

**Introduced by Senator Mountjoy**

February 24, 1995

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An act to amend Sections 7028, 7040, 7058.6, 7096, 7097, 7098, 7102, and 7117.5 of the Business and Professions Code, relating to contractors.

LEGISLATIVE COUNSEL'S DIGEST

SB 1061, as introduced, Mountjoy. Contractors.

Existing law provides that an indictment for a violation of engaging in the business of a contractor with respect to work done while not having a license therefor shall be found as an information or complaint filed within 3 years from the date of completion of the work.

This bill would, instead, provide for the indictment, or an information or complaint to be filed within 3 years from the date of the contract, or completion or abandonment of the work, whichever occurs last.

Existing law exempts from licensure under the Contractors' State License Law certain governmental employees, as specified.

This bill would specify that the exception applies when the entity is acting within the scope of its official capacity.

Existing law provides that a contractor is not required to be certified by the Contractors' State License Board nor registered with the Division of Occupational Safety and Health of the Department of Industrial Relations, if bidding on an asbestos project, if the work is done by a properly certified and registered contractor, as specified.

This bill would conform other related provisions of law for the above. It would require the board to obtain and periodically update a list of contractors certified to engage in asbestos-related work, as specified.

The bill would also do the following:

- (1) Define “licensee” to include joint ventures.
- (2) Provide that acting in the capacity of a contractor under any license that has expired constitutes a cause for disciplinary action.
- (3) Enact various technical and clarifying changes.

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 7028 of the Business and  
 2 Professions Code is amended to read:  
 3 7028. (a) It is a misdemeanor for any person to  
 4 engage in the business or act in the capacity of a  
 5 contractor within this state without having a license  
 6 therefor, unless such person is particularly exempted  
 7 from the provisions of this chapter.  
 8 (b) If such a person has been previously convicted of  
 9 the offense described in this section, the court shall  
 10 impose a fine of 20 percent of the price of the contract  
 11 under which the unlicensed person performed  
 12 contracting work, or four thousand five hundred dollars  
 13 (\$4,500), whichever is greater, or imprisonment in the  
 14 county jail for not less than 10 days nor more than six  
 15 months, or both.  
 16 (c) In the event the person performing the  
 17 contracting work has agreed to furnish materials and  
 18 labor on an hourly basis, “the price of the contract” for the  
 19 purposes of this section means the aggregate sum of the  
 20 cost of materials and labor furnished and the cost of  
 21 completing the work to be performed.  
 22 (d) Notwithstanding any other provision of law to the  
 23 contrary, an indictment for any violation of this section  
 24 ~~with respect to work done~~ by the unlicensed contractor  
 25 shall be found or an information or complaint filed within



1 three years from the date of *the contract*, completion, or  
2 *abandonment* of the work, *whichever occurs last*.

3 SEC. 2. Section 7040 of the Business and Professions  
4 Code is amended to read:

5 7040. (a) This chapter does not apply to an  
6 authorized representative of the United States  
7 government, the State of California, or any incorporated  
8 town, city, county, irrigation district, reclamation district  
9 or other municipal or political corporation or subdivision  
10 of this state *when the entity or its representative is acting*  
11 *within the scope of the entity's or representative's official*  
12 *capacity*.

13 (b) Nothing in this section authorizes the ~~state or an~~  
14 *entity or its* authorized representative thereof either to  
15 enter into or authorize a contract with an unlicensed  
16 contractor for work which is required by this chapter to  
17 be performed by a licensed contractor.

18 SEC. 3. Section 7058.6 of the Business and Professions  
19 Code is amended to read:

20 7058.6. (a) The board shall not issue an asbestos  
21 certification, as required by Section 7058.5, unless the  
22 contractor is registered with the Division of Occupational  
23 Safety and Health of the Department of Industrial  
24 Relations pursuant to Section 6501.5 of the Labor Code.  
25 The board may issue an asbestos certification to a  
26 contractor who is not registered, provided the contractor  
27 in a written statement acknowledges that he or she does  
28 not perform asbestos-related work ~~and requires~~  
29 ~~certification solely for the purposes of bidding on a~~  
30 ~~project involving asbestos-related work~~. The board shall  
31 notify both the division and the contractor, ~~at the same~~  
32 ~~time~~, in writing, of the contractor's passage of the  
33 certification examination, for the purpose of allowing the  
34 contractor to satisfy the requirement of paragraph (1) of  
35 subdivision (a) of Section 6501.5 of the Labor Code. *The*  
36 *contractor shall register with the division within 90 days*  
37 *from the date the contractor is notified of the passage of*  
38 *the certification examination*. The board may require a  
39 reexamination if the contractor fails to register within 90  
40 days following issuance of the notification. Applicable test



1 fees shall be paid for any reexamination required under  
2 this section.

3 ~~A contractor who is certified to engage in~~  
4 ~~asbestos-related work on the effective date of this section~~  
5 ~~shall register with the Division of Occupational Safety~~  
6 ~~and Health of the Department of Industrial Relations~~  
7 ~~within 90 days after the board has notified the contractor~~  
8 ~~that registration is required of all asbestos certified~~  
9 ~~contractors. The board shall notify all contractors who are~~  
10 ~~so certified within 60 days of the effective date of this~~  
11 ~~section that registration is required.~~

12 ~~The board shall obtain and periodically update the list~~  
13 ~~of contractors certified to engage in asbestos-related~~  
14 ~~work who are registered pursuant to Section 6501.5 of the~~  
15 ~~Labor Code.~~

16 (b) Any contractor who is certified to engage in  
17 asbestos-related work shall present proof of current  
18 registration with the ~~Division of Occupational Safety and~~  
19 ~~Health of the Department of Industrial Relations~~ *division*  
20 pursuant to Section 6501.5 of the Labor Code upon  
21 application for renewal of his or her license, if the  
22 contractor engages in asbestos-related work, as defined in  
23 Section 6501.8 of the Labor Code.

24 (c) *A contractor who is not certified pursuant to this*  
25 *section may bid on and contract to perform a project*  
26 *involving asbestos-related work as long as the*  
27 *asbestos-related work is performed by a contractor who*  
28 *is certified and registered pursuant to this section and*  
29 *Section 6501.5 of the Labor Code.*

30 (d) *The board shall obtain and periodically update the*  
31 *list of contractors certified to engage in asbestos-related*  
32 *work who are registered pursuant to Section 6501.5 of the*  
33 *Labor Code.*

34 This section shall become operative on July 1, 1989.

35 SEC. 4. Section 7096 of the Business and Professions  
36 Code is amended to read:

37 7096. For the purposes of ~~Sections 7097 and 7098~~ *this*  
38 *chapter* the term “licensee” shall include an individual,  
39 copartnership, corporation, *joint venture*, or any  
40 combination or organization licensed under this chapter,



1 and shall also include any named responsible managing  
2 officer or member of the personnel of such licentiate  
3 whose appearance has qualified the licentiate under the  
4 provisions of Section 7068.

5 SEC. 5. Section 7097 of the Business and Professions  
6 Code is amended to read:

7 7097. Notwithstanding the provisions of Sections 7121  
8 and 7122, when any license has been suspended ~~following~~  
9 ~~a hearing under the provisions of this article, by a decision~~  
10 *of the registrar pursuant to an accusation or pursuant to*  
11 *subdivision (e) of Section 7071.6, Section 7085.6 or 7090.1,*  
12 any additional license issued under this chapter in the  
13 name of the licensee or for which the licensee furnished  
14 qualifying experience and appearance under the  
15 provisions of Section 7068, may be suspended by the  
16 registrar without further notice.

17 SEC. 6. Section 7098 of the Business and Professions  
18 Code is amended to read:

19 7098. Notwithstanding the provisions of Sections 7121  
20 and 7122, when any license has been revoked ~~following a~~  
21 ~~hearing~~ under the provisions of this ~~article~~ *chapter*, any  
22 additional license issued under this chapter in the name  
23 of the licensee or for which the licensee furnished  
24 qualifying experience and appearance under the  
25 provisions of Section 7068, may be revoked by the  
26 registrar without further notice.

27 SEC. 7. Section 7102 of the Business and Professions  
28 Code is amended to read:

29 7102. After suspension of the license upon any of the  
30 grounds set forth in this ~~article~~ *chapter*, the registrar may  
31 reinstate the license upon proof of compliance by the  
32 contractor with all provisions of the decision as to  
33 reinstatement or, in the absence of such decision or any  
34 provisions therein as to reinstatement, in the sound  
35 discretion of the registrar.

36 After revocation of a license upon any of the grounds  
37 set forth in this ~~article~~ *chapter*, the license shall not be  
38 reinstated or reissued and a license shall not be issued to  
39 any member of the personnel of the revoked licensee  
40 found to have had knowledge of or participated in the



1 acts or omissions constituting grounds for revocation,  
2 within a minimum period of one year and a maximum  
3 period of five years after the final decision of revocation  
4 and then only on proper showing that all loss caused by  
5 the act or omission for which the license was revoked has  
6 been fully satisfied and that all conditions imposed by the  
7 decision of revocation have been complied with.

8 The board shall promulgate regulations covering the  
9 criteria to be considered when extending the minimum  
10 one-year period. The criteria shall give due consideration  
11 to the appropriateness of the extension of time with  
12 respect to the following factors:

- 13 (a) The gravity of the violation.
- 14 (b) The history of previous violations.
- 15 (c) Criminal convictions.

16 When any loss has been reduced to a monetary  
17 obligation or debt, however, the satisfaction of such  
18 monetary obligation or debt as a prerequisite for the  
19 issuance, reissuance, or reinstatement of a license shall  
20 not be required where such monetary obligation or debt  
21 has been adjudicated in a bankruptcy proceeding.  
22 However, any nonmonetary condition not adjudicated in  
23 a bankruptcy proceeding shall be complied with prior to  
24 the issuance, the reissuance, or reinstatement of the  
25 license.

26 SEC. 8. Section 7117.5 of the Business and Professions  
27 Code is amended to read:

28 7117.5. (a) Acting in the capacity of a contractor  
29 under any license which has been made inactive, as  
30 provided in Section 7076.5, constitutes a cause for  
31 disciplinary action.

32 (b) Acting in the capacity of a contractor under any  
33 license that has been suspended for any reason constitutes  
34 a cause for disciplinary action.

35 (c) *Acting in the capacity of a contractor under any*  
36 *license that has expired constitutes a cause for*  
37 *disciplinary action if the license is subject to renewal*  
38 *pursuant to Section 7141. The actions authorized under*



- 1 *this section shall be separate from, and in addition to, all*
- 2 *other remedies either civil or criminal.*

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