

AMENDED IN ASSEMBLY APRIL 9, 2012
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.

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 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. *The bill would also set forth the Legislature’s intent regarding application 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 and (B) the board has acted to retroactively reinstate the license
- 19 from the date work commenced through the date of 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 and (B) the board has acted to retroactively reinstate the license
17 from the date work commenced through the date of completion.

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

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

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

1 licensure is controverted, the burden of proof to establish licensure
 2 or proper licensure shall be on the licensee.

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

28 (f) The exceptions to the prohibition against the application of
 29 the judicial doctrine of substantial compliance found in subdivision
 30 (e) shall apply to all contracts entered into on or after January 1,
 31 1992, and to all actions or arbitrations arising therefrom, except
 32 that the amendments to subdivisions (e) and (f) enacted during the
 33 1994 portion of the 1993–94 Regular Session of the Legislature
 34 shall not apply to either of the following:

35 (1) Any legal action or arbitration commenced prior to January
 36 1, 1995, regardless of the date on which the parties entered into
 37 the contract.

38 (2) Any legal action or arbitration commenced on or after
 39 January 1, 1995, if the legal action or arbitration was commenced
 40 prior to January 1, 1995, and was subsequently dismissed.

1 *SEC. 2. It is the intent of the Legislature that this act affects*
2 *only the rights of the parties to a contract to bring an action to*
3 *recover moneys paid or payable under Section 7031. This act shall*
4 *not be construed to limit or modify any other administrative, civil,*
5 *or criminal actions authorized to be brought by the registrar of*
6 *the board or other law enforcement agency to enforce any*
7 *provision of this chapter.*

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