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SB-757 Solar energy system improvements: consumer protection. (2021-2022)

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Senate Bill No. 757

CHAPTER 249

An act to amend Sections 7151, 7152, 7156, 7159.5, 7162, and 7170 of the Business and Professions Code, relating to solar energy systems.

[Approved by Governor September 23, 2021. Filed with Secretary of State September 23, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

SB 757, Limón. Solar energy system improvements: consumer protection.

Existing law, the Contractors State License Law, establishes the Contractors State License Board within the Department of Consumer Affairs and sets forth its powers and duties relating to the licensing and regulation of contractors. Existing law requires the board to receive and review complaints and consumer questions regarding solar energy systems companies and solar contractors and to receive complaints received from state agencies regarding those systems and contractors.

Existing law defines the term "home improvement" to include the construction, erection, installation, replacement, or improvement of driveways, swimming pools, including spas and hot tubs, terraces, patios, awnings, storm windows, solar energy systems, landscaping, fences, porches, garages, fallout shelters, basements, and other improvements of the structures or land which is adjacent to a dwelling house.

This bill would include solar energy systems, as defined, as an example of types of home improvements in, and would add the installation of those improvements to, that definition.

Existing law defines a "home improvement salesperson" as a person who engaged in the business of specified activities related to home improvement, and requires such person to be registered with the board.

This bill would authorize a home improvement salesperson to be employed by one or more home improvement contractors and would require a home improvement salesperson, prior to engaging in any activity described as a specified home improvement, to identify to the owner or tenant the business name and license number of the contractor they are representing. The bill would provide that failure to do so is a cause of disciplinary action, as provided.

Existing law makes certain actions by home improvement salespersons, including failure to account for or to remit to the employing contractor any payment received in connection with any home improvement transaction, or any other transaction involving a work of improvement, a misdemeanor.

This bill would additionally make a misdemeanor an action by a home improvement salesperson to assist, recommend, select, or otherwise guide an owner or tenant in the selection of a contractor for the performance or sale of home improvement goods or services if notification of the salesperson's employment by the home improvement contractor, as specified, has not been received by the board.

Existing law requires a representation made by any person licensed under the Contractors State License Law with respect to a trademark or brand name, quality, or size of any goods or materials in reference to certain items and systems, including, but not limited to, bathroom fixtures and paints, to be set forth in writing in the contract or specifications and include a description of the goods or materials, including any brand name, model number, or similar designation. Existing law provides that the failure to install the specific goods or materials as represented constitutes a cause for disciplinary action.

This bill would require those licensed persons to also meet the above-described requirements for representations made in reference to a solar energy system.

Existing law requires contractors to comply with specified provisions for home improvement contracts, including that except for a downpayment, the contractor is prohibited from requesting or accepting payment that exceeds the value of the work performed or material delivered. Existing law provides that failure to comply with this provision is cause for discipline and is a misdemeanor.

This bill would clarify that this prohibition extends to advance payment in whole or in part from any lender or financier for the performance or sale of home improvement goods or services.

This bill would make conforming changes.

By creating a new crime, this bill would impose a state-mandated local program.

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 7151 of the Business and Professions Code is amended to read:

7151. (a) "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, installation, replacement, or improvement of driveways, swimming pools, including spas and hot tubs, terraces, patios, awnings, storm windows, solar energy systems, 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.

(b) 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.

(c) For purposes of this article, "solar energy system" means a solar energy device to be installed on a residential building or residential property that has the primary purpose of providing for the collection and distribution of solar energy for the generation of electricity, that produces at least one kilowatt, and not more than five megawatts, alternating current rated peak electricity, and that meets or exceeds the eligibility criteria established pursuant to Section 25782 of the Public Resources Code.

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) Subject to the provisions of Section 7154, a home improvement salesperson may be employed by one, or more than one, home improvement contractor. However, prior to engaging in any activity described in subdivision (a) of this section, a home improvement salesperson shall identify to the owner or tenant the business name and license number of the contractor they are

representing for the purposes of that transaction. Failure to do so is a cause of disciplinary action within the meaning of Section 7155.

(d) 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.

(e) 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 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 their 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 the person is employed.

(c) For any home improvement salesperson to assist, recommend, select, or otherwise guide an owner or tenant in the selection of a contractor for the performance or sale of home improvement goods or services if notification of employment by the home improvement contractor, as required by subdivision (a) of Section 7154, has not been received by the Board.

SEC. 4. Section 7159.5 of the Business and Professions Code, as added by Section 6 of Chapter 92 of the Statutes of 2020, is amended to read:

7159.5. This section applies to all home improvement contracts, as defined in Section 7151.2, between an owner or tenant and a contractor, whether a general contractor or a specialty contractor, that is licensed or subject to be licensed pursuant to this chapter with regard to the transaction.

(a) Failure by the licensee or a person subject to be licensed under this chapter, or by their agent or salesperson, to comply with the following provisions is cause for discipline:

(1) The contract shall be in writing and shall include the agreed contract amount in dollars and cents. The contract amount shall include the entire cost of the contract, including profit, labor, and materials, but excluding finance charges.

(2) If there is a separate finance charge between the contractor and the person contracting for home improvement, the finance charge shall be set out separately from the contract amount.

(3) If a downpayment will be charged, the downpayment shall not exceed one thousand dollars (\$1,000) or 10 percent of the contract amount, whichever amount is less.

(4) If, in addition to a downpayment, the contract provides for payments to be made prior to completion of the work, the contract shall include a schedule of payments in dollars and cents specifically referencing the amount of work or services to be performed and any materials and equipment to be supplied.

(5) Except for a downpayment, the contractor shall neither request nor accept payment that exceeds the value of the work performed or material delivered. The prohibition prescribed by this paragraph extends to advance payment in whole or in part from any lender or financier for the performance or sale of home improvement goods or services.

(6) Upon any payment by the person contracting for home improvement, and prior to any further payment being made, the contractor shall, if requested, obtain and furnish to the person a full and unconditional release from any potential lien claimant claim or mechanics lien authorized pursuant to Sections 8400 and 8404 of the Civil Code for any portion of the work for which payment has been made. The person contracting for home improvement may withhold all further payments until these releases are furnished.

(7) If the contract provides for a payment of a salesperson's commission out of the contract price, that payment shall be made on a pro rata basis in proportion to the schedule of payments made to the contractor by the disbursing party in accordance with paragraph (4).

(8) A contractor furnishing a performance and payment bond, lien and completion bond, or a bond equivalent or joint control approved by the registrar covering full performance and payment is exempt from paragraphs (3), (4), and (5), and need not include, as part of the contract, the statement regarding the downpayment specified in subparagraph (C) of paragraph (8) of subdivision (d) of Section 7159, the details and statement regarding progress payments specified in paragraph (9) of subdivision (d) of Section 7159, or the Mechanics Lien Warning specified in paragraph (4) of subdivision (e) of Section 7159. A contractor furnishing these bonds, bond equivalents, or a joint control approved by the registrar may accept payment prior to completion. If the contract provides for a contractor to furnish joint control, the contractor shall not have any financial or other interest in the joint control. Notwithstanding any other law, a licensee shall be licensed in this state in an active status for not less than two years prior to submitting an Application for Approval of Blanket Performance and Payment Bond as provided in Section 858.2 of Title 16 of the California Code of Regulations as it read on January 1, 2016.

(b) A violation of paragraph (1), (3), or (5) of subdivision (a) by a licensee or a person subject to be licensed under this chapter, or by their agent or salesperson, is a misdemeanor punishable by a fine of not less than one hundred dollars (\$100) nor more than five thousand dollars (\$5,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

(1) An indictment or information against a person who is not licensed but who is required to be licensed under this chapter shall be brought, or a criminal complaint filed, for a violation of this section, in accordance with paragraph (4) of subdivision (d) of Section 802 of the Penal Code, within four years from the date of the contract or, if the contract is not reduced to writing, from the date the buyer makes the first payment to the contractor.

(2) An indictment or information against a person who is licensed under this chapter shall be brought, or a criminal complaint filed, for a violation of this section, in accordance with paragraph (2) of subdivision (d) of Section 802 of the Penal Code, within two years from the date of the contract or, if the contract is not reduced to writing, from the date the buyer makes the first payment to the contractor.

(3) The limitations on actions in this subdivision shall not apply to any administrative action filed against a licensed contractor.

(c) (1) Any person who violates this section as part of a plan or scheme to defraud an owner or tenant of a residential or nonresidential structure, including a mobilehome or manufactured home, in connection with the offer or performance of repairs to the structure for damage caused by a natural disaster, shall be ordered by the court to make full restitution to the victim based on the person's ability to pay, defined as the overall capability of the defendant to reimburse the costs, or a portion of the costs, including consideration of, but not limited to, all of the following:

(A) The defendant's present financial position.

(B) The defendant's reasonably discernible future financial position, provided that the court shall not consider a period of more than one year from the date of the hearing for purposes of determining the reasonably discernible future financial position of the defendant.

(C) The likelihood that the defendant will be able to obtain employment within one year from the date of the hearing.

(D) Any other factor that may bear upon the defendant's financial capability to reimburse the county for costs.

(2) In addition to full restitution, and imprisonment authorized by this section, the court may impose a fine of not less than five hundred dollars (\$500) nor more than twenty-five thousand dollars (\$25,000), based upon the defendant's ability to pay. This subdivision 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.

(d) This section shall become operative on July 1, 2021.

SEC. 5. Section 7162 of the Business and Professions Code is amended to read:

7162. (a) Notwithstanding any other provision of law, any representation by a person licensed pursuant to this chapter with respect to a trademark or brand name, quality, or size of any goods or materials, in reference to bathroom fixtures, a sink, stove,

refrigerator, lighting, carpeting and other floor surfaces, burglar and smoke alarms, a solar energy system, paints, textured coatings, siding and other wall surfaces, insulation, roofing, air conditioning and heating systems, and appliances, to be provided by the person pursuant to a home improvement contract, as defined in Section 7151.2, shall set forth, in writing, in the contract or specifications and shall include a description of the goods or materials, including any brand name, model number, or similar designation.

(b) Failure to install the specific goods or materials as represented as required by this section constitutes a cause for disciplinary action under this chapter.

SEC. 6. Section 7170 of the Business and Professions Code is amended to read:

7170. (a) The Contractors State License Board shall receive and review complaints and consumer questions regarding solar energy systems companies and solar contractors. The board shall also receive complaints received from state agencies regarding solar energy systems companies and solar contractors.

(b) Beginning on July 1, 2019, the board annually shall compile a report documenting consumer complaints relating to solar contractors. The report shall be made available publicly on the board's and the Public Utilities Commission's internet websites. The report shall contain all of the following:

- (1) The number and types of complaints.
- (2) The ZIP Code where the consumer complaint originated.
- (3) The disposition of all complaints received against a solar contractor.

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.