

Date of Hearing: April 18, 2017

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Rudy Salas, Chair

AB 1278 (Low) – As Amended April 3, 2017

NOTE: This bill is doubled referred, and if passed by this Committee, will be referred to the Assembly Committee on Judiciary.

SUBJECT: Contractor licensing: judgment debtor prohibition: final judgment: definition.

SUMMARY: Defines, for purposes of contractor licensure requirements relating to bonds for unsatisfied final judgements, “final judgment” as a judgment that is enforceable under the law applicable to the court that entered the judgment and for which no stay of enforcement is in effect.

EXISTING LAW:

- 1) Establishes the Contractors’ State License Board (CSLB) within the Department of Consumer Affairs (DCA) and vests the CSLB with all functions and duties relating to the administration of the Contractors’ State License Law. (Business and Professions Code (BPC) §§ 7000-7191)
- 2) Defines, for purposes of the Contractors’ State License Law, the following:
 - a) “Members of the personnel of record” means the individuals listed in the CSLB’s records as associated with a licensee. (BPC § 7025(a))
 - b) “Person” includes an individual, a firm, partnership, corporation, limited liability company, association, or other organization. (BPC § 7025(b))
 - c) “Qualifying person,” “qualifying individual,” or “qualifier,” means a person who qualifies for a contractor license. (BPC § 7025(c))
 - d) “Contractor” or “builder” means a person who performs, offers to perform, or represents the capacity to perform specified acts relating to construction, alteration, repair, or demolition of specified structures, roadways, and projects. (BPC § 7026)
- 3) Specifies that contractor licenses are issued to individual owners, partnerships, corporations, and limited liability companies. (BPC § 7065(b))
- 4) Requires every person who is an officer, member, responsible manager, or director of a corporation or limited liability company seeking licensure under the Contractors’ State License Law to be listed on the application as a member of the personnel of record. (BPC § 7065(b)(1))
- 5) Requires every person who is a member of a partnership seeking a contractor’s license to be listed on the application as a member of the personnel record. (BPC § 7065(b)(2))

- 6) Makes it a misdemeanor for a person to engage in the business of, or act in the capacity of, a contractor within this state if the person is not licensed in accordance with the Contractors' State License Law. (BPC § 7028(a))
- 7) Requires the CSLB to require, as a condition precedent to accepting an application for licensure, renewal, reinstatement, or to change officers or other personnel of record, that an applicant who has been previously found to have failed or refused to pay a contractor, subcontractor, consumer, materials supplier, or employee based on an unsatisfied final judgment, file or have on file with the CSLB a bond sufficient to guarantee payment of an amount equal to the unsatisfied final judgment and specifies the process for complying with the requirement, including timing, notice, and penalties. (BPC § 7071.17)
- 8) Prohibits the qualifying person, any partner of the licensee, or personnel of the licensee named as a judgment debtor in an unsatisfied final judgement from serving as an officer, director, associate, partner, owner, manager, qualifying individual, or other personnel of record of another licensee. (BPC § 7071.17(j))
- 9) Authorizes an applicant or licensee to provide a cash deposit instead of an unsatisfied judgement bond, as specified. (BPC § 7071.17(k))
- 10) Specifies that an action is deemed to be pending from the time of its commencement until its final determination upon appeal, or until the time for appeal has passed, unless the judgment is sooner satisfied. (California Code of Civil Procedure (CCP) § 1049)

THIS BILL:

- 1) Defines "final judgment," for purposes of the judgement bond requirement, to mean a judgment that is enforceable under the law applicable to the court that entered the judgment and for which no stay of enforcement is in effect.
- 2) Specifies that the licensee shall have the burden of proving that a stay of enforcement is in effect from certified records of the court that issued the stay of enforcement.
- 3) Makes technical, clarifying changes.

FISCAL EFFECT: Unknown. This bill is keyed fiscal by the Legislative Counsel.

COMMENTS:

Purpose. This bill is sponsored by the **California State Council of Laborers**. According to the author, "[this bill] clarifies and strengthens existing law regarding the responsibility of personnel for judgements against the contractor with whom they are associated. [This bill clarifies] existing law as to when a judgement becomes final for purposes of suspension of a license by the [CSLB]."

Background. In California, the Contractors' State License Law requires that anyone who contracts to perform work on a project that is valued at \$500 or more for combined labor and materials costs must be actively licensed under the CSLB. The law specifies that the CSLB only

issues licenses to business entities, although an individual contractor can apply for a license as the owner of a sole proprietorship.

For multi-member business entities, the law requires a qualifying individual to appear on behalf of the applicant entity. Depending on the type of entity, the qualifying individual can be an owner, partner, or other managing or responsible officer, member, or employee. In addition to the qualifying individual, certain types of entities must list the remaining managing and responsible associates with the CSLB.

Bond Requirements. Contractor licensing requirements are intended to protect consumers and the public from incompetent practice (see BPC § 7000.6). Therefore, an applicant or the applicant's qualifying individual must meet the minimum qualifications needed to properly provide construction services, which is demonstrated through training, work experience, and examination requirements.

In addition, there are requirements that tend to demonstrate an applicant's fitness to practice, including background checks, workers' compensation insurance, and various bond and security deposit requirements. The bonds required under the Contractors' State License Law are surety bonds. Surety bonds are contracts between the applicant or licensee (principal), the state (beneficiary), and a surety (guarantor) under which the surety guarantees that the principal will fulfill obligations pursuant to the state-issued license.

The surety bonds must be written by a surety company licensed through the California Department of Insurance. Surety boards are similar to liability insurance in that the surety guarantees payment of claims covered under the bond. However, they also differ because the applicant or licensee remains liable to the surety.

Judgment Bonds. One of the surety bonds required under the Contractors' State License Law is for applicants or licensees who are subject to construction-related, unsatisfied final judgments based on the failure to pay certain parties. For the applicant to qualify for a license or for the licensee to renew a license or change the licensee's personnel of record, the applicant or licensee must file a bond sufficient to guarantee payment of an amount equal to the unsatisfied judgment.

In addition, the law prohibits the personnel of record of a licensee that is named as a judgment debtor in an unsatisfied final judgment from serving as the personnel of record for another licensee. The prohibition, which was established under AB 2993 (Mountjoy), Chapter 1391, Statutes of 1986, was intended to deter contractors who fail to pay another party from transferring the license to another entity and subsequently returning to contracting with no penalty.

While "final judgment" is not defined under the Contractors' State License Law, "a judgment does not become final so long as the action in which it was rendered is pending," and "an action is deemed pending until it is finally determined on appeal or until the time for appeal has passed" (*McKee v. National Union Fire Ins. Co.* (1993) 15 Cal.App. 4th 285, 289 (quoting *Pacific Gas & Elec. Co. v. Nakano* (1939) 12 Cal. 2d 711, 714 and CCP § 1049)).

Therefore, a licensee is provided time to contest a judgment through the appeals process. However, the author notes that, "[a]s a result, contractors (and other personnel on the license)

who are sued in civil court are able to disassociate from the affected license prior to final judgment and become an officer (or other official of record) on another license. In essence, these unscrupulous contractors can continue to work under a new license, avoiding responsibility for the judgement based on the activities when they were associated with the license.”

This bill seeks to prevent this behavior by defining final judgment to mean a judgement that is enforceable under the laws applicable to the court that entered the judgment, which would include a judgment under which an appeal was available but no stay of enforcement was in effect. Under this bill, the licensee also has the burden of showing that a stay of enforcement is in effect to further limit the period of time in which a licensee or the associated personnel can associate with another license.

Prior Related Legislation. SB 1061 (Mountjoy), Chapter 467, Statutes of 1995, made various clean-up and technical changes to the then named Contractors' License Law, including separating bonding requirements into two separate sections (one for license bonds and another for judgment bonds) and provides for the lifting of a license suspension if the contractor files a notarized copy of an accord.

AB 762 (Mountjoy), Chapter 1177, Statutes of 1989, eliminated the \$50,000 bond or security cap; required applicants and contractors to notify the CSLB within 90 days of an unsatisfied judgment; require the applicant to file the bond or other security within 90 days of notification by the CSLB; provided that failure to notify the CSLB of an unsatisfied judgment or failure to maintain the required bond is grounds for automatic suspension of the contractor's license.

AB 2993 (Mountjoy), Chapter 1391, Statutes of 1986, among other things, required that the CSLB require an applicant who previously failed to pay amounts due a contractor, subcontractor, consumer, or employee (based on a recorded and unsatisfied judgment from a court of law in a period five years preceding the application) to file or have on file a bond or other security sufficient to guarantee payment of the unsatisfied judgment or judgments, to a maximum of \$50,000.

IMPLEMENTATION ISSUES:

Because the personnel of record at the time the violation resulting in a judgment occurred may no longer be associated with the license when the judgement is entered, the author may wish to clarify that the prohibition against personnel serving on another license applies to the personnel on file. However, because the CSLB does not track the timing of the activities of licensees or personnel of record, the author may also wish to continue to work with the CSLB to develop additional enforcement mechanisms specific to unsatisfied final judgments, such as additional reporting requirements.

REGISTERED SUPPORT:

California State Council of Laborers (sponsor)

REGISTERED OPPOSITION:

None on file.

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