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SB-601 Professions and vocations: contractors: home improvement contracts: prohibited business practices: limitation of actions. (2023-2024)

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Senate Bill No. 601

CHAPTER 403

An act to amend Section 7159.5 of the Business and Professions Code, and to amend Section 802 of the Penal Code, relating to professions and vocations.

[Approved by Governor October 07, 2023. Filed with Secretary of State October 07, 2023.]

LEGISLATIVE COUNSEL'S DIGEST

SB 601, McGuire. Professions and vocations: contractors: home improvement contracts: prohibited business practices: limitation of actions.

(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 (department). That law requires a home improvement contract, as defined, to be in writing and include the contract amount, as specified, and prohibits any downpayment for that contract from exceeding the lesser of \$1,000 or 10% of the contract amount. Except for a downpayment, existing law prohibits the contractor from requesting or accepting payment that exceeds the value of the work performed or material delivered. Existing law makes the violation of these provisions a misdemeanor and sets the penalty as a fine of not less than \$100 nor more than \$5,000, or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

This bill would, for violations that take place in a location damaged by natural disaster, as specified, require the court to impose the maximum fine for the above-described crimes.

(2) Existing law makes any person who commits specified acts involving a license, certificate, permit, or registration issued by the department guilty of a misdemeanor. Those acts include lending the person's license to any other person or knowingly permitting the use thereof by another, and knowingly permitting any unlawful use of a license issued to the person. Existing law, except as provided, limits the time for beginning prosecution for commission of specified offenses to one year after commission of the offense.

With regard to individuals licensed pursuant to the Contractors State License Law who commit the above-described acts, this bill would instead authorize prosecution for a misdemeanor violation of the provisions described above involving use of a license issued by the board to begin within 3 years after discovery of the commission of the offense, or within 3 years after completion of the offense, whichever is later. By extending the statute of limitations for a crime, the bill would impose a state-mandated local program.

(3) 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 7159.5 of the Business and Professions Code 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) (1) 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. If a violation occurs in a location damaged 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, the court shall impose the maximum fine.

(2) (A) 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.

(B) 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.

(C) 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. 2. Section 802 of the Penal Code is amended to read:

802. (a) Except as provided in subdivision (b), (c), (d), or (e), prosecution for an offense not punishable by death or imprisonment in the state prison or pursuant to subdivision (h) of Section 1170 shall be commenced within one year after commission of the offense.

(b) Prosecution for a misdemeanor violation of Section 647.6 or former Section 647a committed with or upon a minor under 14 years of age shall be commenced within three years after commission of the offense.

(c) Prosecution of a misdemeanor violation of Section 729 of the Business and Professions Code shall be commenced within two years after commission of the offense.

(d) Prosecution of a misdemeanor violation of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code shall be commenced as follows:

(1) With respect to Sections 7028.17, 7068.5, and 7068.7 of the Business and Professions Code, within one year of the commission of the offense.

(2) With respect to Sections 7027.1, 7028.1, 7028.15, 7118.4, 7118.5, 7118.6, 7126, 7153, 7156, 7157, 7158, 7159.5 (licensee only), 7159.14 (licensee only), 7161, and 7189 of the Business and Professions Code, within two years of the commission of the offense.

(3) With respect to Sections 7027.3 and 7028.16 of the Business and Professions Code, within three years of the commission of the offense.

(4) With respect to Sections 7028, 7159.5 (nonlicensee only), and 7159.14 (nonlicensee only) of the Business and Professions Code, within four years of the commission of the offense.

(e) (1) Prosecution for a misdemeanor violation of Section 6126, 10085.6, 10139, or 10147.6 of the Business and Professions Code or Section 2944.6 or 2944.7 of the Civil Code shall be commenced within three years after discovery of the commission of the offense, or within three years after completion of the offense, whichever is later.

(2) Prosecution for a misdemeanor violation of subdivisions (b) and (e) of Section 119 of the Business and Professions Code, by parties licensed or subject to licensure pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of that code,

within three years after discovery of the commission of the offense, or within three years after completion of the offense, whichever is later.

SEC. 3. 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.