

Date of Hearing: April 3, 2018

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Evan Low, Chair

AB 2705 (Holden) – As Introduced February 15, 2018

SUBJECT: Contractors: violations.

SUMMARY: This bill would make unlicensed persons acting in the capacity of a contractor subject to existing criminal penalties that apply to licensed contractors for refusing to secure the payment of workers' compensation and would make this crime subject to a two-year statute of limitations.

EXISTING LAW:

- 1) Requires that applicants for licensure to the Contractors State License Board (CSLB) must keep on file at all times a current and valid Certificate of Workers' Compensation. (Business and Professions Code (BPC) Section 7125)
- 2) Requires employers to secure compensation for worker injury. (Labor Code Section 3700)
- 3) States that any licensee failing to comply with workers' compensation insurance requirements is guilty of a misdemeanor. (BPC Section 7126)\

THIS BILL:

- 1) Additionally states that any person not licensed by the CSLB but who is acting as a contractor and who fails to comply with workers' compensation insurance requirements is also guilty of a misdemeanor.

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

COMMENTS:

Purpose. This bill is sponsored by the **Contractors State License Board**. According to the author:

California's worker compensation laws were created to protect both our workers and the financial health of their employers. This is especially important for homeowners that hire contractors to perform construction services on their home. If they hire an unlicensed contractor without workers compensation insurance, they can unknowingly be held responsible as the contractor's employer and responsible for any medical expenses for injuries sustained on the job. Unfortunately, current law falls short of protecting these homeowners by disadvantaging the agency tasked with prosecuting bad actors, the Contractors State License Board. This bill increases the statute of limitations for the crime of not having worker's compensation while performing work as an unlicensed contractor, giving the CSLB a better chance to right this wrong.

Background. This bill would make unlicensed persons acting in the capacity of a contractor subject to the same penalties that currently apply to licensed contractors for failing to secure the payment of workers' compensation.

Before issuing a license, the CSLB must verify the applicant has an active certificate for workers' compensation insurance. Under current law, a licensed contractor that fails to comply with the requirement to maintain active workers' compensation coverage would be guilty of a misdemeanor; however, unlicensed contractors are not mentioned in the Penal Code, though their failure to carry workers' compensation insurance could result in the same detrimental consequences as the failure of those who are licensed. Injury to the employee of an unlicensed contractor could result in liability for the consumer, sometimes not known to the consumer for months after the work is completed.

Under current law, if the CSLB seeks an enforcement action against an unlicensed contractor in violation of the workers' compensation provisions of law, it must do so within a year due to the existing statute of limitation; however, the limitation for licensed contractors is two years. Shifting the statute of limitations from one year to two years would allow the CSLB to more effectively pursue unlicensed contractors.

This requirement has been the subject of criticism in the past, most notably giving rise to AB 996 of 2017 (Cunningham) which sought to create a searchable online database for these certificates to allow licensees to track the progress of their application. AB 996 was held in Senate Appropriations.

Prior Related Legislation. AB 996 of 2017 (Cunningham) – Would have required that the Contractors State Licensing Board (CSLB) make improvements to its website to allow the monitoring of a licensee's renewal of a certificate of worker's compensation insurance or certification of self-insurance that is pending before the CSLB. This bill died in Senate Appropriations.

ARGUMENTS IN SUPPORT:

The Contractors State License Board (CSLB) writes: "(CSLB) would like to inform you of its support for Assembly Bill 2705 (Holden). CSLB is pleased to sponsor this legislation. The purpose of this bill is to make consistent the statute of limitations periods in which to prosecute unlicensed and licensed contractors for failing to maintain workers' compensation insurance. Currently, the law provides two years in which to criminally prosecute a licensed contractor who fails to comply with the workers' compensation provisions of the Contractors State License Law, but only one year to criminally prosecute unlicensed contractors for failing to secure workers' compensation insurance."

ARGUMENTS IN OPPOSITION:

None on file.

REGISTERED SUPPORT:

Contractors State License Board

REGISTERED OPPOSITION:

None on file.

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