

AMENDED IN ASSEMBLY MARCH 13, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1920

Introduced by Assembly Member Bill Berryhill

February 22, 2012

An act to amend Section 7031 of the Business and Professions Code, relating to contractors.

LEGISLATIVE COUNSEL'S DIGEST

AB 1920, as amended, Bill Berryhill. Contractors: compensation.

Existing law, the Contractors' State License Law, provides for the licensing and regulation of contractors in the state by the Contractors' State License Board. Existing law prohibits a person acting in the capacity of a contractor from bringing an action to collect compensation for work performed as a contractor without alleging that he or she was a licensed contractor at the time the work was performed, except as specified. Existing law also authorizes a person who utilizes the services of an unlicensed contractor to bring an action in court to recover moneys paid to the unlicensed contractor for the performance of any act or contract. *Existing law authorizes the court to determine whether a contractor has substantially complied with the contractor licensure requirement for purposes of these provisions, as specified.*

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This bill would authorize a person acting in the capacity of a contractor without a license to bring or maintain an action for recovery of compensation for any act or contract if the person had previously been licensed as a contractor in this state ~~within 180 days of commencement of the work~~ and the board has retroactively reinstated the contractor's license from the date the work commenced through the date of

completion. The bill would prohibit an action for recovery of compensation against a contractor that satisfies these conditions. The bill would authorize a licensed contractor who performs work outside the scope of his or her license to bring or maintain an action to recover compensation for the portion of the work that was performed within the scope of his or her license if the value of the unlicensed work does not exceed 20% of the contract price. The bill would limit the liability of a contractor performing work outside the scope of his or her license to the value of the unlicensed work if it does not exceed 20% of the contract price. *The bill would authorize the court to consider specified mitigating and aggravating factors relative to the loss of a contractor’s license in determining whether the contractor has substantially complied with the contractor licensure requirement for purposes of these provisions.*

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

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

1 SECTION 1. Section 7031 of the Business and Professions
 2 Code is amended to read:
 3 7031. (a) (1) Except as provided in subdivision (e), no person
 4 engaged in the business or acting in the capacity of a contractor,
 5 may bring or maintain any action, or recover in law or equity in
 6 any action, in any court of this state for the collection of
 7 compensation for the performance of any act or contract where a
 8 license is required by this chapter without alleging that he or she
 9 was a duly licensed contractor at all times during the performance
 10 of that act or contract, regardless of the merits of the cause of action
 11 brought by the person, except that this prohibition shall not apply
 12 to contractors who are each individually licensed under this chapter
 13 but who fail to comply with Section 7029.
 14 (2) This subdivision shall not apply if the person who engaged
 15 in the business or acted in the capacity of a contractor (A) had
 16 been previously licensed as a contractor in this state in the
 17 appropriate classification for the work contracted or performed
 18 ~~within the 180-day period immediately preceding commencement~~
 19 ~~of the work~~, and (B) the board has acted to retroactively reinstate
 20 the license from the date work commenced through the date of
 21 completion.

1 (3) If a contractor holding a valid license contracted for, or
2 performed a portion of, any work outside of his or her license
3 classification and the value of the unlicensed work does not exceed
4 20 percent of the contract price, the contractor shall not be
5 prevented from bringing or maintaining an action to recover
6 compensation payable for that portion of work contracted or
7 performed for which the contractor was duly licensed.

8 (b) (1) Except as provided in subdivision (e), a person who
9 utilizes the services of an unlicensed contractor may bring an action
10 in any court of competent jurisdiction in this state to recover all
11 compensation paid to the unlicensed contractor for performance
12 of any act or contract.

13 (2) This subdivision shall not apply if the unlicensed contractor
14 (A) had been previously licensed as a contractor in this state in the
15 appropriate classification for the work contracted or performed
16 ~~within the 180-day period immediately preceding commencement~~
17 ~~of the work~~, and (B) the board has acted to retroactively reinstate
18 the license from the date work commenced through the date of
19 completion.

20 (3) If an action brought under this subdivision is based on a
21 claim that a contractor holding a valid license contracted for, or
22 performed a portion of, any work outside of his or her license
23 classification and the value of the unlicensed work does not exceed
24 20 percent of the contract price, any action to recover compensation
25 previously paid to the contractor shall be limited to the value of
26 that portion of the work contracted or performed that was outside
27 the classification for which the contractor was duly licensed.

28 (c) A security interest taken to secure any payment for the
29 performance of any act or contract for which a license is required
30 by this chapter is unenforceable if the person performing the act
31 or contract was not a duly licensed contractor at all times during
32 the performance of the act or contract.

33 (d) If licensure or proper licensure is controverted, then proof
34 of licensure pursuant to this section shall be made by production
35 of a verified certificate of licensure from the Contractors' State
36 License Board which establishes that the individual or entity
37 bringing the action was duly licensed in the proper classification
38 of contractors at all times during the performance of any act or
39 contract covered by the action. Nothing in this subdivision shall
40 require any person or entity controverting licensure or proper

1 licensure to produce a verified certificate. When licensure or proper
2 licensure is controverted, the burden of proof to establish licensure
3 or proper licensure shall be on the licensee.

4 (e) The judicial doctrine of substantial compliance shall not
5 apply under this section where the person who engaged in the
6 business or acted in the capacity of a contractor has never been a
7 duly licensed contractor in this state. However, notwithstanding
8 subdivision (b) of Section 143, the court may determine that there
9 has been substantial compliance with licensure requirements under
10 this section if it is shown at an evidentiary hearing that the person
11 who engaged in the business or acted in the capacity of a contractor
12 ~~(1) had been duly licensed as a contractor in this state prior to the~~
13 ~~performance of the act or contract, (2) acted reasonably and in~~
14 ~~good faith to maintain proper licensure, (3) did not know or~~
15 ~~reasonably should not have known that he or she was not duly~~
16 ~~licensed when performance of the act or contract commenced, and~~
17 ~~(4) acted promptly and in good faith to reinstate his or her license~~
18 ~~upon learning it was invalid and the loss of licensure was not~~
19 ~~caused by a disciplinary action taken by the board. In making a~~
20 ~~determination of substantial compliance, the court may consider~~
21 ~~mitigating factors for a loss of licensure, including whether (1)~~
22 ~~the contractor acted reasonably and in good faith to maintain~~
23 ~~proper licensure, (2) the contractor knew or should have known~~
24 ~~of the loss of licensure, (3) the contractor took prompt action to~~
25 ~~request reinstatement of the license after learning that it was~~
26 ~~invalid, and (4) persons receiving the benefit of the work performed~~
27 ~~would be unjustly enriched. In addition, the court may consider~~
28 ~~aggravating factors for a loss of licensure, including (1) the~~
29 ~~seriousness of the violation that resulted in the loss of licensure,~~
30 ~~and (2) the degree to which the loss of licensure harmed or could~~
31 ~~have harmed the public.~~

32 (f) The exceptions to the prohibition against the application of
33 the judicial doctrine of substantial compliance found in subdivision
34 (e) shall apply to all contracts entered into on or after January 1,
35 1992, and to all actions or arbitrations arising therefrom, except
36 that the amendments to subdivisions (e) and (f) enacted during the
37 1994 portion of the 1993–94 Regular Session of the Legislature
38 shall not apply to either of the following:

- 1 (1) Any legal action or arbitration commenced prior to January
2 1, 1995, regardless of the date on which the parties entered into
3 the contract.
- 4 (2) Any legal action or arbitration commenced on or after
5 January 1, 1995, if the legal action or arbitration was commenced
6 prior to January 1, 1995, and was subsequently dismissed.

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