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AB-3126 Contractors' State License Law: cash deposit in lieu of a bond. (2017-2018)

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Assembly Bill No. 3126

CHAPTER 925

An act to amend Sections 7071.17, 7074, 7091, and 7137 of, to add Section 7071.4 to, and to repeal Section 7071.12 of, the Business and Professions Code, relating to contractors.

[Approved by Governor September 29, 2018. Filed with Secretary of State September 29, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3126, Brough. Contractors' State License Law: cash deposit in lieu of a bond.

Existing law, the Contractors' State License Law, provides for licensing and regulation of contractors by the Contractors' State License Board, which is within the Department of Consumer Affairs. Existing law requires an applicant for licensure or a licensee to file or have on file certain bonds, including a contractor's bond in the sum of \$15,000. Existing law authorizes an applicant or licensee to instead post a cash deposit in lieu of a required bond.

This bill would revise the authorization to post a cash deposit in lieu of a bond to prohibit, among other things, certificates of deposit, and instead would require the contractor to deposit the appropriate amount of lawful money or a cashier's check with the registrar pursuant to specified statutes on and after January 1, 2019, and would require each person licensed under that law and subject to any bond requirement to maintain the required bond as executed by an admitted surety insurer or the money deposited with the registrar in the appropriate amount, except as specified. The bill would require all existing alternatives in lieu of a bond or the specified deposit with the registrar, currently filed with the board, to be replaced for a surety bond or the specified deposit with the registrar by January 1, 2020. The bill would provide that the information required from the contractor to obtain the surety requirements be consistent with the information required to obtain a contractor's license. The bill would require that any deposits of money or cashier's checks to the registrar under these provisions be deposited in an interest-bearing or share account, as specified.

The bill would also require a contractor who deposits money or a cashier's check with the registrar to submit a \$100 fee to the registrar to, upon appropriation by the Legislature, be used to cover the expenses incurred in processing the deposits and paying claims made against the deposits. The bill would create the Contractors' Deposit Fund in the State Treasury for these purposes.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 7071.4 is added to the Business and Professions Code, to read:

7071.4. (a) Each person licensed under the provisions of this chapter and subject to any of the bonding provisions of this article shall maintain the requisite bond as executed by an admitted surety insurer or as deposited with the registrar pursuant to

paragraph (1) of subdivision (a) of Section 995.710 of the Code of Civil Procedure in the appropriate amount. Notwithstanding Article 7 (commencing with Section 995.710) of Chapter 2 of Title 14 of Part 2 of the Code of Civil Procedure, no other method of deposit, including, but not limited to, a certificate of deposit, shall satisfy a bond requirement under this article.

(b) All existing alternatives in lieu of a bond currently filed with the board shall be replaced for a surety bond or the deposit prescribed by paragraph (1) of subdivision (a) of Section 995.710 of the Code of Civil Procedure by January 1, 2020.

(c) Notwithstanding subdivision (a), this section shall not apply to the bond equivalents described in Section 7159.5 of this chapter.

(d) (1) This section shall be operative on and after January 1, 2019, upon which date the board shall thereafter no longer accept alternatives in lieu of a bond, other than as provided in this section.

(2) Notwithstanding any other law, in order to comply with the bonding provisions of this article, a person shall only be required to provide information consistent with the requirements for an applicant under Section 30.

(e) All alternatives in lieu of a bond filed with the board before January 1, 2019, and any lawful money or cashier's check deposited pursuant to paragraph (1) of subdivision (a) of Section 995.710 of the Code of Civil Procedure after January 1, 2019, shall be subject to the following limitations periods:

(1) Any action, other than an action to recover wages or fringe benefits, against a deposit given in lieu of a contractor's bond or bond of a qualifying individual filed by an active licensee shall be brought within three years after the expiration of the license period during which the act or omission occurred, or within three years of the date the license of the active licensee was inactivated, canceled, or revoked by the board, whichever occurs first.

(2) Any action, other than an action to recover wages or fringe benefits, against a deposit given in lieu of a disciplinary bond filed by an active licensee pursuant to Section 7071.8 shall be brought within three years after the expiration of the license period during which the act or omission occurred, or within three years of the date the license of the active licensee was inactivated, canceled, or revoked by the board, or within three years after the last date for which a deposit given in lieu of a disciplinary bond filed pursuant to Section 7071.8 was required, whichever date is first.

(3) A claim to recover wages or fringe benefits shall be brought within six months from the date that the wage or fringe benefit delinquencies were discovered, but in no event shall a civil action thereon be brought later than two years from the date the wage or fringe benefit contributions were due.

(f) In any case in which a claim is filed against an alternative given in lieu of a bond filed with the board before January 1, 2019, by any employee or by an employee organization on behalf of an employee, concerning wages or fringe benefits based upon the employee's employment, claims for the nonpayment shall be filed with the Labor Commissioner. The Labor Commissioner shall, pursuant to the authority vested by Section 96.5 of the Labor Code, conduct hearings to determine whether or not the wages or fringe benefits should be paid to the complainant. Upon a finding by the commissioner that the wages or fringe benefits should be paid to the complainant, the commissioner shall notify the registrar of the findings. The registrar shall not make payment from the deposit on the basis of findings by the commissioner for a period of 10 days following determination of the findings. If, within the period, the complainant or the contractor files written notice with the registrar and the commissioner of an intention to seek judicial review of the findings pursuant to Section 11523 of the Government Code, the registrar shall not make payment if an action is actually filed, except as determined by the court. If, thereafter, no action is filed within 60 days following determination of findings by the commissioner, the registrar shall make payment from the deposit to the complainant.

(g) Legal fees may not be charged by the board against any alternative given in lieu of a bond filed with the board before January 1, 2019.

SEC. 2. Section 7071.12 of the Business and Professions Code is repealed.

SEC. 3. Section 7071.17 of the Business and Professions Code is amended to read:

7071.17. (a) Notwithstanding any other provision of law, the board shall 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, 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 board a bond sufficient to guarantee payment of an amount equal to the unsatisfied final judgment or judgments. The applicant shall have 90 days from the date of notification by the board to file the bond or the application shall become void and the applicant shall reapply for issuance, reinstatement, or reactivation of a license. The board may not issue, reinstate, or reactivate a license until the bond is filed with the board. The bond required by this section is in addition to the contractor's bond. The bond shall be on file for a minimum of one year, after which the bond may be removed by submitting proof of satisfaction of all debts. The applicant may provide the board with a notarized copy of any accord, reached with any individual holding an unsatisfied final judgment, to satisfy a debt in lieu of filing the bond. The board shall include on the

license application for issuance, reinstatement, or reactivation, a statement, to be made under penalty of perjury, as to whether there are any unsatisfied judgments against the applicant on behalf of contractors, subcontractors, consumers, materials suppliers, or the applicant's employees. Notwithstanding any other provision of law, if it is found that the applicant falsified the statement then the license will be retroactively suspended to the date of issuance and the license will stay suspended until the bond, satisfaction of judgment, or notarized copy of any accord applicable under this section is filed.

(b) (1) Notwithstanding any other provision of law, all licensees shall notify the registrar in writing of any unsatisfied final judgment imposed on the licensee. If the licensee fails to notify the registrar in writing within 90 days, the license shall be automatically suspended on the date that the registrar is informed, or is made aware of the unsatisfied final judgment.

(2) The suspension shall not be removed until proof of satisfaction of the judgment, or in lieu thereof, a notarized copy of an accord is submitted to the registrar.

(3) If the licensee notifies the registrar in writing within 90 days of the imposition of any unsatisfied final judgment, the licensee shall, as a condition to the continual maintenance of the license, file or have on file with the board a bond sufficient to guarantee payment of an amount equal to all unsatisfied judgments applicable under this section.

(4) The licensee has 90 days from date of notification by the board to file the bond or at the end of the 90 days the license shall be automatically suspended. In lieu of filing the bond required by this section, the licensee may provide the board with a notarized copy of any accord reached with any individual holding an unsatisfied final judgment.

(c) By operation of law, failure to maintain the bond or failure to abide by the accord shall result in the automatic suspension of any license to which this section applies.

(d) A license that is suspended for failure to comply with the provisions of this section can only be reinstated when proof of satisfaction of all debts is made, or when a notarized copy of an accord has been filed as set forth under this section.

(e) This section applies only with respect to an unsatisfied final judgment that is substantially related to the construction activities of a licensee licensed under this chapter, or to the qualifications, functions, or duties of the license.

(f) Except as otherwise provided, this section shall not apply to an applicant or licensee when the financial obligation covered by this section has been discharged in a bankruptcy proceeding.

(g) Except as otherwise provided, the bond shall remain in full force in the amount posted until the entire debt is satisfied. If, at the time of renewal, the licensee submits proof of partial satisfaction of the financial obligations covered by this section, the board may authorize the bond to be reduced to the amount of the unsatisfied portion of the outstanding judgment. When the licensee submits proof of satisfaction of all debts, the bond requirement may be removed.

(h) The board shall take the actions required by this section upon notification by any party having knowledge of the outstanding judgment upon a showing of proof of the judgment.

(i) For the purposes of this section, the term "judgment" also includes any final arbitration award where the time to file a petition for a trial de novo or a petition to vacate or correct the arbitration award has expired, and no petition is pending.

(j) (1) If a judgment is entered against a licensee, then a qualifying person or personnel of record of the licensee at the time of the activities on which the judgment is based shall be automatically prohibited from serving as a qualifying individual or other personnel of record on another license until the judgment is satisfied.

(2) The prohibition described in paragraph (1) shall cause the license of any other existing renewable licensed entity with any of the same personnel of record as the judgment debtor licensee to be suspended until the license of the judgment debtor is reinstated or until those same personnel of record disassociate themselves from the renewable licensed entity.

(k) For purposes of this section, lawful money or cashier's check deposited pursuant to paragraph (1) of subdivision (a) of Section 995.710 of the Code of Civil Procedure, may be submitted in lieu of the bond.

(l) Notwithstanding subdivision (f), the failure of a licensee to notify the registrar of an unsatisfied final judgment in accordance with this section is cause for disciplinary action.

SEC. 4. Section 7074 of the Business and Professions Code is amended to read:

7074. (a) Except as otherwise provided by this section, an application for an original license, for an additional classification, or for a change of qualifier shall become void when:

(1) The applicant or the examinee for the applicant has failed to achieve a passing grade in the qualifying examination within 18 months after the application has been deemed acceptable by the board.

(2) The applicant for an original license, after having been notified to do so, fails to pay the initial license fee within 90 days from the date of the notice.

(3) The applicant, after having been notified to do so, fails to file within 90 days from the date of the notice any bond or lawful money or cashier's check deposited pursuant to paragraph (1) of subdivision (a) of Section 995.710 of the Code of Civil Procedure or other documents that may be required for issuance or granting pursuant to this chapter.

(4) After filing, the applicant withdraws the application.

(5) The applicant fails to return the application rejected by the board for insufficiency or incompleteness within 90 days from the date of original notice or rejection.

(6) The application is denied after disciplinary proceedings conducted in accordance with the provisions of this code.

(b) The void date on an application may be extended up to 90 days or one examination may be rescheduled without a fee upon documented evidence by the applicant that the failure to complete the application process or to appear for an examination was due to a medical emergency or other circumstance beyond the control of the applicant.

(c) An application voided pursuant to this section shall remain in the possession of the registrar for the period as he or she deems necessary and shall not be returned to the applicant. Any reapplication for a license shall be accompanied by the fee fixed by this chapter.

SEC. 5. Section 7091 of the Business and Professions Code is amended to read:

7091. (a) (1) A complaint against a licensee alleging commission of any patent acts or omissions that may be grounds for legal action shall be filed in writing with the registrar within four years after the act or omission alleged as the ground for the disciplinary action.

(2) A disciplinary action against a licensee relevant to this subdivision shall be filed or a referral to the arbitration program outlined in Section 7085 shall be referred within four years after the patent act or omission alleged as the ground for disciplinary action or arbitration or within 18 months from the date of the filing of the complaint with the registrar, whichever is later.

(b) (1) A complaint against a licensee alleging commission of any latent acts or omissions that may be grounds for legal action pursuant to subdivision (a) of Section 7109 regarding structural defects, as defined by regulation, shall be filed in writing with the registrar within 10 years after the act or omission alleged as the ground for the disciplinary action.

(2) A disciplinary action against a licensee relevant to this subdivision shall be filed within 10 years after the latent act or omission alleged as the ground for disciplinary action or within 18 months from the date of the filing of the complaint with the registrar, whichever is later. As used in this subdivision "latent act or omission" means an act or omission that is not apparent by reasonable inspection.

(c) A disciplinary action alleging a violation of Section 7112 shall be filed within two years after the discovery by the registrar or by the board of the alleged facts constituting the fraud or misrepresentation prohibited by the section.

(d) With respect to a licensee who has been convicted of a crime and, as a result of that conviction is subject to discipline under Section 7123, the disciplinary action shall be filed within two years after the discovery of the conviction by the registrar or by the board.

(e) A disciplinary action regarding an alleged breach of an express, written warranty issued by the contractor shall be filed not later than 18 months from the expiration of the warranty.

(f) The proceedings under this article shall be conducted in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the registrar shall have all the powers granted therein.

(g) Nothing in this section shall be construed to affect the liability of a surety or the period of limitations prescribed by law for the commencement of actions against a surety or lawful money or cashier's check deposited pursuant to paragraph (1) of subdivision (a) of Section 995.710 of the Code of Civil Procedure.

SEC. 6. Section 7137 of the Business and Professions Code is amended to read:

7137. The board may set fees by regulation. These fees shall be set according to the following schedule:

(a) (1) The application fee for an original license in a single classification shall be three hundred thirty dollars (\$330) and may be increased to not more than three hundred seventy-five dollars (\$375).

(2) The application fee for each additional classification applied for in connection with an original license shall not be more than eighty-five dollars (\$85).

(3) The application fee for each additional classification pursuant to Section 7059 shall be one hundred fifty dollars (\$150) and may be increased to not more than one hundred seventy-five dollars (\$175).

(4) The application fee to replace a responsible managing officer, responsible managing manager, responsible managing member, or responsible managing employee pursuant to Section 7068.2 shall be one hundred fifty dollars (\$150) and may be increased to not more than one hundred seventy-five dollars (\$175).

(5) The application fee to add personnel, other than a qualifying individual, to an existing license shall be one hundred dollars (\$100) and may be increased to not more than one hundred fifteen dollars (\$115).

(b) The fee for rescheduling an examination for an applicant who has applied for an original license, additional classification, a change of responsible managing officer, responsible managing manager, responsible managing member, or responsible managing employee, or for an asbestos certification or hazardous substance removal certification, shall not be more than seventy dollars (\$70).

(c) The fee for scheduling or rescheduling an examination for a licensee who is required to take the examination as a condition of probation shall not be more than seventy dollars (\$70).

(d) The initial license fee for an active or inactive license shall be two hundred dollars (\$200) and may be increased to not more than two hundred twenty-five dollars (\$225).

(e) (1) The renewal fee for an active license shall be four hundred dollars (\$400) and may be increased to not more than four hundred fifty dollars (\$450).

(2) The renewal fee for an inactive license shall be two hundred dollars (\$200) and may be increased to not more than two hundred twenty-five dollars (\$225).

(f) The delinquency fee is an amount equal to 50 percent of the renewal fee, if the license is renewed after its expiration.

(g) The registration fee for a home improvement salesperson shall be eighty-three dollars (\$83) and may be increased to not more than ninety-five dollars (\$95).

(h) The renewal fee for a home improvement salesperson registration shall be eighty-three dollars (\$83) and may be increased to not more than ninety-five dollars (\$95).

(i) The application fee for an asbestos certification examination shall be eighty-three dollars (\$83) and may be increased to not more than ninety-five dollars (\$95).

(j) The application fee for a hazardous substance removal or remedial action certification examination shall be eighty-three dollars (\$83) and may be increased to not more than ninety-five dollars (\$95).

(k) In addition to any other fees charged to C-10 and C-7 contractors, the board may charge a fee not to exceed twenty dollars (\$20), which shall be used by the board to enforce provisions of the Labor Code related to electrician certification.

(l) The service fee to deposit with the registrar lawful money or cashier's check pursuant to paragraph (1) of subdivision (a) of Section 995.710 of the Code of Civil Procedure for purposes of compliance with any provision of Article 5 (commencing with Section 7065) shall be one hundred dollars (\$100), which shall be used by the board only to process each deposit filed with the registrar, to cover the reasonable costs to the registrar for holding money or cashier's checks in trust in interest bearing deposit or share accounts, and to offset the costs of processing payment of lawful claims against a deposit in a civil action.

(m) The service fee collected under subdivision (l) shall be placed in the Contractors' Deposit Fund, which is hereby created in the State Treasury, and shall, upon appropriation by the Legislature, be available only for the regulatory purposes contained in subdivision (l).

(n) The board shall, by regulation, establish criteria for the approval of expedited processing of applications. Approved expedited processing of applications for licensure or registration, as required by other provisions of law, shall not be subject to this subdivision.

(o) This section shall become operative on July 1, 2017.