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**SB-561 Contractors: home improvement salespersons.** (2015-2016)

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**Senate Bill No. 561**

**CHAPTER 281**

An act to amend Sections 7067.6, 7152, 7153, 7153.2, 7153.3, 7154, 7155.5, and 7156 of, and to add Section 7156.6 to, the Business and Professions Code, relating to professions and vocations.

[ Approved by Governor September 08, 2015. Filed with Secretary of State September 08, 2015. ]

**LEGISLATIVE COUNSEL'S DIGEST**

SB 561, Monning. Contractors: home improvement salespersons.

Existing law, the Contractors' State License Law, provides for the licensure and regulation of contractors, including home improvement contractors, by the Contractors' State License Board within the Department of Consumer Affairs. Existing law also provides for the registration and regulation of home improvement salespersons by the board. Existing law requires the board to appoint a registrar of contractors who is the executive officer and secretary of the board and is responsible for carrying out specified administrative duties.

Under existing law, a home improvement salesperson is a person employed by a licensed home improvement contractor to solicit, sell, negotiate, or execute contracts for home improvements, for the sale, installation, or furnishing of home improvement goods or services, or of swimming pools, spas, or hot tubs.

This bill would provide that such a salesperson is a person who is registered and engaged in the business of soliciting, selling, negotiating, or executing contracts for home improvements, for the sale, installation or furnishing of home improvement goods or services, or of swimming pools, spas, or hot tubs on behalf of a licensed home improvement contractor. The bill would require a home improvement salesperson to register with the board in order to engage in the business of, or act in the capacity of, a home improvement salesperson.

Existing law makes it a crime for any person to engage in the occupation of home improvement salesperson for one or more home improvement contractors without a registration for each of the home improvement contractors by whom he or she is employed. Existing law makes it a crime for any person to engage in the occupation of salesperson of home improvement goods or services, as defined, without a registration.

This bill would instead make it a crime for any person to engage in the occupation of home improvement salesperson for one or more home improvement contractors without having, at the time of the sales transaction, a current and valid registration. The bill would instead make it a crime for any person to engage in the occupation of salesperson of home improvement goods or services without having, at the time of the sales transaction, a current and valid registration. By changing the definitions of these crimes, the bill would impose a state-mandated local program.

Under existing law, home improvement salesperson registrations expire subject to board determination, as described.

This bill would provide that these registrations expire 2 years from the last day of the month in which the registration was issued or 2 years from the date on which the renewed registration last expired.

Under existing law, a home improvement contractor who employs a person to sell home improvement contracts while that person is not registered by the registrar as a home improvement salesperson is subject to disciplinary action.

This bill would require a home improvement contractor to notify the registrar in writing about the employment of a registered home improvement salesperson. The bill would also require a home improvement contractor to notify the registrar when a registered home improvement salesperson ceases to be employed by the contractor. The bill would make a home improvement contractor who fails to report this information subject to disciplinary action by the registrar.

Existing law authorizes the board to make rules and regulations as are reasonably necessary to carry out the law and requires the rules and regulations to be adopted in accordance with the provisions of the Administrative Procedure Act.

This bill would authorize the board, by regulation, to implement a system to provide for the electronic transmission of contractor applications for licensure, home improvement salesperson applications for registration, and those aforementioned notices required to be made by a home improvement contractor, as specified.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

### **SECTION 1.** Section 7067.6 of the Business and Professions Code is amended to read:

**7067.6.** (a) Every application form for an original license, for renewal thereof, for reinstatement or for reissuance, including both active and inactive licenses, shall be signed by both the applicant and by the person qualifying on behalf of an individual or firm as referred to in Section 7068.1.

(b) (1) Notwithstanding any other law, the board may implement a system that provides for the electronic transmission of an application described in subdivision (a) and the acceptance of a digital or electronic signature as part of the filing of those applications.

(2) The board by regulation may specify the form and manner of these transmissions and acceptances, including, but not limited to, the adoption of any protocols necessary to ensure the validity and security of any information, signature, data, or document transmitted electronically or digitally. Upon the effective date of the regulations, the electronic submission of an initial license application or a renewal application, including a digital or electronic signature, shall satisfy the requirements of this article.

### **SEC. 2.** Section 7152 of the Business and Professions Code is amended to read:

**7152.** (a) "Home improvement salesperson" is a person who is registered under this chapter and engaged in the business of soliciting, selling, negotiating, or executing contracts for home improvements, for the sale, installation or furnishing of home improvement goods or services, or of swimming pools, spas, or hot tubs on behalf of a home improvement contractor licensed under this chapter.

(b) A home improvement salesperson shall register with the board in order to engage in the business of, or act in the capacity of, a home improvement salesperson.

(c) The following shall not be required to be registered as home improvement salespersons:

(1) An officer of record of a corporation licensed pursuant to this chapter, or a manager, member, or officer of record of a limited liability company licensed pursuant to this chapter.

(2) A general partner listed on the license record of a partnership licensed pursuant to this chapter.

(3) A qualifying person, as defined in Section 7025.

(4) A salesperson whose sales are all made pursuant to negotiations between the parties if the negotiations are initiated by the prospective buyer at or with a general merchandise retail establishment that operates from a fixed location where goods or services are offered for sale.

(5) A person who contacts the prospective buyer for the exclusive purpose of scheduling appointments for a registered home improvement salesperson.

(6) A bona fide service repairperson who is in the employ of a licensed contractor and whose repair or service call is limited to the service, repair, or emergency repair initially requested by the buyer of the service.

(d) The exemption to registration provided under paragraphs (1), (2), and (3) of subdivision (c) shall apply only to those individuals who, at the time of the sales transaction, are listed as personnel of record for the licensee responsible for soliciting, negotiating, or contracting for a service or improvement that is subject to regulation under this article.

**SEC. 3.** Section 7153 of the Business and Professions Code is amended to read:

**7153.** (a) It is a misdemeanor for any person to engage in the occupation of salesperson for one or more home improvement contractors within this state without having, at the time of the sales transaction, a current and valid home improvement salesperson registration issued by the registrar. If, upon investigation, the registrar has probable cause to believe that a salesperson is in violation of this section, the registrar may issue a citation pursuant to Section 7028.7.

It is a misdemeanor for any person to engage in the occupation of salesperson of home improvement goods or services within this state without having, at the time of the sales transaction, a current and valid home improvement salesperson registration issued by the registrar.

(b) Any security interest taken by a contractor, to secure any payment for the performance of any act or conduct described in Section 7151 that occurs on or after January 1, 1995, is unenforceable if the person soliciting the act or contract was not a duly registered salesperson or was not exempt from registration pursuant to Section 7152 at the time the homeowner signs the home improvement contract solicited by the salesperson.

**SEC. 4.** Section 7153.2 of the Business and Professions Code is amended to read:

**7153.2.** All home improvement salesperson registrations issued under the provisions of this article shall expire two years from the last day of the month in which the registration was issued, or two years from the date on which the renewed registration last expired.

**SEC. 5.** Section 7153.3 of the Business and Professions Code is amended to read:

**7153.3.** (a) To renew a home improvement salesperson registration, which has not expired, the registrant shall before the time at which the registration would otherwise expire, apply for renewal on a form prescribed by the registrar and pay a renewal fee prescribed by this chapter. Renewal of an unexpired registration shall continue the registration in effect for the two-year period following the expiration date of the registration, when it shall expire if it is not again renewed.

(b) An application for renewal of registration is delinquent if the application is not postmarked or received via electronic transmission as authorized by Section 7156.6 by the date on which the registration would otherwise expire. A registration may, however, still be renewed at any time within three years after its expiration upon the filing of an application for renewal on a form prescribed by the registrar and the payment of the renewal fee prescribed by this chapter and a delinquent renewal penalty in the amount of twenty-five dollars (\$25). If a registration is not renewed within three years, the person shall make a new application for registration pursuant to Section 7153.1.

(c) The registrar may refuse to renew a registration for failure by the registrant to complete the application for renewal of registration. If a registrant fails to return the application rejected for insufficiency or incompleteness within 90 days from the original date of rejection, the application and fee shall be deemed abandoned. Any application abandoned may not be reinstated. However, the person may file a new application for registration pursuant to Section 7153.1.

The registrar may review and accept the petition of a person who disputes the abandonment of his or her renewal application upon a showing of good cause. This petition shall be received within 90 days of the date the application for renewal is deemed abandoned.

**SEC. 6.** Section 7154 of the Business and Professions Code is amended to read:

**7154.** (a) A home improvement contractor licensed under this chapter shall notify the registrar in writing, on a form prescribed by the registrar, about the employment of a registered home improvement salesperson, pursuant to the terms of this article. This notification requirement shall include, but not be limited to, the name and registration number of the home improvement salesperson who is employed by the contractor. The form shall be submitted prior to the home improvement salesperson beginning work for the contractor.

(b) A home improvement contractor shall notify the registrar in writing, on a form prescribed by the registrar, when a registered home improvement salesperson ceases to be employed by the contractor. This notification requirement shall include, but not be limited to, the name and registration number of the home improvement salesperson who had been employed by the contractor. The form shall be submitted within 90 days after the home improvement salesperson ceases to be employed by the contractor.

(c) A home improvement contractor who employs a registered home improvement salesperson to sell home improvement contracts, but who fails to report to the registrar pursuant to subdivision (a) or (b), is subject to disciplinary action by the registrar.

(d) A home improvement contractor who employs a person to sell home improvement contracts while that person is not registered by the registrar as a home improvement salesperson as provided in this article, is subject to disciplinary action by the registrar.

**SEC. 7.** Section 7155.5 of the Business and Professions Code is amended to read:

**7155.5.** Violations of any provisions of this chapter by a home improvement salesperson likewise constitute cause for disciplinary action against the contractor by whom he or she was employed at the time the violation occurred, whether or not the contractor had knowledge of or participated in the act or omission constituting violations of this chapter.

**SEC. 8.** Section 7156 of the Business and Professions Code is amended to read:

**7156.** It shall be a misdemeanor and a cause for disciplinary action to commit any of the following acts:

(a) For any home improvement salesperson to fail to account for or to remit to his or her employing contractor any payment received in connection with any home improvement transaction or any other transaction involving a work of improvement.

(b) For any person to use a contract form in connection with any home improvement transaction or any other transaction involving a work of improvement if the form fails to disclose the name of the contractor principal by whom he or she is employed.

**SEC. 9.** Section 7156.6 is added to the Business and Professions Code, to read:

**7156.6.** (a) Notwithstanding any other law, the board may implement a system that provides for the electronic transmission of an initial application or renewal application for the registration required by this article and the electronic transmission of the notices required by Section 7154.

(b) The board by regulation may specify the form and manner of these transmissions, including the adoption of any protocols necessary to ensure the validity and security of any information, data, or document transmitted electronically. Upon the effective date of the regulations, the electronic submission of an initial registration application, a renewal application, or the electronic transmission of a notice required by Section 7154 shall satisfy the requirements of this article.

**SEC. 10.** No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.