

AMENDED IN ASSEMBLY APRIL 5, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 264

Introduced by Assembly Member Correa

February 16, 2001

~~An act to amend Section 9801 of the Business and Professions Code, relating to electronic and appliance repair.~~ *An act to amend Sections 7058, 7159, and 7159.3 of, and to add Sections 7027.6, 7028.05, and 7160.1 to, the Business and Professions Code, and to add Section 1689.15 to the Civil Code, relating to contractors, and making an appropriation therefor.*

LEGISLATIVE COUNSEL'S DIGEST

AB 264, as amended, Correa. ~~Electronic and appliance repair dealers~~ *Service and repair contractors.*

Existing law, the Contractors' State License Law, provides for the regulation and discipline of licensed contractors, including specialty contractors.

This bill would authorize a new type of specialty contractor called the service and repair contractor. The bill would also provide for the imposition of new fines upon a service and repair contractor. These fines would be placed in the Contractors' License Fund, a continuously appropriated fund. Because the bill increases revenues in a continuously appropriated fund, it would make an appropriation. The bill would make other changes relating to service and repair contractors.

~~The Electronic and Appliance Repair Dealer Registration Law which is administered by the Bureau of Electronic and Appliance Repair in the~~

~~Department of Consumer Affairs sets forth various definitions applicable to that law, including defining the term “electronic set.”~~

~~This bill would provide that the term “electronic set” does not include a cellular telephone.~~

Vote: ~~majority~~ ^{2/3}. Appropriation: ~~no~~ yes. Fiscal committee: yes. State-mandated local program: no.

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

1 ~~SECTION 1. Section 9801 of the Business and Professions~~
2 *SECTION 1. Section 7027.6 is added to the Business and*
3 *Professions Code, to read:*

4 *7027.6. A violation of this chapter by a person or business*
5 *acting as a service and repair contractor or a service and repair*
6 *business is punishable by a fine of not less than ten thousand*
7 *dollars (\$10,000).*

8 *SEC. 2. Section 7028.05 is added to the Business and*
9 *Professions Code, to read:*

10 *7028.05. A violation of this chapter by a person or business*
11 *acting as a service and repair contractor or a service and repair*
12 *business is punishable by a fine of not less than ten thousand*
13 *dollars (\$10,000).*

14 *SEC. 3. Section 7058 of the Business and Professions Code is*
15 *amended to read:*

16 *7058. (a) A specialty contractor is a contractor whose*
17 *operations involve the performance of construction work*
18 *requiring special skill and whose principal contracting business*
19 *involves the use of specialized building trades or crafts.*

20 *(b) A specialty contractor includes a contractor whose*
21 *operations include the business of servicing or testing fire*
22 *extinguishing systems.*

23 *(c) A specialty contractor includes a contractor whose*
24 *operations are concerned with the installation and laying of*
25 *carpets, linoleum, and resilient floor covering.*

26 *(d) A specialty contractor includes a contractor whose*
27 *operations are concerned with preparing or removing roadway*
28 *construction zones, lane closures, flagging, or traffic diversions on*
29 *roadways, including, but not limited to, public streets, highways,*
30 *or any public conveyance.*



1 On and after January 1, 2001, no person or entity shall set up or
2 remove roadway construction zones, lane closures, flagging, or
3 traffic diversions on any roadway unless that person or entity holds
4 the appropriate specialty license pursuant to this chapter.

5 (e) A specialty contractor includes a contractor whose
6 operations involve customer conditions that require immediate
7 attention, including a customer's personal emergency, that does
8 not exceed two thousand five hundred dollars (\$2,500) in labor
9 and material. This type of specialty contractor shall be known as
10 a service and repair contractor. A person or business licensed
11 under this category shall maintain the following:

12 (1) A minimum of one hundred thousand dollars (\$100,000) in
13 general liability insurance.

14 (2) A minimum license bond of seven thousand five hundred
15 dollars (\$7,500).

16 SEC. 4. Section 7159 of the Business and Professions Code is
17 amended to read:

18 7159. This section applies only to home improvement
19 contracts, as defined in Section 7151.2, between a contractor,
20 whether a general contractor or a specialty contractor, who is
21 licensed or subject to be licensed pursuant to this chapter with
22 regard to the transaction and who contracts with an owner or tenant
23 for work upon a residential building or structure, or upon land
24 adjacent thereto, for proposed repairing, remodeling, altering,
25 converting, modernizing, or adding to the residential building or
26 structure or land adjacent thereto, and where the aggregate
27 contract price specified in one or more improvement contracts,
28 including all labor, services, and materials to be furnished by the
29 contractor, exceeds five hundred dollars (\$500).

30 Every home improvement contract and every contract, the
31 primary purpose of which is the construction of a swimming pool,
32 is subject to this section. Every contract and any changes in the
33 contract subject to this section shall be evidenced by a writing and
34 shall be signed by all the parties to the contract. The writing shall
35 contain all of the following:

36 (a) The name, address, and license number of the contractor,
37 and the name and registration number of any salesperson who
38 solicited or negotiated the contract.

39 (b) The approximate dates when the work will begin and on
40 which all construction is to be completed.



1 (c) A plan and scale drawing showing the shape, size,
2 dimensions, and construction and equipment specifications for a
3 swimming pool and for other home improvements, a description
4 of the work to be done and description of the materials to be used
5 and the equipment to be used or installed, and the agreed
6 consideration for the work.

7 (d) If the payment schedule contained in the contract provides
8 for a downpayment to be paid to the contractor by the owner or the
9 tenant before the commencement of work, the downpayment may
10 not exceed two hundred dollars (\$200) or 2 percent of the contract
11 price for swimming pools, or one thousand dollars (\$1,000) or 10
12 percent of the contract price for other home improvements,
13 excluding finance charges, whichever is less.

14 (e) A schedule of payments showing the amount of each
15 payment as a sum in dollars and cents. In no event may the payment
16 schedule provide for the contractor to receive, nor may the
17 contractor actually receive, payments in excess of 100 percent of
18 the value of the work performed on the project at any time,
19 excluding finance charges, except that the contractor may receive
20 an initial downpayment authorized by subdivision (d). With
21 respect to a swimming pool contract, the final payment may be
22 made at the completion of the final plastering phase of
23 construction, provided that any installation or construction of
24 equipment, decking, or fencing required by the contract is also
25 completed. A failure by the contractor without lawful excuse to
26 substantially commence work within 20 days of the approximate
27 date specified in the contract when work will begin shall postpone
28 the next succeeding payment to the contractor for that period of
29 time equivalent to the time between when substantial
30 commencement was to have occurred and when it did occur. The
31 schedule of payments shall be stated in dollars and cents, and shall
32 be specifically referenced to the amount of work or services to be
33 performed and to any materials and equipment to be supplied.
34 With respect to a contract that provides for a schedule of monthly
35 payments to be made by the owner or tenant and for a schedule of
36 payments to be disbursed to the contractor by a person or entity to
37 whom the contractor intends to assign the right to receive the
38 owner's or tenant's monthly payments, the payments referred to in
39 this subdivision mean the payments to be disbursed by the assignee
40 and not those payments to be made by the owner or tenant.



1 (f) A statement that, upon satisfactory payment being made for
2 any portion of the work performed, the contractor shall, prior to
3 any further payment being made, furnish to the person contracting
4 for the home improvement or swimming pool a full and
5 unconditional release from any claim or mechanic's lien pursuant
6 to Section 3114 of the Civil Code for that portion of the work for
7 which payment has been made.

8 (g) The requirements set forth in subdivisions (d), (e), and (f)
9 do not apply when the contract provides for the contractor to
10 furnish a performance and payment bond, lien and completion
11 bond, bond equivalent, or joint control approved by the registrar
12 covering full performance and completion of the contract and the
13 bonds or joint control is or are furnished by the contractor, or when
14 the parties agree for full payment to be made upon or for a schedule
15 of payments to commence after satisfactory completion of the
16 project. The contract shall contain, in close proximity to the
17 signatures of the owner and contractor, a notice in at least 10-point
18 type stating that the owner or tenant has the right to require the
19 contractor to have a performance and payment bond.

20 (h) No extra or change-order work may be required to be
21 performed without prior written authorization of the person
22 contracting for the construction of the home improvement or
23 swimming pool. No change-order is enforceable against the
24 person contracting for home improvement work or swimming
25 pool construction unless it clearly sets forth the scope of work
26 encompassed by the change-order and the price to be charged for
27 the changes. Any change-order forms for changes or extra work
28 shall be incorporated in, and become a part of, the contract. Failure
29 to comply with the requirements of this subdivision does not
30 preclude the recovery of compensation for work performed based
31 upon quasi-contract, quantum meruit, restitution, or other similar
32 legal or equitable remedies designed to prevent unjust enrichment.

33 (i) If the contract provides for a payment of a salesperson's
34 commission out of the contract price, that payment shall be made
35 on a pro rata basis in proportion to the schedule of payments made
36 to the contractor by the disbursing party in accordance with
37 subdivision (e).

38 (j) The language of the notice required pursuant to Section
39 7018.5.



1 (k) What constitutes substantial commencement of work
2 pursuant to the contract.

3 (l) A notice that failure by the contractor without lawful excuse
4 to substantially commence work within 20 days from the
5 approximate date specified in the contract when work will begin
6 is a violation of the Contractors' State License Law.

7 (m) If the contract provides for a contractor to furnish joint
8 control, the contractor shall not have any financial or other interest
9 in the joint control.

10 A failure by the contractor without lawful excuse to
11 substantially commence work within 20 days from the
12 approximate date specified in the contract when work will begin
13 is a violation of this section.

14 This section does not prohibit the parties to a home
15 improvement contract from agreeing to a contract or account
16 subject to Chapter 1 (commencing with Section 1801) of Title 2
17 of Part 4 of Division 3 of the Civil Code.

18 The writing may also contain other matters agreed to by the
19 parties to the contract.

20 The writing shall be legible and shall be in a form that clearly
21 describes any other document that is to be incorporated into the
22 contract. Before any work is done, the owner shall be furnished a
23 copy of the written agreement, signed by the contractor.

24 For purposes of this section, the board shall, by regulation,
25 determine what constitutes "without lawful excuse."

26 The provisions of this section are not exclusive and do not
27 relieve the contractor or any contract subject to it from compliance
28 with all other applicable provisions of law.

29 A violation of this section by a licensee, or a person subject to
30 be licensed, under this chapter, or by his or her agent or
31 salesperson, is a misdemeanor punishable by a fine of not less than
32 one hundred dollars (\$100) nor more than five thousand dollars
33 (\$5,000), or by imprisonment in the county jail not exceeding one
34 year, or by both that fine and imprisonment.

35 (n) Any person who violates this section as part of a plan or
36 scheme to defraud an owner of a residential or nonresidential
37 structure, including a mobilehome or manufactured home, in
38 connection with the offer or performance of repairs to the structure
39 for damage caused by a natural disaster, shall be ordered by the
40 court to make full restitution to the victim based on the person's



1 ability to pay, as defined in subdivision (e) of Section 1203.1b of
2 the Penal Code. In addition to full restitution, and imprisonment
3 authorized by this section, the court may impose a fine of not less
4 than five hundred dollars (\$500) nor more than twenty-five
5 thousand dollars (\$25,000), based upon the defendant's ability to
6 pay. This subdivision applies to natural disasters for which a state
7 of emergency is proclaimed by the Governor pursuant to Section
8 8625 of the Government Code or for which an emergency or major
9 disaster is declared by the President of the United States.

10 (o) (1) An indictment or information against a person who is
11 not licensed, but who is required to be licensed under this chapter,
12 shall be brought, or a criminal complaint filed, for a violation of
13 this section within four years from the date the buyer signs the
14 contract.

15 (2) An indictment or information against a person who is
16 licensed under this chapter shall be brought, or a criminal
17 complaint filed, for a violation of this section within one year from
18 the date the buyer signs the contract.

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

21 (p) *A service and repair contractor shall be paid in full upon*
22 *completion of the project.*

23 (q) *All change orders to contracts of service and repair*
24 *contractors shall be in writing.*

25 (r) *Service and repair contractors shall comply with the*
26 *provisions in subdivisions (a) and (j), but shall not be subject to*
27 *subdivisions (b) to (i), inclusive.*

28 *SEC. 5. Section 7159.3 of the Business and Professions Code*
29 *is amended to read:*

30 7159.3. (a) A home improvement contract and an estimate
31 for home improvement work shall be accompanied by and include
32 all of the following:

33 (1) A statement prepared by the board through regulation that
34 emphasizes the value of commercial general liability insurance
35 and encourages the owner or tenant to verify the contractor's
36 insurance coverage and status.

37 (2) A check box indicating whether or not the contractor carries
38 commercial general liability insurance, and if that is the case, the
39 name and the telephone number of the insurer.



1 (3) A checklist prepared by the board through regulation
2 setting forth the items that an owner contracting for home
3 improvement should consider when reviewing a proposed home
4 improvement contract.

5 (b) This section shall become operative three months after the
6 board adopts the regulations referenced in paragraph (1) of
7 subdivision (a).

8 (c) *This section does not apply to service and repair*
9 *contractors.*

10 *SEC. 6. Section 7160.1 is added to the Business and*
11 *Professions Code, to read:*

12 *7160.1. Any person who enters into a contract for service and*
13 *repair work with a service and repair contractor based on false or*
14 *fraudulent representations or statements may file a claim in any*
15 *court of competent jurisdiction seeking recovery from the service*
16 *and repair contractor of a penalty of ten thousand dollars*
17 *(\$10,000), plus reasonable attorney’s fees and any damages*
18 *sustained due to the false or fraudulent representations or*
19 *statements made by the service and repair contractor.*

20 *SEC. 7. Section 1689.15 is added to the Civil Code, to read:*

21 *1689.15. Service and repair contractors are exempt from the*
22 *provisions of Sections 1689.5 to 1689.14, inclusive, if the*
23 *homeowner has signed a waiver acknowledging that the condition*
24 *in question requires immediate attention or is a homeowner’s*
25 *personal emergency. In no event shall the amount of the work*
26 *exceed seven thousand five hundred dollars (\$7,500) in labor and*
27 *materials.*

28 ~~Code is amended to read:~~

29 ~~9801. The following terms as used in this chapter have the~~
30 ~~meaning expressed in this section:~~

31 ~~(a) “Person” includes firm, partnership, association, limited~~
32 ~~liability company, or corporation.~~

33 ~~(b) “Department” means the Department of Consumer~~
34 ~~Affairs.~~

35 ~~(c) “Director” means the Director of Consumer Affairs.~~

36 ~~(d) “Bureau” means the Bureau of Electronic and Appliance~~
37 ~~Repair.~~

38 ~~(e) “Chief” means the Chief of the Bureau of Electronic and~~
39 ~~Appliance Repair.~~



1 (f) ~~“Service dealer” means a person who, for compensation,~~
2 ~~engages in, or holds himself or herself out to the public as offering~~
3 ~~services in, the business of:~~

4 (1) ~~Repairing, servicing, or maintaining an electronic set~~
5 ~~normally used or sold for personal, family, household, or home~~
6 ~~office use.~~

7 (2) ~~Installing, repairing, servicing, or maintaining equipment~~
8 ~~or a burglar alarm system for use in private motor vehicles.~~

9 (3) ~~Installing, repairing, servicing, or maintaining television or~~
10 ~~radio receiver antennas, rotators, and accessories or direct satellite~~
11 ~~signal receiving equipment located on or adjacent to a residence~~
12 ~~and not involving a function which is subject to and regulated~~
13 ~~under the provisions of Chapter 9 (commencing with Section~~
14 ~~7000).~~

15 (4) ~~Repairing, servicing, or maintaining major appliances.~~

16 (g) ~~“Equipment” for the purposes of this chapter means an~~
17 ~~electronic set, appliance, antenna, rotator, and accessories.~~

18 (h) ~~“Electronic set” includes, but is not limited to, any~~
19 ~~television, radio, audio or video recorder or playback equipment,~~
20 ~~video camera, video game, video monitor, computer system,~~
21 ~~photocopier, or facsimile machine normally used or sold for~~
22 ~~personal, family, household, or home office use.~~

23 (i) ~~“Appliance” or “major home appliance” includes, but is~~
24 ~~not limited to, any refrigerator, freezer, range, microwave oven,~~
25 ~~washer, dryer, dishwasher, trash compactor, or room~~
26 ~~air conditioner normally used or sold for personal, family,~~
27 ~~household, or home office use, or for use in private motor vehicles.~~

28 (j) ~~“Antenna” includes, but is not limited to, a resonant device~~
29 ~~designed especially for the purpose of capturing electromagnetic~~
30 ~~energy transmitted by direct satellite or commercial radio or~~
31 ~~television broadcasting facilities. An antenna, and its associated~~
32 ~~accessories, is not deemed to be a part of a set, and shall be~~
33 ~~considered, under this section, to be located outside or in the attic~~
34 ~~of a residence.~~

35 (k) ~~“Rotator,” when used in connection with an antenna~~
36 ~~installation or repair, includes, but is not limited to, an~~
37 ~~electromechanical device operated from a remote location to~~
38 ~~rotate an antenna on a horizontal plane. A rotator and its associated~~
39 ~~accessories is not deemed to be a part of a set and shall be~~



1 considered under this section, with the exception of the directional
2 control unit, to be located outside or in the attic of a residence.

3 (l) ~~“Accessories,” when used in connection with an antenna or~~
4 ~~rotator installation or repair, includes, but is not limited to, masts,~~
5 ~~towers, clamps, guy wires, eye hooks, standoff insulators, roof~~
6 ~~saddles, vent pipe mounts, chimney mount kits, signal~~
7 ~~amplifiers/boosters, multiset couplers, transmission lines, control~~
8 ~~cables, directional control units, and other devices as may be used~~
9 ~~from time to time to effect installation or repair.~~

10 (m) ~~“Computer system” includes, but is not limited to, a~~
11 ~~central processing unit which performs data manipulation~~
12 ~~functions, and any associated peripheral devices, including, but~~
13 ~~not limited to, keyboards, display terminals, printers, or disk~~
14 ~~drives.~~

15 (n) ~~“Video game” includes, but is not limited to, any electronic~~
16 ~~amusement device which utilizes a computer, microprocessor, or~~
17 ~~similar electronic circuitry and its own cathode ray tube or a~~
18 ~~television set or a monitor.~~

19 (o) ~~“Direct satellite signal receiving equipment” includes, but~~
20 ~~is not limited to, receivers, down converters, amplifiers, and audio~~
21 ~~or video processors related to the reception of audio, video, or data~~
22 ~~signals broadcasted or rebroadcasted by communication satellites~~
23 ~~located in space.~~

24 (p) ~~“Electronic repair industry” means those activities defined~~
25 ~~in paragraph (1), (2), or (3) of subdivision (f).~~

26 (q) ~~“Appliance repair industry” means those activities defined~~
27 ~~in paragraph (4) of subdivision (f).~~

