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SB-1189 Contracting business: home improvement: residential property. (2019-2020)

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Senate Bill No. 1189

CHAPTER 364

An act to amend Sections 7028.16, 7055, and 7151 of, and to add Section 7057.5 to, the Business and Professions Code, and to amend Sections 667.16 and 670 of the Penal Code, relating to contractors.

[Approved by Governor September 30, 2020. Filed with Secretary of State September 30, 2020.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1189, McGuire. Contracting business: home improvement: residential property.

(1) Existing law, the Contractors' State License Law, 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. Existing law classifies the contracting business as general engineering contracting, general building contracting, and specialty contracting. Certain violations of the Contractors' State License Law are punished as misdemeanors.

This bill would create a new classification of contracting business, to be called residential remodeling contracting. The bill would provide that a residential remodeling contractor's principal contracting business is in projects that make improvements to, on, or in an existing residential wood frame structure that require the use of at least 3 unrelated building trades or crafts for a single contract. The bill would provide a nonexclusive list of trades or crafts in this regard. The bill would prohibit a residential remodeling contractor from taking a contract for a project unless the contract includes 3 or more unrelated trades or crafts, including fire protection, unless the contractor holds the appropriate license classification or subcontracts with an appropriately licensed contractor. The bill would also prohibit a residential remodeling contractor from contracting to make structural changes to load bearing portions of an existing structure and from contracting to install, replace, substantially alter, or extend electrical, mechanical, or plumbing systems or their component parts, or the mechanisms or devices that are part of those systems, except as specified. By expanding the definition of a crime, this bill would impose a state-mandated local program.

(2) Under existing law, a person who engages in the business or acts in the capacity of a contractor, without having a license in connection with the offer or performance of repairs to a residential or nonresidential structure for damage caused by a natural disaster, as specified, is guilty of a crime, punishable as a felony or a misdemeanor. Existing law prescribes certain sentence enhancements for people who commit specified crimes as part of a scheme to defraud owners and lessees of residential or nonresidential structures in connection with the offer or performance of repairs to a residential or nonresidential structure caused by a natural disaster, as specified.

This bill would apply the provisions described above to improvements, to property as well as to structures, and to the adding to, or subtracting from, grounds in connection with them. The bill would also specify that the provisions described above apply to destruction as well as damage caused by a natural disaster. By expanding the definition of a crime, this bill would impose a state-mandated local program.

(3) Existing law defines and regulates the activities of home improvement contractors and home improvement sales people. For these purposes, existing law defines "home improvement" as the repairing, remodeling, altering, converting, or modernizing of, or adding to, residential property, as specified, and the installation of home improvement goods or the furnishing of home improvement services. Certain violations of these provisions are punished as misdemeanors.

This bill would expand the definition of home improvement to include the reconstruction, restoration, or rebuilding of residential property that is damaged or destroyed by a natural disaster for which a state of emergency is proclaimed by the Governor or for which an emergency or major disaster is declared by the President of the United States. By expanding the definition of a crime, this bill would impose a state-mandated local program.

(4) 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

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

SECTION 1. Section 7028.16 of the Business and Professions Code is amended to read:

7028.16. A person who engages in the business or acts in the capacity of a contractor, without having a license therefor, in connection with the offer or performance of repairs or improvements to a residential or nonresidential structure or property, or by adding to, or subtracting from, grounds in connection therewith, for damage or destruction caused by a natural disaster for which a state of emergency is proclaimed by the Governor pursuant to Section 8625 of the Government Code, or for which an emergency or major disaster is declared by the President of the United States, shall be punished by a fine up to ten thousand dollars (\$10,000), or by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for 16 months, or for two or three years, or by both that fine and imprisonment, or by a fine up to one thousand dollars (\$1,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment. In addition, a person who utilized the services of the unlicensed contractor is a victim of crime regardless of whether that person had knowledge that the contractor was unlicensed.

SEC. 2. Section 7055 of the Business and Professions Code is amended to read:

7055. For the purpose of classification, the contracting business includes any or all of the following branches:

- (a) General engineering contracting.
- (b) (1) General building contracting.
 - (2) Residential remodeling contracting.
- (c) Specialty contracting.

SEC. 3. Section 7057.5 is added to the Business and Professions Code, to read:

7057.5. (a) A residential remodeling contractor is a contractor whose principal contracting business is in connection with any project to make improvements to, on, or in an existing residential wood frame structure, and the project requires the use of at least three unrelated building trades or crafts for a single contract.

(b) (1) A residential remodeling contractor may take a prime contract for trades or crafts which may include, but is not limited to, the following:

- (A) Drywall.
- (B) Finish carpentry.
- (C) Flooring.
- (D) Insulation.
- (E) Painting.
- (F) Plastering.
- (G) Roof repair.

(H) Siding.

(I) Tiling.

(J) Installing, repairing, or replacing electrical fixtures, such as dimmers, fans, lights, outlets, and switches.

(K) Installing, repairing, or replacing plumbing fixtures, such as faucets, sinks, toilets, and tubs.

(L) Installing, repairing, or replacing mechanical fixtures, such as air filters, air delivery and return grills, and preassembled exhaust fans.

(2) A residential remodeling contractor shall not take a contract unless the contract includes three or more unrelated trades or crafts.

(3) Subject to the limit described in paragraph (2), a residential remodeling contractor may self-perform its contract or may subcontract any of the trades or crafts to appropriately licensed subcontractor or subcontractors.

(c) A residential remodeling contractor shall conduct its contracting activity in accordance with the following restrictions:

(1) A residential remodeling contractor shall not contract for a project that includes the following trades or crafts unless the contractor holds the appropriate license classification or subcontracts with an appropriately licensed contractor:

(A) C-16 Fire Protection.

(B) C-22 Asbestos Abatement.

(C) C-57 Well Drilling.

(2) A residential remodeling contractor shall not contract to make structural changes to load bearing portions of an existing structure, including, but not limited to, footings, foundations, load bearing walls, partitions, and roof structures.

(3) (A) The residential remodeling contractor shall not contract to install, replace, substantially alter, or extend electrical, mechanical, or plumbing systems or their component parts, or the mechanisms or devices that are part of those systems, unless the residential remodeling contractor holds the appropriate license classification or subcontracts with an appropriately licensed contractor.

(B) The residential remodeling contractor may contract to make minor alterations to existing electrical, mechanical, or plumbing systems to effectuate the purpose of installing, repairing, or replacing electrical, mechanical and plumbing fixtures, provided that the contract requires the use of at least three unrelated building trades or crafts.

(C) The board may adopt regulations to further define what activity constitutes the minor alterations described in subparagraph (B), and to further define the electrical, mechanical, or plumbing systems, or their component parts, or the mechanisms or devices that are part of those systems, that are subject to the restriction described in subparagraph (A).

(d) This contractor classification may be cited as the B-2 Residential Remodeling Contractor.

SEC. 4. Section 7151 of the Business and Professions Code is amended to read:

7151. "Home improvement" means the repairing, remodeling, altering, converting, or modernizing of, or adding to, residential property, as well as the reconstruction, restoration, or rebuilding of a residential property that is damaged or destroyed by a natural disaster for which a state of emergency is proclaimed by the Governor pursuant to Section 8625 of the Government Code, or for which an emergency or major disaster is declared by the President of the United States, and shall include, but not be limited to, the construction, erection, replacement, or improvement of driveways, swimming pools, including spas and hot tubs, terraces, patios, awnings, storm windows, landscaping, fences, porches, garages, fallout shelters, basements, and other improvements of the structures or land which is adjacent to a dwelling house. "Home improvement" shall also mean the installation of home improvement goods or the furnishing of home improvement services.

For purposes of this chapter, "home improvement goods or services" means goods and services, as defined in Section 1689.5 of the Civil Code, which are bought in connection with the improvement of real property. Such home improvement goods and services include, but are not limited to, carpeting, texture coating, fencing, air conditioning or heating equipment, and termite extermination. Home improvement goods include goods which are to be so affixed to real property as to become a part of real property whether or not severable therefrom.

SEC. 5. Section 667.16 of the Penal Code is amended to read:

667.16. (a) Any person convicted of a felony violation of Section 470, 487, or 532 as part of a plan or scheme to defraud an owner of a residential or nonresidential structure, including a mobilehome or manufactured home, in connection with the offer or performance of repairs or improvements to the structure or property, or by adding to, or subtracting from, grounds in connection therewith, for damage caused by a natural disaster, shall receive a one-year enhancement in addition and consecutive to the penalty prescribed. The additional term shall not be imposed unless the allegation is charged in the accusatory pleading and admitted by the defendant or found to be true by the trier of fact.

(b) This enhancement applies to natural disasters for which a state of emergency is proclaimed by the Governor pursuant to Section 8625 of the Government Code or for which an emergency or major disaster is declared by the President of the United States.

(c) Notwithstanding any other law, the court may strike the additional term provided in subdivision (a) if the court determines that there are mitigating circumstances and states on the record the reasons for striking the additional punishment.

SEC. 6. Section 670 of the Penal Code is amended to read:

670. (a) Any person who violates Section 7158 or 7159 of, or subdivision (b), (c), (d), or (e) of Section 7161 of, the Business and Professions Code or Section 470, 484, 487, or 532 of this code as part of a plan or scheme to defraud an owner or lessee of a residential or nonresidential structure in connection with the offer or performance of repairs or improvements to the structure or property, or the adding to, or subtracting from, grounds in connection therewith, for damage or destruction caused by a natural disaster specified in subdivision (b), shall be subject to the penalties and enhancements specified in subdivisions (c) and (d). The existence of any fact which would bring a person under this section shall be alleged in the information or indictment and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by a plea of guilty or nolo contendere or by trial by the court sitting without a jury.

(b) This section applies to natural disasters for which a state of emergency is proclaimed by the Governor pursuant to Section 8625 of the Government Code or for which an emergency or major disaster is declared by the President of the United States.

(c) The maximum or prescribed amounts of fines for offenses subject to this section shall be doubled. If the person has been previously convicted of a felony offense specified in subdivision (a), the person shall receive a one-year enhancement in addition to, and to run consecutively to, the term of imprisonment for any felony otherwise prescribed by this subdivision.

(d) Additionally, the court shall order any person sentenced pursuant to this section to make full restitution to the victim or to make restitution to the victim based on the person's ability to pay, as defined in subdivision (e) of Section 1203.1b. The payment of the restitution ordered by the court pursuant to this subdivision shall be made a condition of any probation granted by the court for an offense punishable under this section. Notwithstanding any other provision of law, the period of probation shall be at least five years or until full restitution is made to the victim, whichever first occurs.

(e) Notwithstanding any other provision of law, the prosecuting agency shall be entitled to recover its costs of investigation and prosecution from any fines imposed for a conviction under this section.

SEC. 7. 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.