

Senate Bill No. 1112

Passed the Senate September 6, 2005

Secretary of the Senate

Passed the Assembly August 30, 2005

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2005, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 5515, 7028.13, 7065.05, 7071.6, 7071.11, 7071.12, 7073, 7085, and 7110.5 of the Business and Professions Code, and to amend Section 19830 of the Health and Safety Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

SB 1112, Committee on Business, Professions and Economic Development. Contractors and architects.

(1) Existing law provides for the licensing and regulation of architects by the California Architects Board in the Department of Consumer Affairs. Existing law provides that appointments to the board expire on June 1 of the 4th year following the year in which the previous term expired.

This bill would instead provide that board appointments expire on June 30 of the 4th year following the year in which the previous term expired.

(2) Existing law, the Contractors' State License Law, provides for the licensing and regulation of contractors by the Contractors' State License Board in the Department of Consumer Affairs. Existing law requires cities and counties that require issuance of a permit as a condition precedent to the construction, alteration, improvement, demolition, or repair of a building or structure to give specified notices.

This bill would revise the above notice requirement to conform with certain provisions of existing law.

Existing law establishes an arbitration process administered by the board to resolve disputes between contractors and consumers. Existing law authorizes the registrar of contractors, after investigating complaints and finding possible violations, to refer the alleged violation and complaint to arbitration if damages are more than \$7,500, and if certain other conditions are met.

This bill would instead require that, for referral to arbitration, the damages or potential damages be greater than the amount of the licensing bond required.

Existing law requires the registrar, upon receipt of a certified copy of the Labor Commissioner's finding of a willful or deliberate violation of certain provisions, to initiate formal

disciplinary action against a license within 30 days of notification.

This bill would delete the requirement that the disciplinary action be formal.

Existing law requires an action not to recover wages or fringe benefits against a deposit to be brought within a certain time period after expiration of a license, or after the license was inactivated, canceled, or revoked. Existing law provides that a deposit in lieu of a bond shall not be released until a complaint is adjudicated.

This bill would also require a claim to recover wages or fringe benefits to be brought within 6 months of discovery of the wage or fringe benefit delinquencies, but not later than 2 years from the date the wage or fringe benefit contributions were due. The bill would provide that legal fees can't be charged by the board against a deposit posted. The bill would delete the provisions that a deposit shall not be released until a complaint is adjudicated and would instead provide that, if the board receives written notification of a civil action against a deposit, the bond will not be released except as ordered by the court.

Existing law authorizes the registrar to deny an application for licensure for specified reasons.

This bill would authorize the registrar, in lieu of denying licensure, to issue a probationary license, and would enact provisions relating to revocation and renewal of a probationary license.

This bill would make other nonsubstantive changes to the provisions relating to contractors.

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

SECTION 1. Section 5515 of the Business and Professions Code is amended to read:

5515. Every person appointed shall serve for four years and until the appointment and qualification of his or her successor or until one year shall have elapsed since the expiration of the term for which he or she was appointed, whichever first occurs.

No person shall serve as a member of the board for more than two consecutive terms.

Vacancies occurring prior to the expiration of the term shall be filled by appointment for the unexpired term.

Each appointment shall expire on June 30 of the fourth year following the year in which the previous term expired.

The Governor shall appoint three of the public members and the five licensed members qualified as provided in Section 5514. The Senate Rules Committee and the Speaker of the Assembly shall each appoint a public member.

SEC. 2. Section 7028.13 of the Business and Professions Code is amended to read:

7028.13. (a) After the exhaustion of the review procedures provided for in Sections 7028.10 to 7028.12, inclusive, the registrar may apply to the appropriate superior court for a judgment in the amount of the civil penalty and an order compelling the cited person to comply with the order of abatement. The application, which shall include a certified copy of the final order of the registrar, shall constitute a sufficient showing to warrant the issuance of the judgment and order. If the cited person did not appeal the citation, a certified copy of the citation and proof of service, and a certification that the person cited is not or was not a licensed contractor or applicant for a license at the time of issuance of the citation, shall constitute a sufficient showing to warrant the issuance of the judgment and order.

(b) Notwithstanding any other provision of law, the registrar may delegate the collection of the civil penalty for any citation issued to any person or entity legally authorized to engage in collections. Costs of collection shall be borne by the person cited. The registrar shall not delegate the authority to enforce the order of abatement.

(c) Notwithstanding any other provision of law, the registrar shall have the authority to assign the rights to the civil penalty, or a portion thereof, for adequate consideration. The assignee and the registrar shall have all the rights afforded under the ordinary laws of assignment of rights and delegation of duties. The registrar shall not assign the order of abatement. The assignee may apply to the appropriate superior court for a judgment based upon the assigned rights upon the same evidentiary showing as set forth in subdivision (a).

(d) Notwithstanding any other provision of law, including subdivisions (a) and (b) of Section 340 of the Code of Civil Procedure, the registrar or his or her designee or assignee shall have four years from the date of the final order to collect civil penalties except that the registrar or his or her designee or assignee shall have 10 years from the date of the judgment to enforce civil penalties on citations that have been converted to judgments through the process described in subdivisions (a) and (c).

SEC. 3. Section 7065.05 of the Business and Professions Code is amended to read:

7065.05. The board shall periodically review and, if needed, revise the contents of qualifying examinations to insure that the examination questions are timely and relevant to the business of contracting. The board shall, in addition, construct and conduct examinations in such a manner as to preclude the possibility of any applicant having prior knowledge of any specific examination question.

SEC. 4. Section 7071.6 of the Business and Professions Code is amended to read:

7071.6. (a) The board shall require as a condition precedent to the issuance, reinstatement, reactivation, renewal, or continued maintenance of a license, that the applicant or licensee file or have on file a contractor's bond in the sum of ten thousand dollars (\$10,000), regardless of the classification. However, on and after January 1, 2007, the sum of the bond that an applicant or licensee is required to have on file shall be twelve thousand five hundred dollars (\$12,500).

(b) Excluding the claims brought by the beneficiaries specified in subdivision (a) of Section 7071.5, the aggregate liability of a surety on claims brought against a bond required by this section shall not exceed the sum of seven thousand five hundred dollars (\$7,500). The bond proceeds in excess of seven thousand five hundred dollars (\$7,500) shall be reserved exclusively for the claims of the beneficiaries specified in subdivision (a) of Section 7071.5. However, nothing in this section shall be construed so as to prevent any beneficiary specified in subdivision (a) of Section 7071.5 from claiming or recovering the full measure of the bond required by this section.

(c) No bond shall be required of a holder of a license that has been inactivated on the official records of the board during the period the license is inactive.

(d) Notwithstanding any other provision of law, as a condition precedent to licensure, the board may require an applicant to post a contractor's bond in twice the amount required pursuant to subdivision (a) until the time that the license is renewed, under the following conditions:

(1) The applicant has either been convicted of a violation of Section 7028 or has been cited pursuant to Section 7028.7.

(2) If the applicant has been cited pursuant to Section 7028.7, the citation has been reduced to a final order of the registrar.

(3) The violation of Section 7028, or the basis for the citation issued pursuant to Section 7028.7, constituted a substantial injury to the public.

SEC. 5. Section 7071.11 of the Business and Professions Code is amended to read:

7071.11. (a) The aggregate liability of a surety on a claim for wages and fringe benefits brought against any bond required by this article, other than a bond required by Section 7071.8, shall not exceed the sum of four thousand dollars (\$4,000). If any bond required by this article is insufficient to pay all claims in full, the sum of the bond shall be distributed to all claimants in proportion to the amount of their respective claims.

(b) No license may be renewed, reissued, or reinstated while any judgment or admitted claim in excess of the amount of the bond remains unsatisfied. The following limitations periods apply to bonds required by this article:

(1) Any action, other than an action to recover wages or fringe benefits, against a contractor's bond or a bond of a qualifying individual filed by an active licensee shall be brought within two years after the expiration of the license period during which the act or omission occurred, or within two years of the date the license of the active licensee was inactivated, canceled, or revoked by the board, whichever first occurs.

(2) Any action, other than an action to recover wages or fringe benefits, against a disciplinary bond filed by an active licensee pursuant to Section 7071.8 shall be brought within two years after the expiration of the license period during which the act or omission occurred, or within two years of the date the license of

the active licensee was inactivated, canceled, or revoked by the board, or within two years after the last date for which a disciplinary bond filed pursuant to Section 7071.8 was required, whichever date is first.

(3) A claim to recover wages or fringe benefits shall be brought within six months from the date that the wage or fringe benefit delinquencies were discovered, but in no event shall a civil action thereon be brought later than two years from the date the wage or fringe benefit contributions were due.

(c) Whenever the surety makes payment on any claim against a bond required by this article, whether or not payment is made through a court action or otherwise, the surety shall, within 30 days of the payment, provide notice to the registrar. The notice required by this subdivision shall provide the following information by declaration on a form prescribed by the registrar:

- (1) The name and license number of the contractor.
- (2) The surety bond number.
- (3) The amount of payment.
- (4) The statutory basis upon which the claim is made.
- (5) The names of the person or persons to whom payments have been made.

(6) Whether or not the payments were the result of a good faith action by the surety.

The notice shall also clearly indicate whether or not the licensee filed a protest in accordance with this section.

(d) Prior to the settlement of a claim through a good faith payment by the surety, a licensee shall have not less than 15 days in which to provide a written protest. This protest shall instruct the surety not to make payment from the bond on the licensee's account upon the specific grounds that the claim is opposed by the licensee, and provide the surety a specific and reasonable basis for the licensee's opposition to payment.

(1) Whenever a licensee files a protest in accordance with this subdivision, the board shall investigate the matter and file disciplinary action as set forth under this chapter if there is evidence that the surety has sustained a loss as the result of a good faith payment made for the purpose of mitigating any damages incurred by any person or entity covered under Section 7071.5.

(2) Any licensee that fails to file a protest as specified in this subdivision shall have 90 days from the date of notification by the board to submit proof of payment of the actual amount owed to the surety and, if applicable, proof of payment of any judgment or admitted claim in excess of the amount of the bond or, by operation of law, the license shall be suspended at the end of the 90 days. A license suspension pursuant to this subdivision shall be disclosed indefinitely as a failure to settle outstanding final liabilities in violation of this chapter. The disclosure specified by this subdivision shall also be applicable to all licenses covered by the provisions of subdivision (d).

(e) No license may be renewed, reissued, or reinstated while any surety remains unreimbursed for any loss or expense sustained on any bond issued for the licensee or for any entity of which any officer, director, member, partner, or qualifying person was an officer, director, member, partner, or qualifying person of the licensee while the licensee was subject to suspension or disciplinary action under this section.

(f) The licensee may provide the board with a notarized copy of an accord, reached with the surety to satisfy the debt in lieu of full payment. By operation of law, failure to abide by the accord shall result in the automatic suspension of any license to which this section applies. A license that is suspended for failure to abide by the accord may only be renewed or reinstated when proof of satisfaction of all debts is made.

(g) Legal fees may not be charged against the bond by the board.

SEC. 6. Section 7071.12 of the Business and Professions Code is amended to read:

7071.12. (a) Instead of the bond provided by this article a deposit may be given pursuant to Article 7 (commencing with Section 995.710) of Chapter 2 of Title 14 of Part 2 of the Code of Civil Procedure.

(b) If the board is notified, in writing, of a civil action against the deposit authorized under this section, the deposit or any portion thereof shall not be released for any purpose, except as determined by the court.

(c) If any deposit authorized under this section is insufficient to pay, in full, all claims that have been adjudicated under any action filed in accordance with this section, the sum of the

deposit shall be distributed to all claimants in proportion to the amount of their respective claims.

(d) The following limitations periods apply to deposits in lieu of the bond required by this article:

(1) Any action, other than an action to recover wages or fringe benefits, against a deposit given in lieu of a contractor's bond or bond of a qualifying individual filed by an active licensee shall be brought within three years after the expiration of the license period during which the act or omission occurred, or within three years of the date the license of the active licensee was inactivated, canceled, or revoked by the board, whichever occurs first.

(2) Any action, other than an action to recover wages or fringe benefits, against a deposit given in lieu of a disciplinary bond filed by an active licensee pursuant to Section 7071.8 shall be brought within three years after the expiration of the license period during which the act or omission occurred, or within three years of the date the license of the active licensee was inactivated, canceled, or revoked by the board, or within three years after the last date for which a deposit given in lieu of a disciplinary bond filed pursuant to Section 7071.8 was required, whichever date is first.

(3) A claim to recover wages or fringe benefits shall be brought within six months from the date that the wage or fringe benefit delinquencies were discovered, but in no event shall a civil action thereon be brought later than two years from the date the wage or fringe benefit contributions were due.

(e) In any case in which a claim is filed against a deposit given in lieu of a bond by any employee or by an employee organization on behalf of an employee, concerning wages or fringe benefits based upon the employee's employment, claims for the nonpayment shall be filed with the Labor Commissioner. The Labor Commissioner shall, pursuant to the authority vested by Section 96.5 of the Labor Code, conduct hearings to determine whether or not the wages or fringe benefits should be paid to the complainant. Upon a finding by the commissioner that the wages or fringe benefits should be paid to the complainant, the commissioner shall notify the register of the findings. The registrar shall not make payment from the deposit on the basis of findings by the commissioner for a period of 10 days following

determination of the findings. If, within the period, the complainant or the contractor files written notice with the registrar and the commissioner of an intention to seek judicial review of the findings pursuant to Section 11523 of the Government Code, the registrar shall not make payment if an action is actually filed, except as determined by the court. If, thereafter, no action is filed within 60 days following determination of findings by the commissioner, the registrar shall make payment from the deposit to the complainant.

(f) Legal fees may not be charged by the board against any deposit posted pursuant to this section.

SEC. 7. Section 7073 of the Business and Professions Code is amended to read:

7073. (a) The registrar may deny any application for a license or supplemental classification where the applicant has failed to comply with any rule or regulation adopted pursuant to this chapter or where there are grounds for denial under Section 480. Procedures for denial of an application shall be conducted in accordance with Section 485.

(b) When the board has denied an application for a license on grounds that the applicant has committed a crime substantially related to qualifications, functions, or duties of a contractor, it shall, in its decision or in its notice under subdivision (b) of Section 485, inform the applicant of the earliest date on which the applicant may reapply for a license. The board shall develop criteria, similar to the criteria developed to evaluate rehabilitation, to establish the earliest date on which the applicant may reapply. The date set by the registrar shall not be more than five years from the effective date of the decision or service of notice under subdivision (b) of Section 485.

(c) The board shall inform an applicant that all competent evidence of rehabilitation shall be considered upon reapplication.

(d) Along with the decision or notice under subdivision (b) of Section 485, the board shall serve a copy of the criteria for rehabilitation formulated under Section 482.

(e) In lieu of denying licensure as authorized under this section, the registrar may issue an applicant a probationary license with terms and conditions. During the probationary period, if information is brought to the attention of the registrar regarding any act or omission of the licensee constituting

grounds for discipline or denial of licensure for which the registrar determines that revocation of the probationary license would be proper, the registrar shall notify the applicant to show cause within 30 days why the probationary license should not be revoked. The proceedings shall be conducted in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the registrar shall have all the powers granted therein. A probationary license shall not be renewed during any period in which any proceeding brought pursuant to this section is pending.

SEC. 8. Section 7085 of the Business and Professions Code is amended to read:

7085. (a) After investigating any verified complaint alleging a violation of Section 7107, 7109, 7110, 7113, 7119, or 7120, and any complaint arising from a contract involving works of improvement and finding a possible violation, the registrar may, with the concurrence of both the licensee and the complainant, refer the alleged violation, and any dispute between the licensee and the complainant arising thereunder, to arbitration pursuant to this article, provided the registrar finds that:

(1) There is evidence that the complainant has suffered or is likely to suffer material damages as a result of a violation of Section 7107, 7109, 7110, 7113, 7119, or 7120, and any complaint arising from a contract involving works of improvement.

(2) There are reasonable grounds for the registrar to believe that the public interest would be better served by arbitration than by disciplinary action.

(3) The licensee does not have a history of repeated or similar violations.

(4) The licensee was in good standing at the time of the alleged violation.

(5) The licensee does not have any outstanding disciplinary actions filed against him or her.

(6) The parties have not previously agreed to private arbitration of the dispute pursuant to contract or otherwise.

(7) The parties have been advised of the provisions of Section 2855 of the Civil Code.

For the purposes of paragraph (1), “material damages” means damages greater than the amount of the bond required under subdivision (a) of Section 7071.6, but less than fifty thousand dollars (\$50,000).

(b) In all cases in which a possible violation of the sections set forth in paragraph (1) of subdivision (a) exists and the contract price, or the demand for damages is equal to or less than the amount of the bond required under Section 7071.6, but, regardless of the contract price, the complaint shall be referred to arbitration, utilizing the criteria set forth in paragraphs (2) to (6), inclusive, of subdivision (a).

SEC. 9. Section 7110.5 of the Business and Professions Code is amended to read:

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

SEC. 10. Section 19830 of the Health and Safety Code is amended to read:

19830. Every city or county, whether general law or chartered, which requires the issuance of a permit as a condition precedent to the construction, alteration, improvement, demolition, or repair of any building or structure, shall, in addition to any other requirements, prepare and give notice to the owner of the building or structure whenever an application for a building permit is submitted in the owner’s name as builder of the improvements. The notice shall be given by mail; or the notice may be given to the applicant at the time the application for the permit is made, provided that the applicant presents identification sufficient to identify himself or herself as the owner. The notice shall be in substantially the following form:

“OWNER-BUILDER INFORMATION

“Dear Property Owner:

“An application for a building permit has been submitted in your name listing yourself as the builder of the property improvements specified.

“For your protection you should be aware that as ‘owner-builder’ you are the responsible party of record on the permit. Building permits are not required to be signed by property owners unless they are personally performing their own work. If your work is being performed by someone other than yourself, you may protect yourself from possible liability if that person applies for the proper permit in his or her name.

“Contractors are required by law to be licensed and bonded by the State of California and to have a business license from the city or county. They are also required by law to put their license number on all permits for which they apply.

“If you plan to do your own work, with the exception of various trades that you plan to subcontract, you should be aware of the following information for your benefit and protection:

“If you employ or otherwise engage any persons other than your immediate family, and the work (including materials and other costs) is \$500 or more for the entire project, and the persons are not licensed as contractors or subcontractors, then you may be an employer.

“If you are an employer, you must register with the state and federal government as an employer and you are subject to several obligations including state and federal income tax withholding, federal social security taxes, workers’ compensation insurance, disability insurance costs, and unemployment compensation contributions.

“There may be financial risks for you if you do not carry out these obligations, and these risks are especially serious with respect to workers’ compensation insurance.

“For more specific information about your obligations under federal law, contact the Internal Revenue Service (and, if you wish, the U.S. Small Business Administration). For more specific information about your obligations under state law, contact the Department of Benefit Payments and the Division of Industrial Accidents.

“If the structure is intended for sale, property owners who are not licensed contractors are allowed to perform their work personally or through their own employees, without a licensed contractor or subcontractor, only under limited conditions.

“A frequent practice of unlicensed persons professing to be contractors is to secure an ‘owner-builder’ building permit,

erroneously implying that the property owner is providing his or her own labor and material personally. Building permits are not required to be signed by property owners unless they are performing their own work personally.

“Information about licensed contractors may be obtained by contacting the Contractors’ State License Board’s automated telephone information system at 1-800-321-CSLB (2752) or by accessing their Web site at www.CSLB.ca.gov.

“Please complete and return the enclosed owner-builder verification form so that we can confirm that you are aware of these matters. The building permit will not be issued until the verification is returned.

Very truly yours,

“(Name of permitting agency)”.

Approved _____, 2005

Governor