

NOVEMBER 19, 2012
SACRAMENTO, CALIFORNIA



CONTRACTORS STATE LICENSE BOARD

Legislative
Committee Meeting





CONTRACTORS STATE LICENSE BOARD

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STATE OF CALIFORNIA

Governor Edmund G. Brown Jr.

NOTICE OF LEGISLATIVE COMMITTEE MEETING

The Contractors State License Board (CSLB) will hold a Legislative Committee Meeting on November 19, 2012, at 2:00 p.m. via teleconference at the following sites:

John C. Hall Hearing Room
9821 Business Park Drive
Sacramento, CA 95827

837 West 17th Street
Costa Mesa, CA 92627

137 West 168th Street
Gardena, CA 90248

25391 Commercentre Dr
Suite 115
Lake Forest, CA 92630

TELECONFERENCE NOTICE (pursuant to Government Code section 11123(b)): One or more Board members may participate in this meeting via teleconference for the benefit of the Board. The public teleconference site(s) are as noticed in this agenda. The meeting is open and the public is invited to attend. If you need reasonable accommodation, as defined by the Americans with Disabilities Act, or if you have any questions regarding this meeting, contact the Registrar's Office at (916) 255-4000.

Please note that all times indicated and the order of business are approximate and subject to change. Board members who are not members of the Committee may be attending the Committee meetings.

LEGISLATIVE COMMITTEE AGENDA

2:00 p.m.

Legislative Committee Members

Lisa Miller-Strunk, Chair / Matthew Kelly / James Miller / Mark Thurman

- A. Call to Order – Chair's Remarks
- B. Public Comment Session
- C. Legislative Proposals to Amend the Business and Professions Code
 1. Section 7027.3 (Illegal Use of License Information)
 2. Section 7031 and Others (Definition of Unlicensed Activity)
 3. Section 7068.1 (License Qualifiers)
 4. Section 7085.5 (Arbitration)
 5. Section 7114 (Aiding and Abetting Unlicensed Activity)
- D. Adjournment

AGENDA ITEM A

Call to Order – Chair’s Remarks

Roll is called by the Committee Chair.

LEGISLATIVE COMMITTEE MEMBERS:

LISA MILLER-STRUNK, CHAIR

MATTHEW KELLY

JAMES MILLER

MARK THURMAN

Committee Chair Lisa Miller-Strunk will review the scheduled Board actions and make appropriate announcements.



AGENDA ITEM B

Public Comment Session

Members of the public may address the committee at this time.
The Committee Chair may allow public participation
during other agenda items.



AGENDA ITEM C

Legislative Proposals to Amend the Business and Professions Code



CONTRACTORS STATE LICENSE BOARD LEGISLATIVE PROPOSAL

SUBJECT: B&P Criminal Misdemeanor Filings For Violations Of B&P Code 119 (recited below).

PROBLEM SUMMARY:

Although individuals who commit the violations listed in B&P Code 119 represent a risk to the public and legitimate licensees, workload considerations may prevent some district attorneys from pursuing criminal charges. Consequently individuals who have, in fact, violated the law may avoid having a specific record of these violations since the CSLB has no authority to expressly cite for them.

PROPOSED CHANGE:

Add new language to the law that would authorize the CSLB to take administrative action for violations of specified provisions of Section 119. This would allow CSLB to issue administrative citations whether or not these violations are pursued by the district attorney, thereby enabling the CSLB to establish a relevant record against licensees and non-licensees.

PROPOSED LANGUAGE:

Business and Professions Code Section 7027.3 is amended to read:

~~7027.3. Any person, licensed or unlicensed, who willfully and intentionally uses, with intent to defraud, a contractor's license number that does not correspond to the number on a currently valid contractor's license held by that person, is punishable by a fine not exceeding ten thousand dollars (\$10,000), or by imprisonment in state prison, or in county jail for not more than one year, or by both that fine and imprisonment. The penalty provided by this section is cumulative to the penalties available under all other laws of this state. If, upon investigation, the registrar has probable cause to believe that an unlicensed individual is in violation of this section, the registrar may issue a citation pursuant to Section 7028.7.~~

7027.3. (a) Any person, subject to licensure under this chapter, who commits any of the following acts is subject to the administrative remedies authorized by this chapter:

(1) Displays, causes or permits to be displayed or has in his or her possession a canceled, revoked, suspended, or fraudulently altered license.

(2) Displays, causes or permits to be displayed or has in his or her possession a fictitious license or any document simulating a license or purporting to be or have been issued as a license.

(3) Displays or represents any license not issued to him or her as being his or her license.

(4) Photographs, photostats, duplicates, manufactures, or in any way reproduces any license or facsimile thereof in a manner that it could be mistaken for a valid license, or displays or has in

his or her possession any such photograph, photostat, duplicate, reproduction, or facsimile unless authorized by this code.

(5) Buys or receives a fraudulent, forged, or counterfeited license knowing that it is fraudulent, forged, or counterfeited. For purposes of this subdivision, "fraudulent" means containing any misrepresentation of fact.

(6) Willfully and intentionally uses, with intent to defraud, a license number that does not correspond to the number on a currently valid contractor's license held by that person.

(b) In addition to the administrative remedies authorized under this chapter, a violation of paragraph (6) of subsection (a) is punishable by a fine not exceeding ten thousand dollars (\$10,000), or by imprisonment in state prison, or in county jail for not more than one year, or by both that fine and imprisonment, which shall be cumulative to the penalties available under all other laws of this state.

Business and Professions Code Section 119

119. Any person who does any of the following is guilty of a misdemeanor:

(a) Displays or causes or permits to be displayed or has in his or her possession either of the following:

(1) A canceled, revoked, suspended, or fraudulently altered license.

(2) A fictitious license or any document simulating a license or purporting to be or have been issued as a license.

(b) Lends his or her license to any other person or knowingly permits the use thereof by another.

(c) Displays or represents any license not issued to him or her as being his or her license.

(d) Fails or refuses to surrender to the issuing authority upon its lawful written demand any license, registration, permit, or certificate which has been suspended, revoked, or canceled.

(e) Knowingly permits any unlawful use of a license issued to him or her.

(f) Photographs, photostats, duplicates, manufactures, or in any way reproduces any license or facsimile thereof in a manner that it could be mistaken for a valid license, or displays or has in his or her possession any such photograph, photostat, duplicate, reproduction, or facsimile unless authorized by this code.

(g) Buys or receives a fraudulent, forged, or counterfeited license knowing that it is fraudulent, forged, or counterfeited. For purposes of this subdivision, "fraudulent" means containing any misrepresentation of fact.

As used in this section, "license" includes "certificate," "permit," "authority," and "registration" or any other indicia giving authorization to engage in a business or profession regulated by this code or referred to in Section 1000 or 3600.

CONTRACTORS STATE LICENSE BOARD LEGISLATIVE PROPOSAL

SUBJECT: Definition of Duly Licensed and Unlicensed

BACKGROUND: (1) Business and Professions Code (B&P) Sections 7114 and 7118 provide for disciplinary action against a licensed contractor entering into contract with an entity that is not duly licensed by the CSLB.

(2) Under B&P Section 7031 a contractor must show that he/she was “duly licensed at all times...” in order to recover compensation. Section 7031 also authorizes a person to *recover all compensation* paid to a person who is “unlicensed.” (*Also known as “disgorgement”*)

PROBLEM SUMMARY:

(1) Some contractors are continuing to contract with consumers even though their contractors licenses have either expired, been suspended or have been renewed as an inactive license. In addition, some licensed contractors are aiding and abetting these individuals by entering into subcontract agreements with them. B&P Sections 7114 and 7118 allows the Registrar to discipline a contractor for doing business with an “unlicensed” contractor, but does not adequately address a situation wherein a licensed entity enters into a contract with a licensee whose license is suspended or inactive.

(2) The terms “duly licensed” and “unlicensed” are not clearly and expressly defined in the Contractors State License Law. Consequently, consumers, the legal community and the courts have no clear, consistent guidelines to use when construction related disputes result in issues relative to compensation. Notably, even for those instances where there is little or no dispute about the quality of work, decisions relative to payment or disgorgement are frequently dependent upon the contractor’s license status, which is subject to interpretation. More specifically, a contractor who performs work under a **license classification** that he/ she **does not hold** is susceptible to **disgorgement of all sums paid** even if the contractor is **properly licensed to perform the majority of the work** required under the contract. Without clear guidelines the prospects for consumers involved in these civil actions are likewise unacceptable. Legal expenses could amass based on expected results that never materialize.

STAFF RECOMMENDATION:

Direct staff to develop a legislative proposal with language to address the problems summarized above.

**CONTRACTORS STATE LICENSE BOARD
DRAFT LEGISLATIVE PROPOSAL
NOVEMBER 7, 2012**

Subject: **Qualifying Individuals - Supervision and Control of Contractor's Business**

Relevant Provisions: Business and Professions Code Section 7068.1

BACKGROUND - PROBLEM SUMMARY:

All contractors must have a person who acts as the *qualifier* for the license. The qualifier is the person who furnishes the knowledge and experience that is required for licensure and, if applicable, must pass the written examination. The qualifier can be one of the following:

- (1) The Sole Owner himself/herself
- (2) An officer named on a corporate license (aka Responsible Managing Officer or **RMO**)
- (3) A Responsible Managing Employee (aka **RME**)
- (4) One of the Partners on a Partnership license (aka Qualifying Partner or **QP**)

Under the Contractors' State License Law (CSLL) the qualifier for the license is "*...responsible for exercising that direct supervision and control of his or her employer's or principal's construction operations as is necessary to secure full compliance with [the CSLL] and the rules and regulations of the board relating to the construction operations.*" Pursuant to California Code of Regulations (CCR), Title 16, 823, the following prerequisite must be addressed on the license application by the qualifying individual for a license:

The Registrar of Contractors has determined that direct supervision and control includes any one or a combination of the following activities: supervising construction, managing construction activities by making technical and administrative decisions, checking jobs for proper workmanship, or direct supervision on construction sites.

Applicants must respond in the affirmative relative to this prerequisite for the application to be processed; **however CSLB has determined many qualifiers do not perform the direct supervision and control duties as required under the law.** In fact, CSLB has encountered several cases where "retired" licensees are serving as an RMO on a corporate license for a monthly fee, but have no direct involvement in the construction and business activities. Examples of significant consumer harm can be seen in the accusations filed against Pacific Home Remodeling Inc., license #768166; and Ocean Air Care Inc., license #909100. Multiple consumers filed complaints against both licenses, and the investigations determined that the RMOs were unaware of the projects as well as the illegal and fraudulent acts being committed by the officers who were running the corporations. Consumers suffered significant financial injuries that far exceeded the \$12,500 contractor bond.

Existing law requires CSLB to prove that a qualifier did not provide sufficient supervision and control **AND** a violation of Contractor's License Law occurred. If successful in proving the qualifier's failure to comply with his/her statutory duty, CSLB can take disciplinary action

against the license but does **not** have the authority to take any action directly against the qualifier who has failed to exercise his/her duties, regardless of the harm to consumers.

PROPOSED CHANGE:

Amend 7068.1 to provide for misdemeanor prosecution and include a reference that failure by a qualifying person to comply with supervision and control requirements is grounds for disciplinary action.

Current Language:

7068.1. The person qualifying on behalf of an individual or firm under paragraph (1), (2), (3), or (4) of subdivision (b) of Section 7068 shall be responsible for exercising that direct supervision and control of his or her employer's or principal's construction operations as is necessary to secure full compliance with this chapter and the rules and regulations of the board relating to the construction operations. This person shall not act in the capacity of the qualifying person for an additional individual or firm unless one of the following conditions exists:

(a) There is a common ownership of at least 20 percent of the equity of each individual or firm for which the person acts in a qualifying capacity.

(b) The additional firm is a subsidiary of or a joint venture with the first. "Subsidiary," as used in this subdivision, means any firm at least 20 percent of the equity of which is owned by the other firm.

(c) With respect to a firm under paragraph (2), (3), or (4) of subdivision (b) of Section 7068, the majority of the partners, officers, or managers are the same.

(d) Notwithstanding subdivisions (a), (b), and (c), a qualifying individual may act as the qualifier for no more than three firms in any one-year period.

"Firm," as used in this section, means a partnership, a limited partnership, a corporation, a limited liability company, or any other combination or organization described in Section 7068.

"Person," as used in this section, is limited to natural persons, notwithstanding the definition of "person" in Section 7025.

The board shall require every applicant or licensee qualifying by the appearance of a qualifying individual to submit detailed information on the qualifying individual's duties and responsibilities for supervision and control of the applicant's construction operations.

Proposed Language:

Add the following paragraph to the end of B&P Code Section 7068.1:

A qualifying individual failing to exercise direction and control as defined by California Code of Regulations (CCR), Title 16, Section 823, is subject to the following penalties:

- (a) A violation of this section is grounds for disciplinary action.***
- (b) A violation of this section is a misdemeanor punishable by a fine of not less than three thousand dollars (\$3,000) and not more than five thousand dollars (\$5,000), or by imprisonment in the county jail for not more than one year, or both.***

CONTRACTORS STATE LICENSE BOARD LEGISLATIVE PROPOSAL

SUBJECT: Contractors State License Board (CSLB) Arbitration Program

BACKGROUND: The CSLB Arbitration Program is governed by Business and Professions Code Sections 7085 - 7085.9. The program provides an alternative dispute resolution process, the purpose of which is to resolve consumer complaints equitably and efficiently. Although the relevant law provides a detailed guide for the arbitration process, there are practical changes that could improve and clarify the process for both consumers and contractors.

PROBLEM SUMMARY:

The license law is currently silent or lacks clarity on several pertinent issues, including the authority of arbitrators, the award of attorney fees and other civil remedies. Although these issues are currently managed through internal procedures, statutory changes are needed in order to provide more explicit guidance for the program participants.

PROPOSED CHANGE (Include the Related Sections of Law)

Amend Business and Professions Code Section 7085.5 to clarify and refine various provisions of the section. The changes proposed will increase the clarity of the process for both homeowners and contractors. Additionally, the proposed changes are more in line with current case law and best practices.

PROPOSED LANGUAGE:

(NOTE: Only the provisions necessary to show the proposed changes are included)

Business and Professions Code Section 7085.5 is amended to read:

7085.5. Arbitrations of disputes arising out of cases filed with or by the board shall be conducted in accordance with the following rules:

(a) All "agreements to arbitrate" shall include the names, addresses, and telephone numbers of the parties to the dispute, the issue in dispute, and the amount in dollars ~~or any other remedy~~ sought. Any remedy sought must be in US Dollars only, with the exception of the release of a mechanic's lien or the return of tools or materials. The arbitrator shall not order or provide for specific performance of any kind for any project, including but not limited to, the completion of work, repairs or corrections. The appropriate fee for arbitration services shall be paid to the appointed arbitration association by the board from the Contractors' License Fund.

(c) No person shall serve as an arbitrator in any arbitration in which that person has any financial or personal interest in the result of the arbitration. Prior to accepting an appointment, the prospective arbitrator shall disclose to the appointed arbitration

association any circumstances likely to prevent a prompt hearing or to create a presumption of bias. Upon receipt of that information, the board or appointed arbitration association shall immediately replace the arbitrator or communicate the information to the parties for their comments. Thereafter, the board or appointed arbitration association shall determine whether the arbitrator should be disqualified and shall inform the parties of its decision, which shall be conclusive.

(e) (1) The board or appointed arbitration association shall provide the parties with a list of the times, and dates, and locations of the hearing to be held. ~~The parties shall notify the arbitrator, within seven calendar days of the mailing of the list, of the times and dates convenient to each party. If the parties fail to respond to the arbitrator within the seven-day period, the arbitrator shall fix the time, place, and location of the hearing.~~ An arbitrator may, at the arbitrator's sole discretion, make an inspection of the construction site which is the subject of the arbitration. The arbitrator shall notify the parties of the time and date set for the inspection. Any party who so desires may be present at the inspection.

(g) Hearings shall be adjourned by the arbitrator ~~only~~ for good cause.

(h) A record is not required to be taken of the proceedings. However, any party to the proceeding may have a record made at its own expense. Any party making a recording of a hearing shall supply the recording to the arbitrator at the party's own expense. The parties may make appropriate notes of the proceedings.

(n) The hearing may be reopened on the arbitrator's own motion prior to the rendering of an award.

(p) (1) Except as provided in paragraph (2), any papers or process necessary or proper for the initiation or continuation of an arbitration under these rules and for any court action in connection therewith, or for the entry of judgment on an award made thereunder, may be served upon any party (A) by regular mail addressed to that party or his or her attorney at the party's last known address, or (B) by personal service. Service is complete upon deposit of mail with the post office, mailbox, substation, mail chute or similar facility, the services of which are under the auspices of the United States Postal Service.

(r) (1) The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of the board's referral and the requirements of the board. The arbitrator, in his or her sole discretion, may award costs or expenses, but shall not award specific performance, or make determinations relative to any remedy not expressly authorized under this article, including but not limited to, attorney fees, personal injury or punitive damages.

(2) ~~The amendments made in paragraph (1) during the 2003-04 Regular Session shall not be interpreted to prevent an~~ An arbitrator ~~may from awarding a complainant award~~ all direct costs and expenses for the completion or repair of the project.

(s) The award shall become final 30 calendar days from the date the arbitration award is issued, notwithstanding the date either party receives the award. The arbitrator, upon written application of a party to the arbitration, may correct the award upon the following grounds:

(1) There was an evident miscalculation of figures or an evident mistake in the description of any person, things, or property referred to in the award.

(2) There is any other clerical error in the award, not affecting the merits of the controversy.

An application for correction of the award shall be made within 10 calendar days of the date of service of the award by serving a copy of the application on the arbitrator, and all other parties to the arbitration. Any party to the arbitration may make a written objection to the application for correction by serving a copy of the written objection on the arbitrator, the board, and all other parties to the arbitration, within 10 calendar days of the date of service of the application for correction.

The arbitrator shall either deny the application or correct the award within 30 calendar days of the date of service of the original award by mailing a copy of the denial or correction to all parties to the arbitration. Any appeal from the denial or correction shall be filed with a court of competent jurisdiction and a true copy thereof shall be filed with the ~~arbitrator~~ or appointed arbitration association within 30 calendar days after the award has become final. The award shall be in writing, and shall be signed by the arbitrator or a majority of them. If no ~~appeal~~ request for correction is filed within the 30-calendar day period, it shall become a final order of the registrar.

(t) Service of the award by certified mail shall be effective if a certified letter containing the award, or a true copy thereof, is mailed by the ~~arbitrator~~ or arbitration association to each party or to a party's attorney of record at their last known address, address of record, or by personally serving any party. ~~Service may be proved in the manner authorized in civil actions.~~ Service is complete upon deposit of mail with the post office, mailbox, substation, mail chute or similar facility, the services of which are under the auspices of the United States Postal Service.

(u) The board shall pay the expenses of one expert witness appointed by the board when the services of an expert witness are requested by either party involved in arbitration pursuant to this article and the case involves workmanship issues that are itemized in the complaint and have not been repaired or replaced. Parties who choose to present the findings of another expert witness as evidence shall pay for those services. Payment for expert witnesses appointed by the board shall be limited to the expert witness costs for inspection of the problem at the construction site, preparation of

the expert witness' report, and expert witness fees for appearing or testifying at a hearing. All requests for payment to an expert witness shall be submitted on a form that has been approved by the registrar. All requests for payment to an expert witness shall be reviewed and approved by the board prior to payment. ~~The registrar shall advise the parties that names of industry experts may be obtained by requesting this information from the registrar.~~

CONTRACTORS STATE LICENSE BOARD LEGISLATIVE PROPOSAL

SUBJECT: B&P 7114 - Aiding, Abetting, or Conspiring with Unlicensed Person – authorizes the Registrar to discipline licensees and order restitution to Injured parties.

PROGRAM BACKGROUND & LEGISLATIVE HISTORY:

B&P 7114 was amended by the Statutes of 2007, Chapter 299 (SB 354) which added provisions (subdivision (b)) that authorize the Registrar to order a licensee to make restitution to a consumer who is financially injured pursuant to the licensee's violation of the section.

IDENTIFICATION OF PROBLEM:

The proposal seeks to overcome a potential defense argument that a restitution order for a 7114 violation is limited to the citation process and, consequently, cannot be applied when circumstances dictate that a license be suspended or revoked. As such, the final order suspending or revoking a license could not include an order to make restitution as a condition of license reinstatement.

PROPOSED SOLUTION:

Delete the reference to Section 7099 (Citation - subdivision (b)).

PROPOSED LANGUAGE:

Business and Professions Code 7114 is amended to read:

7114. (a) Aiding or abetting an unlicensed person to evade the provisions of this chapter or combining or conspiring with an unlicensed person, or allowing one's license to be used by an unlicensed person, or acting as agent or partner or associate, or otherwise, of an unlicensed person with the intent to evade the provisions of this chapter constitutes a cause for disciplinary action.

(b) A licensee who is found by the registrar to have violated subdivision (a) shall, in accordance with the provisions of this article, be subject to the registrar's authority pursuant to ~~Section 7099~~ to order payment of a specified sum to an injured party, including, but not limited to, payment for any injury resulting from the acts of the unlicensed person.

AGENDA ITEM D

Adjournment

