
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: SB 601 **Hearing Date:** April 25, 2023
Author: McGuire
Version: March 22, 2023
Urgency: No **Fiscal:** Yes
Consultant: AB

Subject: *Professions and vocations: contractors: home improvement contracts: prohibited business practices: limitation of actions*

HISTORY

Source: Author

Prior Legislation: AB 835 (Dababneh, 2017), not heard in Asm. Business and Professions
SB 561 (Monning), Ch. 281, Stats. of 2015
AB 1950 (Davis), Ch. 569, Stats. of 2012
AB 2216 (Nakanishi), Ch. 586, Stats. of 2004
SB 187 (Hughes), Ch. 512, Stats. of 1999

Support: Contractors State License Board

Opposition: California Surety Federation

PURPOSE

The purpose of this bill is to require a home improvement contract by a contractor for residential repair work to a property damaged by a natural disaster to include a provision requiring the filing of separate performance and payment bonds, as specified. The bill also extends the statute of limitations for a violation of various prohibitions related to a license, certificate, permit or registration issued by the Department of Consumer Affairs from one year to three years.

Existing law establishes the Contractors State License Law, which defines and regulates the activities of contractors and provides for their licensure, regulation, and discipline by the Contractors State License Board within the Department of Consumer Affairs (the Department.) (Business and Professions (B&P) Code §7000 et. seq.)

Existing law establishes the Contractors State License Board (the Board) and vests the entity with authority to enforce laws and regulations related to contractors, among other responsibilities. (B&P Code §§ 7000.5, 7000.6, 7011.4, 7017.3)

Existing law sets forth the definition of the term “contractor.” (B&P Code §§ 7026, 7026.1, 7026.2, 7026.3.)

Existing law sets forth definitions for the terms “home improvement” and “home improvement contractor.” (B&P Code §§ 7150.1, 7151.)

Existing law defines “home improvement contract” as an agreement, whether oral or written, or contained in one or more documents, between a contractor and an owner or between a contractor and a tenant, regardless of the number of residence or dwelling units contained in the building in which the tenant resides, if the work is to be performed in, to, or upon the residence or dwelling unit of the tenant, for the performance of a home improvement, as defined, and includes all labor, services and materials to be furnished and performed thereunder. “Home improvement contract” also means an agreement, whether oral or written, or contained in one or more documents, between a salesperson, whether or not he or she is a home improvement salesperson, and (a) an owner or (b) a tenant, regardless of the number of residence or dwelling units contained in the building in which the tenant resides, which provides for the sale, installation, or furnishing of home improvement goods or services. (B&P Code § 7151.2.)

Existing law identifies the projects for which a home improvement contract is required, outlines the contract requirements, and lists the items that shall be included in the contract, or may be provided as an attachment. (B&P Code § 7159.)

This bill provides that a home improvement contract by a prime contractor for the reconstruction, restoration, or rebuilding of a residential property that was damaged or destroyed by a natural disaster for which a state of emergency is proclaimed by the Governor, as specified, or for which an emergency or major disaster is declared by the President of the United States, shall include a provision that requires the prime contractor to file separate performance and payment bonds.

This bill provides that any performance and payment bond shall meet all of the following criteria:

- A bond shall be in a form executed by an admitted surety insurer and shall not be a deposit in lieu of a bond.
- Each bond shall be in a sum equal to at least one-half of the contract price.
- The payment bond shall secure the payment of any claim of a laborer, mechanic, or material person employed on the work under the contract and shall contain any other provision required by law.
- The performance bond shall guarantee the faithful performance of the contract by the prime contractor.

This bill specifies that the requirements above operate independently of any other bonding provision in specified sections of existing law related to contractors.

This bill specifies that failure of a prime contractor to comply with its provisions is cause for disciplinary action.

Existing law provides that the boards, bureaus, and commissions within the Department are established for the purpose of ensuring that those private businesses and professions deemed to engage in activities which have potential impact upon the public health, safety, and welfare are

adequately regulated in order to protect the people of California. To this end, they establish minimum qualifications and levels of competency and license persons desiring to engage in the occupations they regulate upon determining that such persons possess the requisite skills and qualifications necessary to provide safe and effective services to the public, or register or otherwise certify persons in order to identify practitioners and ensure performance according to set and accepted professional standards. They provide a means for redress of grievances by investigating allegations of unprofessional conduct, incompetence, fraudulent action, or unlawful activity brought to their attention by members of the public and institute disciplinary action against persons licensed or registered under the provisions of this code when such action is warranted. In addition, they conduct periodic checks of licensees, registrants, or otherwise certified persons in order to ensure compliance with the relevant sections of this code. (B&P Code § 101.6.)

Existing law provides that any person who does any of the following is guilty of a misdemeanor:

- Displays or causes or permits to be displayed or has in the person’s possession either of the following:
 - A canceled, revoked, suspended or fraudulently altered license.
 - A fictitious license or any document simulating a license or purporting to be or have been issued as a license.
- Lends the person’s license to any other person or knowingly permits the use thereof by another.
- Displays or represents any license not issued to the person as being the person’s license.
- 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.
- Knowingly permits any unlawful use of a license issued to the person.
- 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 the person’s possession any such photograph, photostat, duplicate, reproduction, or facsimile unless authorized by this code.
- 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. (B&P Code §119.)

Existing law provides that except as otherwise specified, prosecution of misdemeanors shall be commenced within one year after the commission of the offense. (Penal Code § 802(a).)

Existing law provides that prosecution for a misdemeanor violation of specified sections of the Business and Profession Code and the Civil Code shall be commenced within three years after

the discovery of the commission of the offense, or within three years after the completion of the offense, whichever is later. (Penal Code § 802(e).)

This bill extends the statute of limitations for a violation of B&P Code §119 from one year to three years after the discovery of the commission of the offense or three years after the completion of the offense, whichever is later.

COMMENTS

1. Need for This Bill

According to the Author:

Let me be clear, the golden state continues to face unprecedented disasters such as mega fires, earthquakes and floods. Thousands of Californians have lost their homes in these devastating disasters. After losing everything, survivors then begin the challenging task of rebuilding their homes and lives. With so much loss, some homeowners turn to contractors offering great deals, but that unfortunately have little to no experience building homes. Losing a home is tough enough – but ending up with an inexperienced contractor – or worse, a contractor who intentionally takes a job knowing they cannot finish it – has made the rebuilding process, and the healing process, incredibly traumatic. To address these issues SB 601, will increase the statute of limitations for the unlawful use of a license to three years. SB 601 ensures that contractors who work in disaster declared areas are held accountable for their actions and that disaster survivors have the confidence that their homes will be properly rebuilt.

2. California Contractor Licensing

The Contractors State License Board, within the Department of Consumer Affairs, is responsible for the implementation and enforcement of the Contractors' State License Law, which governs the licensure, practice and discipline of the construction industry in California.¹ All businesses and individuals who construct or alter, or offer to construct or alter, any building, highway, road, parking facility, railroad, excavation, or other structure in California must be licensed by the CSLB if the total cost, including both labor and materials, of one or more contracts on the project is \$500 or more.

The CSLB licenses and regulates approximately 286,000 licensees across 44 trade classifications and 2 certifications, and registers approximately 26,000 Home Improvement Salespersons. Each licensing classification specifies the type of contracting work permitted in that classification. To obtain licensure in each classification, applicants are required to take and pass both a trade examination and a law and business examination. Licensees may not perform work outside of a classification without having the appropriate license to do so. In 2022, CSLB received 20,527 complaints against licensed and unlicensed contractors – a 19 percent increase over the previous year.²

¹ [CSLB-Home -CSLB \(ca.gov\)](https://www.cslb.ca.gov/)

² Contractors State License Board: Accomplishments and Activities 2022. [2022 CSLB Accomplishments and Activities Report \(ca.gov\)](https://www.cslb.ca.gov/2022-CSLB-Accomplishments-and-Activities-Report)

Existing law establishes a host of misdemeanors for conduct relating to the use of a fake, revoked, suspended or fraudulently altered license, or the misuse of a valid license. These provisions also make it a misdemeanor to fraudulently duplicate an existing license or purchase a forged or counterfeit license.³ Under existing law, a violation of these provisions, like most misdemeanors, must be prosecuted within one year after the commission of the offense. This bill allows the prosecution of these violations to begin within 3 years after discovery of the commission of the offense, or within 3 years after the completion of the offense, whichever is later.

3. Statutes of Limitations, Generally

Statutes of limitations require commencement of a prosecution within a certain period of time after the commission of a crime. A prosecution is initiated by filing an indictment or information, filing a complaint, certifying a case to superior court, or issuing an arrest or bench warrant. (Penal Code § 804.) The failure of a prosecution to be commenced within the applicable period of limitation is a complete defense to the charge. The statute of limitations is jurisdictional and may be raised as a defense at any time, before or after judgment. (*People v. Morris* (1988) 46 Cal.3d 1, 13.) The defense may only be waived under limited circumstances. (See *Cowan v. Superior Court* (1996) 14 Cal.4th 367.)

The United States Supreme Court has stated that statutes of limitations are the primary guarantee against bringing overly stale criminal charges.⁴ There is a measure of predictability provided by specifying a limit beyond which there is an irrebuttable presumption that a defendant's right to a fair trial would be prejudiced. Such laws reflect legislative assessments of relative interests of the state and the defendant in administering and receiving justice: “Significantly, a statute of limitations reflects a legislative judgment that, after a certain time, no quantum of evidence is sufficient to convict. And that judgment typically rests, in large part, upon evidentiary concerns – for example, concern that the passage of time has eroded memories or made witnesses or other evidence unavailable.”⁵

The basic California statutory scheme, first enacted in 1851 and codified in the 1872 Penal Code, provided a one-year limitation period for misdemeanors, a three-year period for felonies, and no limitation for murder. Since then, a multitude of legislative enactments have modified and complicated this basic framework. The California Law Revision Commission (CLRC) has identified various factors to be considered in drafting a limitation statute. These factors include: (a) *The staleness factor*. A person accused of crime should be protected from having to face charges based on possibly unreliable evidence and from losing access to the evidentiary means to defend. (b) *The repose factor*. This reflects society's lack of a desire to prosecute for crimes committed in the distant past. (c) *The motivation factor*. This aspect of the statute imposes a priority among crimes for investigation and prosecution. (d) *The seriousness factor*. The statute of limitations is a grant of amnesty to a defendant; the more serious the crime, the less willing society is to grant that amnesty. (e) *The concealment factor*. Detection of certain concealed crimes may be quite difficult and may require long investigations to identify and prosecute the perpetrators.⁶

³ Business and Professions Code §119.

⁴ *United States v. Ewell* (1966) 383 U.S. 116, 122.

⁵ *Stogner v. California* (2003) 539 U.S. 607, 615.

⁶ “Recommendation Relating to Felony Statute of Limitation. (Jan. 1984) 17 Cal. Law Review Com. Rep. (1984) pp. 308-311.” [Pub146.pdf \(ca.gov\)](#)

4. Discovery of the Crime

As mentioned above, the statute of limitation for most misdemeanors in California is one year. In 2004, the Legislature passed AB 2216 (Nakanishi, Ch. 586, Stats of 2004), which extended the statute of limitations for a number of contractor-related misdemeanors from one year to 2-4 years from the commission of the offense. The Legislature modified misdemeanor statutes of limitation yet again in 2012 when it passed AB 1950 (Davis, Ch. 569, Stats. of 2012), which extended the statute for certain crimes related to the licensure of lawyers and realtors from one year to three years from the discovery of the commission of the offense or three years after the completion of the offense, whichever is later.

Regarding the tolling of the statute of limitations until the discovery of the offense, the CLRC has noted that:

The very nature of certain concealed crimes makes their detection especially difficult. These same crimes may also require longer investigation to identify the perpetrators and, even after they are identified, may require continuing investigation. The concealment and investigation factors argue against imposition of a statute of limitations. [...] Tolling is an appropriate means of dealing of crimes [...] of which a material element is fraud or breach of a fiduciary obligation. However, tolling should not be permitted to run on such a crime indefinitely, with the result that a person may be prosecuted for a crime of concealment committed in the distant past.⁷

This bill adds the crimes described above related to the licensure of contractors to the list of misdemeanors subject to a statute of limitations that runs from three years from the discovery of the commission of the offense or three years from the completion of the offense, whichever is later. Given that these crimes are very similar to those already subject to the three-year statute, and thus that they too are relatively difficult to detect compared to other misdemeanors, such an extension appears reasonable.

5. Prior Committee

This bill was heard in the Senate Committee on Business, Professions and Economic Development on April 17, where it received a vote of 13-0. This analysis only covers provisions of this bill within this committee's jurisdiction. For an analysis of the provisions of the bill relating to home improvement contract requirements, see the analysis prepared by the staff of the Business, Professions and Economic Development Committee.

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⁷ *Ibid*, pp. 314-315.