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Wednesday, February 13, 2008



## NEWS | SAN DIEGO

# A new year brings new laws for contractors

By Pamela J. Scholefield

Thursday, January 31, 2008

Print E-Mail

Fortunately, 2008 brings with it only a few changes to the laws that will affect the construction industry as a whole.

Plus, one new law that affects virtually everyone that drives and uses a cell phone -- we'll discuss this one first.

### Motor Vehicle Code §23123 -- Hands-Free

#### for Cell Phones

This new law restricts the use of mobile phones while operating a motor vehicle and takes effect on July 1, 2008.

The law requires most drivers to use hands-free device while using a wireless telephone while driving a vehicle.

There are exceptions for emergency use, tow trucks, farm vehicles, large commercial vehicles and operating vehicles while on private property.

(See [dmv.ca.gov/cellularphonelaws/](http://dmv.ca.gov/cellularphonelaws/) for DMV's explanation).

There have been recent press releases that say that the use of the two-way radio, walkie-talkie like feature on a cell phone (like that provided by Nextel) is still allowed, but that is not the case.

The exemption allowing the use of two-way radios applies only to specific vehicles, which does not include a pickup truck, despite that truck being registered and used exclusively for commercial purposes.

The exemption does apply to a motor truck (think moving van) or a truck tractor (big-rig or semi tractor-trailer) that require either a commercial class A or class B driver's license to operate.

### Business & Professions Code §125.6

#### -- Anti-Discrimination

A licensed contractor will face disciplinary action if they discriminate by refusing construction-related services based upon a prospective client's medical condition or sexual orientation.

This expands the existing law providing disciplinary action against licensees for refusing services based upon race, color, sex, religion, ancestry, disability, marital status or national origin of a prospective client.

### Business & Professions Code §7026.11 -- Mobile/Manufactured Homes

Because health and safety laws now provide separate and distinct definitions for the terms "mobile home" and "manufactured home," the Contractors State License laws had to be amended to allow for a general manufactured housing (C-47) classification to continue to be the appropriate specialty license for performing work relative to both mobile homes and manufactured housing.

### Business & Professions Code §7027.5 -- Expanded Scope for Landscape Contractors

Landscape Contractors (C-27 license) are authorized to enter into prime contracts for residential landscape projects that include the construction and installation of fireplaces (that are not attached to the dwelling) or outdoor cooking centers, as long as any work beyond the scope of the landscape contractor's licensing is subcontracted out to appropriate specialty contractors or a licensed general contractor.

### Business & Professions Code §7083.1

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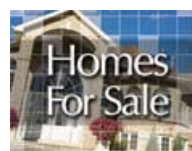
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**-- Expired or Cancelled Licenses**

A contractor whose license is expired, suspended and renewable, or canceled, must keep current his or her address of record with the Contractors State Licensing Board for a five-year period immediately following the expiration, suspension or cancellation of their license.

**Business & Professions Code §7091 -- Statute of Limitations for Disciplinary Actions**

If a licensee is convicted of a crime that is substantially related to the qualifications, functions or duties of a contractor, the CSLB will have two years from the date the conviction is discovered in which to file disciplinary action against the licensee.

Also, the CSLB will have 18 months after the date a warranty expires in which to file a disciplinary action against a licensee who fails to honor the warranty terms.

**Business & Professions Code §7114 -- Payment of Money**

for Aiding Unlicensed Contractor

As part of disciplinary action against a licensee, the Registrar of Contractors is authorized to order a licensee to pay a specific amount of money to an injured party if the licensee has aided an unlicensed person or allowed an unlicensed person to use his or her license.

**Business & Professions Code §7159.5 --****Home Improvement Contracts**

Parts of this statute have been revised to as follows: Contractors who provide and register payment and performance bonds need not include some of the language normally required for home improvement contracts.

Also, this revised statute sets specific time frames for the running of statutes of limitations to bring criminal charges against contractors who violate certain provisions of the home improvement contracts statutes.

**Business & Professions Code §7159.14 --****Service and Repair Contracts**

This amended statute clarifies statutes of limitation for bringing criminal charges against contractors who violate the requirements for service and repair home improvement contracts.

**Civil Code §2782 -- Subcontractor****Indemnity**

A new subsection added to this statute voids residential building contract provisions that attempt to make the subcontractor responsible (by way of indemnification) for construction defects claims that arise out of the negligence or design defects of the general contractor. But, this new subsection applies only to general contractors who are "unaffiliated" with the builder.

This means that in order for this safeguard for the subcontractor to apply, the general contractor must be an independent from the builder, meaning it can't be a partner, member of, or subsidiary of the builder.

**Insurance Code §11760.1 --****Audit Penalties**

This new statute provides that if, after three requests, an employer fails to allow an insurance company or its representative access to its records in order to perform a workers' compensation audit, the employer may be liable to pay the insurance company three times the total annual premium, plus associated costs.

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