

AMENDED IN SENATE MAY 6, 2020
AMENDED IN SENATE APRIL 9, 2020

SENATE BILL

No. 1189

Introduced by Senator McGuire
(Coauthor: Senator Dodd)
(Coauthor: Assembly Member Low)

February 20, 2020

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.

LEGISLATIVE COUNSEL'S DIGEST

SB 1189, as amended, 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 contractors 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

requiring less than 3 unrelated trades or crafts and also would prohibit contracting for a project that involves specified 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, or extend electrical 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.
State-mandated local program: yes.

The people of the State of California do enact as follows:

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

3 7028.16. A person who engages in the business or acts in the
4 capacity of a contractor, without having a license therefor, in
5 connection with the offer or performance of repairs or
6 improvements to a residential or nonresidential structure or
7 property, or by adding to, or subtracting from, grounds in
8 connection therewith, for damage or destruction caused by a natural
9 disaster for which a state of emergency is proclaimed by the
10 Governor pursuant to Section 8625 of the Government Code, or
11 for which an emergency or major disaster is declared by the
12 President of the United States, shall be punished by a fine up to
13 ten thousand dollars (\$10,000), or by imprisonment pursuant to
14 subdivision (h) of Section 1170 of the Penal Code for 16 months,
15 or for two or three years, or by both that fine and imprisonment,
16 or by a fine up to one thousand dollars (\$1,000), or by
17 imprisonment in a county jail not exceeding one year, or by both
18 that fine and imprisonment. In addition, a person who utilized the
19 services of the unlicensed contractor is a victim of crime regardless
20 of whether that person had knowledge that the contractor was
21 unlicensed.

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

24 7055. For the purpose of classification, the contracting business
25 includes any or all of the following branches:

- 26 (a) General engineering contracting.
- 27 (b) (1) General building contracting.
- 28 (2) Residential remodeling contracting.

1 (c) Specialty contracting.

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

4 7057.5. (a) A residential remodeling contractor is a contractor
5 whose principal contracting business is in connection with any
6 project to make improvements to, on, or in an existing residential
7 wood frame structure, and the project requires the use of at least
8 three unrelated building trades or crafts for a single contract.

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

12 (A) Drywall.

13 (B) Finish carpentry.

14 (C) Flooring.

15 (D) Insulation.

16 (E) Painting.

17 (F) Plastering.

18 (G) Roof repair.

19 (H) Siding.

20 (I) Tiling.

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

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

25 (2) A residential remodeling contractor shall not take a contract
26 for a project requiring less than three unrelated trades or crafts.

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

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

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

37 (A) C-16 Fire Protection.

38 (B) C-22 Asbestos Abatement.

39 (C) C-57 Well Drilling.

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

5 (3) (A) The residential remodeling contractor shall not contract
6 to install, replace, or extend electrical or plumbing systems or their
7 component parts, or the mechanisms or devices that are part of
8 those systems, provided that the residential remodeling contractor
9 may make minor alterations to existing electrical or plumbing
10 systems to effectuate the purpose of installing, repairing, or
11 replacing electrical and plumbing fixtures.

12 (B) The board may adopt regulations to further define the minor
13 alterations to existing electrical and plumbing systems that are
14 permissible under subparagraph (A).

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

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

19 7151. "Home improvement" means the repairing, remodeling,
20 altering, converting, or modernizing of, or adding to, residential
21 property, as well as the reconstruction, restoration, or rebuilding
22 of a residential property that is damaged or destroyed by a natural
23 disaster for which a state of emergency is proclaimed by the
24 Governor pursuant to Section 8625 of the Government Code, or
25 for which an emergency or major disaster is declared by the
26 President of the United States, and shall include, but not be limited
27 to, the construction, erection, replacement, or improvement of
28 driveways, swimming pools, including spas and hot tubs, terraces,
29 patios, awnings, storm windows, landscaping, fences, porches,
30 garages, fallout shelters, basements, and other improvements of
31 the structures or land which is adjacent to a dwelling house. "Home
32 improvement" shall also mean the installation of home
33 improvement goods or the furnishing of home improvement
34 services.

35 For purposes of this chapter, "home improvement goods or
36 services" means goods and services, as defined in Section 1689.5
37 of the Civil Code, which are bought in connection with the
38 improvement of real property. Such home improvement goods and
39 services include, but are not limited to, carpeting, texture coating,
40 fencing, air conditioning or heating equipment, and termite

1 extermination. Home improvement goods include goods which
2 are to be so affixed to real property as to become a part of real
3 property whether or not severable therefrom.

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

5 667.16. (a) Any person convicted of a felony violation of
6 Section 470, 487, or 532 as part of a plan or scheme to defraud an
7 owner of a residential or nonresidential structure, including a
8 mobilehome or manufactured home, in connection with the offer
9 or performance of repairs or improvements to the structure or
10 property, or by adding to, or subtracting from, grounds in
11 connection therewith, for damage caused by a natural disaster,
12 shall receive a one-year enhancement in addition and consecutive
13 to the penalty prescribed. The additional term shall not be imposed
14 unless the allegation is charged in the accusatory pleading and
15 admitted by the defendant or found to be true by the trier of fact.

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

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

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

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

1 (b) This section applies to natural disasters for which a state of
2 emergency is proclaimed by the Governor pursuant to Section
3 8625 of the Government Code or for which an emergency or major
4 disaster is declared by the President of the United States.

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

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

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

25 SEC. 7. No reimbursement is required by this act pursuant to
26 Section 6 of Article XIII B of the California Constitution because
27 the only costs that may be incurred by a local agency or school
28 district will be incurred because this act creates a new crime or
29 infraction, eliminates a crime or infraction, or changes the penalty
30 for a crime or infraction, within the meaning of Section 17556 of
31 the Government Code, or changes the definition of a crime within
32 the meaning of Section 6 of Article XIII B of the California
33 Constitution.

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