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SB-1465 Contractors: civil actions: reporting. (2017-2018)

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Senate Bill No. 1465

CHAPTER 514

An act to add Sections 7071.20, 7071.21, and 7071.22 to the Business and Professions Code, relating to professions and vocations.

[Approved by Governor September 18, 2018. Filed with Secretary of State September 18, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1465, Hill. Contractors: civil actions: reporting.

Existing law, the Contractors' State License Law, provides for the licensure, regulation, and discipline of contractors by the Contractors' State License Board. Existing law requires the board, with the approval of the Director of Consumer Affairs, to appoint a registrar of contractors to serve as the executive officer and secretary of the board. Under existing law, protection of the public is required to be the highest priority for the Contractors' State License Board in exercising its licensing, regulatory, and disciplinary functions. Existing law requires a licensee to report to the registrar within 90 days of the date that the licensee has knowledge of the conviction of the licensee for any felony or any other crime substantially related to the qualifications, functions, and duties of a licensed contractor. Existing law also exempts from disclosure to the public a complaint resolved in favor of the contractor, as specified.

This bill would require a licensee to report to the registrar within 90 days of the date that the licensee has knowledge of any civil action resulting in a final judgment, executed settlement agreement, or final arbitration award in an action in which the licensee is named as a defendant or cross-defendant, that meets specified criteria, including that the amount or value of the judgment, settlement payment, or award is \$1,000,000 or greater and that the action is the result of a claim for damages to a property or person allegedly caused by specified construction activities of a licensee on any part of a multifamily rental residential structure, as specified. The bill would require the registrar or a designee to review these reports, return them to the licensee, and take no further action if, upon review, the registrar or a designee makes any one of specified findings. The bill would deem a returned report to be a complaint resolved in favor of the licensee. The bill would further require, within 30 days of all or a portion of the insurer's payment of the judgment, settlement payment, or award, an insurer providing a specified type of insurance to that licensee to report listed information relating to the judgment, settlement payment, or award to the registrar.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

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

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

SECTION 1. Section 7071.20 is added to the Business and Professions Code, to read:

7071.20. (a) A licensee shall report to the registrar in writing within 90 days after the licensee has knowledge of any civil action resulting in a final judgment, executed settlement agreement, or final arbitration award in which the licensee is named as a defendant or cross-defendant, filed on or after January 1, 2019, that meets all of the following criteria:

(1) The action alleges fraud, deceit, negligence, breach of contract or express or implied warranty, misrepresentation, incompetence, recklessness, wrongful death, or strict liability by the act or omission of a licensee while acting in the capacity of a contractor, whether as a general contractor or as a specialty contractor.

(2) The amount or value of the judgment, settlement payment, or arbitration award for which the licensee is named as a defendant or cross-defendant, is one million dollars (\$1,000,000) or greater, not including investigative costs or prior repairs performed by the licensee.

(3) The action is the result of a claim for damages to a property or person that allegedly resulted in a failure or condition that creates a substantial risk of a failure in the load bearing portions of a multifamily rental residential structure.

(4) The action is the result of a claim for damages to a property or person that was allegedly caused by a licensee's construction, repair, alteration to, subtraction from, improvement of, moving, wrecking, or demolishing of, any part of a multifamily rental residential structure, either personally or by or through others.

(5) The action, if a civil action, has been designated by a court of competent jurisdiction as a "complex case" pursuant to rules 3.400 to 3.403, inclusive, of the California Rules of Court because it involves a claim of construction defect or insurance coverage arising out of a construction defect claim, pursuant to paragraph (2) or (7) of subdivision (c) of Rule 3.400 of the California Rules of Court.

(b) This section shall not apply to residential construction subject to any part of Title 7 (commencing with Section 895) of Part 2 of Division 2 of the Civil Code.

(c) In an action that meets the criteria of this section, in which more than one contractor is named as a defendant or cross-defendant, all contractors who are apportioned any liability either by the court or pursuant to an agreement between parties, shall report the action pursuant to subdivision (a). This subdivision does not apply to a contractor who is named as a defendant or cross-defendant, but is assigned liability of less than fifteen thousand dollars (\$15,000) in the action.

(d) The reports required by this section shall be signed by the licensee and shall set forth the license number of the licensee and the facts that constitute the reportable event. If the reportable event involves the action of a court, the report shall also set forth the following:

(1) The title of the matter.

(2) The court or agency name.

(3) The docket number.

(4) The claim or file number.

(5) The date on which the reportable event occurred.

(e) (1) The registrar or a designee shall review the reports required by this section. The registrar or designee shall return the report to the licensee and take no further action if, upon review, the registrar or a designee finds any of the following:

(A) The facts of the reportable event would not substantiate an allegation that a licensee has violated this chapter.

(B) There are reasonable grounds to believe that the public interest is sufficiently served by the existing resolution or disposition of the reportable event as reached by the parties to the action or by the court.

(C) Disciplinary action is unnecessary.

(2) Any report returned to a licensee pursuant to this subdivision shall be deemed to be a complaint resolved in favor of the licensee and the facts underlying the event as reported by the licensee shall not be subject to further review by the board, except upon receipt of an independent complaint involving the same underlying facts.

(3) If additional information is necessary to make the determination required by paragraph (1), the registrar or designee shall keep and regard the report as a complaint that shall be subject to Sections 7090 and 7091. The disclosure of any complaint

referred to investigation pursuant to this section shall comply with the public disclosure provisions of Section 7124.6.

(f) Failure of a licensee to report to the registrar in the time and manner required by this section shall be grounds for disciplinary action. Criminal penalties shall not be imposed for a violation of this section.

(g) Except as provided in paragraphs (1) and (2) of subdivision (e), nothing in this section is intended to limit the registrar's authority on his or her motion, or upon the verified written complaint of another, to investigate the actions of a contractor as specified in Section 7090.

SEC. 2. Section 7071.21 is added to the Business and Professions Code, to read:

7071.21. (a) An insurer providing a licensee commercial general liability insurance, construction defect insurance, or professional liability insurance shall report to the registrar within 30 days of all or a portion of the insurer's payment of a civil action judgment, settlement payment, or arbitration award, that meets all of the requirements of Section 7071.20, against the licensee all of the following:

- (1) The name and license number of the licensee.
- (2) The claim or file number.
- (3) The amount or value of the judgment, settlement payment, or arbitration award.
- (4) The amount paid by the insurer.
- (5) The identity of the payee.

(b) (1) The registrar or a designee shall review the reports required by this section. The registrar or designee shall return the report to the licensee and take no further action if, upon review, the registrar or a designee finds any of the following:

- (A) The facts of the reportable event would not substantiate an allegation that a licensee has violated this chapter.
- (B) There are reasonable grounds to believe that the public interest is sufficiently served by the existing resolution or disposition of the reportable event as reached by the parties to the action or by the court.
- (C) Disciplinary action is unnecessary.

(2) Any report returned to a licensee pursuant to this subdivision shall be deemed to be a complaint resolved in favor of the licensee and the facts underlying the event as reported by the licensee shall not be subject to further review by the board, except upon receipt of an independent complaint involving the same underlying facts.

(3) If additional information is necessary to make the determination required by paragraph (1), the registrar or designee shall keep and regard the report as a complaint that shall be subject to Sections 7090 and 7091. The disclosure of any complaint referred to investigation pursuant to this section shall comply with the public disclosure provisions of Section 7124.6.

(c) Except as provided in paragraphs (1) and (2) of subdivision (b), nothing in this section is intended to limit the registrar's authority on his or her motion, or upon the verified written complaint of another, to investigate the actions of a contractor as specified in Section 7090.

SEC. 3. Section 7071.22 is added to the Business and Professions Code, to read:

7071.22. (a) Sections 7071.20 and 7071.21 shall apply if a party to the civil action, judgment, settlement payment, or arbitration award is or was a licensee, as defined in Section 7096, or was a member of the personnel of the record, a person, or a qualifying person, as those terms are defined in Section 7025.

(b) Notwithstanding any other law, a licensee or person providing a report to the registrar pursuant to Section 7071.20 or 7071.21 shall not be considered to have violated a confidential settlement agreement or other confidential agreement.

(c) The board may adopt regulations to further the purposes of Sections 7071.20 and 7071.21, specifically with regard to the reporting requirements of those sections.

SEC. 4. The Legislature finds and declares that Sections 1 and 2 of this act, which add Sections 7071.20 and 7071.21 to the Business and Professions Code, impose a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

In order to allow the Contractors' State License Board to fully accomplish its regulatory and disciplinary goals, it is necessary to limit access to the reports required by those sections that are favorable to licensees.