) If the contract provides for a contractor to furnish joint control, the contractor shall not have any financial or other interest in the joint control.

A failure by the contractor without lawful excuse to substantially commence work within 20 days from the approximate date specified in the contract when work will begin is a violation of this section.

This section does not prohibit the parties to a home improvement contract from agreeing to a contract or account subject to Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of Division 3 of the Civil Code.

The writing may also contain other matters agreed to by the parties to the contract.

The writing shall be legible and shall be in a form that clearly describes any other document that is to be incorporated into the contract. Before any work is done, the owner shall be furnished a copy of the written agreement, signed by the contractor.

For purposes of this section, the board shall, by regulation, determine what constitutes "without lawful excuse."

The provisions of this section are not exclusive and do not relieve the contractor or any contract subject to it from compliance with all other applicable provisions of law.

A violation of this section by a licensee, or a person subject to be licensed, under this chapter, or by his or her agent or salesperson, is a misdemeanor punishable by a fine of not less than one hundred dollars (\$100) nor more than five thousand dollars (\$5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(n) Any person who violates this section as part of a plan or scheme to defraud an owner of a residential or nonresidential structure, including a mobilehome or manufactured home, in connection with the offer or performance of repairs to the structure for damage



caused by a natural disaster, shall be ordered by the court to make full restitution to the victim based on the person's ability to pay, as defined in subdivision (e) of Section 1203.1b of the Penal Code. In addition to full restitution, and imprisonment authorized by this section, the court may impose a fine of not less than five hundred dollars (\$500) nor more than twenty-five thousand dollars (\$25,000), based upon the defendant's ability to pay. This subdivision applies to natural disasters for which a state of emergency is proclaimed by the Governor pursuant to Section 8625 of the Government Code or for which an emergency or major disaster is declared by the President of the United States.

SEC. 9. (a) It is the intent of the Legislature to amend Section 7057 of the Business and Professions Code in order to modify the holdings in *Home Depot, U.S.A., Inc. v. Contractors' State License Bd.*, 41 Cal. App. 4th 1592, and *Hazard, Jr., Enterprises, Inc. v. Insurance Co. of the West*, 52 Cal. App. 4th 1088, to the extent the courts' holdings, or the courts' statutory construction of Section 7057 of the Business and Professions Code, are inconsistent with this act.

(b) The limitations applicable to general building contractors performing in the role of specified specialty building contractors for which other standards and criteria have been established, are necessary to serve as a means of protecting the public against contractors who have not demonstrated competence in specified specialty aspects of work for which a specialty license is required and as a means of facilitating the selection and provision of contracting services by and for the public that provides recognition to those persons or entities that have demonstrated experience, competence, and appropriate qualifications in those specialties specified in Section 7057 of the Business and Professions Code. In addition, experience has shown that consumers need and deserve to be protected against work being performed by contractors not licensed in specialty areas, and that the majority of consumer abuses occur and the focus of enforcement is needed most in these areas.



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

SEC. 10. The Legislature finds and declares that the program of furnishing opinions of industry experts on the cause or basis of a condition that has produced a consumer complaint arising from a contractor's alleged failure to comply with the license law, and on the cost to correct that condition, was established in 1987 to provide the parties to those disputes with an opinion of a disinterested professional to facilitate the resolution of those disputes quickly and inexpensively. While generically this is an expert witness program, it is unique and focused on the particular industry practices and problems in contracting, and the provisions made by this act are designed to improve and facilitate its availability, and the Legislature does not intend to provide for, or to provide



any precedent for, any expert witness program in any other context or any other industry, trade, or profession.

SEC. 11. The Contractors' State License Board shall, before January 1, 1999, consult with representatives of the industry it regulates, with consumer groups, and with other parties that have demonstrated an interest in the operation of the program of licensing contractors, and evolve in conjunction with those discussions, a potential administrative regulation or regulations that the board believes would best serve the interests of the public, and the affected parties for the definition, administration, governance, and implementation of a program such as that provided in Section 7019.1 of the Business and Professions Code, as that program might be continued after July 1, 2000.

The board shall also consult with the Director of Consumer Affairs, with whom the board is required to consult in the adoption of administrative regulations pursuant to Section 313.1 of the Business and Professions Code, to obtain the director's input into the formulation of the potential regulations to be evolved pursuant to this section.

SEC. 12. The Contractors' State License Board shall identify those "C" specialty license classifications that present a risk to the health, safety, and general welfare of the public, and shall report to the Legislature and the Department of Consumer Affairs by October 1, 1998, which specialty licensing contractor classifications may be appropriate for consolidation, redefinition, or elimination. Not later than July 1, 1999, the board shall, in consideration of any response of the Legislature and the Department of Consumer Affairs to the report, take regulatory action to implement the recommendations of the report.

SEC. 13. The Contractors' State License Board shall report to the Legislature and the Department of Consumer Affairs by October 1, 1998, on which specialty licensing contractor classifications, such as asbestos contractors or contractors involved in the removal or remediation of hazardous substances, are appropriate for



consolidation, redefinition, or elimination. The board shall also report on whether a separate classification or certification of home improvement contractors is appropriate.



Approved _____, 1997

Governor

