

Assembly Bill No. 316

Passed the Assembly September 6, 2005

Chief Clerk of the Assembly

Passed the Senate September 1, 2005

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2005, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 7122.2, 7159, 7159.5, 7159.10, 7159.11, and 7167 of, and to repeal Sections 7159.3, 7159.4, 7159.12, and 7159.13 of, the Business and Professions Code, and to amend Sections 1689.6, 1689.7, and 1689.15 of the Civil Code, relating to contractors.

LEGISLATIVE COUNSEL'S DIGEST

AB 316, Nakanishi. Contractors.

(1) Under existing law, the disassociation of any qualifying partner, responsible managing officer, or responsible managing employee from a license that has been referred to arbitration does not relieve the qualifying partner, responsible managing officer, or responsible managing employee from responsibility for complying with an award rendered as a result of an arbitration referral.

This bill would instead require a disassociated qualifying partner, responsible managing officer, or responsible managing employee to comply with an arbitration award rendered as a result of acts or omissions committed while acting as the qualifying partner, responsible managing officer, or responsible managing employee.

(2) Existing law provides for the licensing and regulation of contractors by the Contractors' State License Board. Existing law, operative January 1, 2006, requires that a home improvement contract, as defined, and any changes to the contract be in writing, signed by the parties, legible, and readable. Existing law also requires a contractor to provide a buyer with a copy of a home improvement contract and it also specifies that a change-order form will be incorporated into the contract if certain requirements are satisfied.

This bill would require that a home improvement contract and any changes to the contract comply with additional specified requirements, including, but not limited to, the inclusion of a notice stating that the owner or tenant has the right to require the contractor to have a performance and payment bond. The bill would provide that a violation of these provisions subjects a

licensee, his or her agent or salesperson, or a person subject to be licensed to discipline.

(3) Existing law, operative January 1, 2006, defines a “service and repair contract” as an agreement between a contractor or salesperson for a contractor and a homeowner or a tenant that meets specified requirements.

This bill would revise and recast these requirements and would also set forth information, notices, and disclosures required to be included as part of the contract. The bill would also make a “service and repair contract” that does not meet specified conforming requirements subject to the requirements applicable to a home improvement contract regardless of the aggregate contract price.

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

SECTION 1. Section 7122.2 of the Business and Professions Code is amended to read:

7122.2. (a) Notwithstanding Section 7068.2 or any other provisions of this chapter, the disassociation of any qualifying partner, responsible managing officer, or responsible managing employee from a license that has been referred to arbitration pursuant to Section 7085 shall not relieve the qualifying partner, responsible managing officer, or responsible managing employee from the responsibility of complying with an arbitration award rendered as a result of acts or omissions committed while acting as the qualifying partner, responsible managing officer, or responsible managing employee for the license as provided under Sections 7068 and 7068.1.

(b) Section 7122.5 shall apply to any qualifying partner, responsible managing officer, or responsible managing employee of a licensee that fails to comply with an arbitration award once it is rendered.

SEC. 2. Section 7159 of the Business and Professions Code, as amended by Section 7 of Chapter 48 of the Statutes of 2005, is amended to read:

7159. (a) (1) This section identifies the projects for which a home improvement contract is required, outlines the contract requirements and lists the items that shall be included in the contract, or may be provided as an attachment.

(2) This section does not apply to service and repair contracts which are subject to Section 7159.10, provided the contract for the applicable services complies with Sections 7159.10 to 7159.14, inclusive.

(3) Failure by the licensee, his or her agent or salesperson, or by a person subject to be licensed under this chapter, to provide the specified information, notices, and disclosures in the contract, or to otherwise fail to comply with any provision of this section, is cause for discipline.

(b) For purposes of this section, “home improvement contract” means an agreement, whether oral or written, or contained in one or more documents, between a contractor and an owner or between a contractor and a tenant, regardless of the number of residence or dwelling units contained in the building in which the tenant resides, if the work is to be performed in, to, or upon the residence or dwelling unit of the tenant, for the performance of a home improvement, as defined in Section 7151, and includes all labor, services, and materials to be furnished and performed thereunder, if the aggregate contract price specified in one or more improvement contracts, including all labor, services, and materials to be furnished by the contractor, exceeds five hundred dollars (\$500). “Home improvement contract” also means an agreement, whether oral or written, or contained in one or more documents, between a salesperson, whether or not he or she is a home improvement salesperson, and an owner or a tenant, regardless of the number of residence or dwelling units contained in the building in which the tenant resides, which provides for the sale, installation, or furnishing of home improvement goods or services.

(c) In addition to the specific requirements listed under this section, every home improvement contract and any person subject to licensure under this chapter or his or her agent or salesperson shall comply with all of the following:

(1) The writing shall be legible.

(2) Any printed form shall be readable. Unless a larger typeface is specified in this article, text in any printed form shall be in at least 10-point typeface and the headings shall be in at least 10-point boldface type.

(3) (A) Before any work is started, the contractor shall give the buyer a copy of the contract signed and dated by both the

contractor and the buyer. The buyer's receipt of the copy of the contract initiates the buyer's rights to cancel the contract pursuant to Sections 1689.5 to 1689.14, inclusive, of the Civil Code.

(B) The contract shall contain on the first page, in a typeface no smaller than that generally used in the body of the document, both of the following:

(i) The date the buyer signed the contract.

(ii) The name and address of the contractor to which the applicable "Notice of Cancellation" is to be mailed, immediately preceded by a statement advising the buyer that the "Notice of Cancellation" may be sent to the contractor at the address noted on the contract.

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

(5) A change-order form for changes or extra work shall be incorporated into the contract and shall become part of the contract only if it is in writing and signed by the parties prior to the commencement of any work covered by a change order.

(6) The contract shall contain, in close proximity to the signatures of the owner and contractor, a notice stating that the owner or tenant has the right to require the contractor to have a performance and payment bond.

(7) 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.

(8) The provisions of this section are not exclusive and do not relieve the contractor from compliance with any other applicable provision of law.

(d) A home improvement contract and any changes to the contract, shall be in writing and signed by the parties to the contract prior to the commencement of any work covered by the contract or applicable change order, and shall include or comply with all of the following:

(1) The name, business address, and license number of the contractor.

(2) If applicable, the name and registration number of the home improvement salesperson that solicited or negotiated the contract.

(3) The following heading on the contract form that identifies the type of contract in at least 10-point boldface type: “Home Improvement.”

(4) The following statement in at least 12-point boldface type: “You are entitled to a completely filled in copy of this agreement, signed by both you and the contractor, before any work may be started.”

(5) The heading: “Contract Price,” followed by the amount of the contract in dollars and cents.

(6) If a finance charge will be charged, the heading: “Finance Charge,” followed by the amount in dollars and cents. The finance charge is to be set out separately from the contract amount.

(7) The heading: “Description of the Project and Description of the Significant Materials to be Used and Equipment to be Installed,” followed by a description of the project and a description of the significant materials to be used and equipment to be installed. For swimming pools, the project description required under this paragraph also shall include a plan and scale drawing showing the shape, size, dimensions, and the construction and equipment specifications.

(8) If a down payment will be charged, the details of the down payment shall be expressed in substantially the following form, and shall include the text of the notice as specified in subparagraph (C):

(A) The heading: “Down Payment.”

(B) A space where the actual down payment appears.

(C) The following statement in at least 12-point boldface type: “THE DOWN PAYMENT MAY NOT EXCEED \$1,000 OR 10 PERCENT OF THE CONTRACT PRICE, WHICHEVER IS LESS.”

(9) If any payments, other than the down payment, is to be made before the project is completed, the details of these payments, known as progress payments, shall be expressed in

substantially the following form, and shall include the text of the statement as specified in subparagraph (C):

(A) A schedule of progress payments shall be preceded by the heading: “Schedule of Progress Payments.”

(B) Each progress payment shall be stated in dollars and cents and specifically reference the amount of work or services to be performed and any materials and equipment to be supplied.

(C) The section of the contract reserved for the progress payments shall include the following statement in at least 12-point boldface type:

“The schedule of progress payments must specifically describe each phase of work, including the type and amount of work or services scheduled to be supplied in each phase, along with the amount of each proposed progress payment. IT IS AGAINST THE LAW FOR A CONTRACTOR TO COLLECT PAYMENT FOR WORK NOT YET COMPLETED, OR FOR MATERIALS NOT YET DELIVERED. HOWEVER, A CONTRACTOR MAY REQUIRE A DOWNPAYMENT.”

(10) The contract shall address the commencement of work to be performed in substantially the following form:

(A) A statement that describes what constitutes substantial commencement of work under the contract.

(B) The heading: “Approximate Start Date.”

(C) The approximate date on which work will be commenced.

(11) The estimated completion date of the work shall be referenced in the contract in substantially the following form:

(A) The heading: “Approximate Completion Date.”

(B) The approximate date of completion.

(12) If applicable, the heading: “List of Documents to be Incorporated into the Contract,” followed by the list of documents incorporated into the contract.

(13) The heading: “Note about Extra Work and Change Orders,” followed by the following statement:

“Extra Work and Change Orders become part of the contract once the order is prepared in writing and signed by the parties prior to the commencement of any work covered by the new change order. The order must describe the scope of the extra work or change, the cost to be added or subtracted from the contract, and the effect the order will have on the schedule of progress payments.”

(e) All of the following notices shall be provided to the owner as part of the contract form as specified or, if otherwise authorized under this subdivision, may be provided as an attachment to the contract:

(1) A notice concerning commercial general liability insurance. This notice may be provided as an attachment to the contract if the contract includes the following statement: “A notice concerning commercial general liability insurance is attached to this contract.” The notice shall include the heading “Commercial General Liability Insurance (CGL),” followed by whichever of the following statements is both relevant and correct:

(A) “(The name on the license or ‘This contractor’) does not carry commercial general liability insurance.”

(B) “(The name on the license or ‘This contractor’) carries commercial general liability insurance written by (the insurance company). You may call the (insurance company) at _____ to check the contractor’s insurance coverage.”

(C) “(The name on the license or ‘This contractor’) is self-insured.”

(2) A notice concerning workers’ compensation insurance. This notice may be provided as an attachment to the contract if the contract includes the statement: “A notice concerning workers’ compensation insurance is attached to this contract.” The notice shall include the heading “Workers’ Compensation Insurance” followed by whichever of the following statements is correct:

(A) “(The name on the license or ‘This contractor’) has no employees and is exempt from workers’ compensation requirements.”

(B) “(The name on the license or ‘This contractor’) carries workers’ compensation insurance for all employees.”

(3) A notice that provides the buyer with the following information about the performance of extra or change-order work:

(A) A statement that the buyer may not require a contractor to perform extra or change-order work without providing written authorization prior to the commencement of any work covered by the new change order.

(B) A statement informing the buyer that extra work or a change order is not enforceable against a buyer unless the change order also identifies all of the following in writing prior to the commencement of any work covered by the new change order:

- (i) The scope of work encompassed by the order.
- (ii) The amount to be added or subtracted from the contract.
- (iii) The effect the order will make in the progress payments or the completion date.

(C) A statement informing the buyer that the contractor's failure to comply with the requirements of this paragraph does not preclude the recovery of compensation for work performed based upon legal or equitable remedies designed to prevent unjust enrichment.

(4) A notice with the heading "Mechanics' Lien Warning" written as follows:

"MECHANICS LIEN WARNING:

Anyone who helps improve your property, but who is not paid, may record what is called a mechanics' lien on your property. A mechanics' lien is a claim, like a mortgage or home equity loan, made against your property and recorded with the county recorder.

Even if you pay your contractor in full, unpaid subcontractors, suppliers, and laborers who helped to improve your property may record mechanics' liens and sue you in court to foreclose the lien. If a court finds the lien is valid, you could be forced to pay twice or have a court officer sell your home to pay the lien. Liens can also affect your credit.

To preserve their right to record a lien, each subcontractor and material supplier must provide you with a document called a '20-day Preliminary Notice.' This notice is not a lien. The purpose of the notice is to let you know that the person who sends you the notice has the right to record a lien on your property if he or she is not paid.

BE CAREFUL. The Preliminary Notice can be sent up to 20 days after the subcontractor starts work or the supplier provides material. This can be a big problem if you pay your contractor before you have received the Preliminary Notices.

You will not get Preliminary Notices from your prime contractor or from laborers who work on your project. The law

assumes that you already know they are improving your property.

PROTECT YOURSELF FROM LIENS. You can protect yourself from liens by getting a list from your contractor of all the subcontractors and material suppliers that work on your project. Find out from your contractor when these subcontractors started work and when these suppliers delivered goods or materials. Then wait 20 days, paying attention to the Preliminary Notices you receive.

PAY WITH JOINT CHECKS. One way to protect yourself is to pay with a joint check. When your contractor tells you it is time to pay for the work of a subcontractor or supplier who has provided you with a Preliminary Notice, write a joint check payable to both the contractor and the subcontractor or material supplier.

For other ways to prevent liens, visit CSLB's Web site at www.cslb.ca.gov or call CSLB at 800-321-CSLB (2752).

REMEMBER, IF YOU DO NOTHING, YOU RISK HAVING A LIEN PLACED ON YOUR HOME. This can mean that you may have to pay twice, or face the forced sale of your home to pay what you owe.”

(5) The following notice shall be provided in at least 12-point typeface: “Information about the Contractors’ State License Board (CSLB): CSLB is the state consumer protection agency that licenses and regulates construction contractors.

Contact CSLB for information about the licensed contractor you are considering, including information about disclosable complaints, disciplinary actions and civil judgments that are reported to CSLB.

Use only licensed contractors. If you file a complaint against a licensed contractor within the legal deadline (usually four years), CSLB has authority to investigate the complaint. If you use an unlicensed contractor, CSLB may not be able to help you resolve your complaint. Your only remedy may be in civil court, and you may be liable for damages arising out of any injuries to the unlicensed contractor or the unlicensed contractor’s employees.

For more information:

Visit CSLB’s Web site at www.cslb.ca.gov

Call CSLB at 800-321-CSLB (2752)

Write CSLB at P.O. Box 26000, Sacramento, CA 95826.”

(6) (A) The notice set forth in subparagraph (B) and entitled “Three-Day Right to Cancel,” shall be provided to the buyer unless the contract is:

(i) Negotiated at the contractor’s place of business.

(ii) Subject to the “Seven-Day Right to Cancel,” as set forth in paragraph (8).

(iii) Subject to licensure under the Alarm Company Act (Chapter 11.6 (commencing with Section 7590)), provided the alarm company licensee complies with Sections 1689.5, 1689.6, and 1689.7 of the Civil Code, as applicable.

(B) “Three-Day Right to Cancel

“You, the buyer, have the right to cancel this contract within three business days. You may cancel by e-mailing, mailing, faxing, or delivering a written notice to the contractor at the contractor’s place of business by midnight of the third business day after you received a signed and dated copy of the contract that includes this notice. Include your name, your address, and the date you received the signed copy of the contract and this notice.

If you cancel, the contractor must return to you anything you paid within 10 days of receiving the notice of cancellation. For your part, you must make available to the contractor at your residence, in substantially as good condition as you received it, any goods delivered to you under this contract or sale. Or, you may, if you wish, comply with the contractor’s instructions on how to return the goods at the contractor’s expense and risk. If you do make the goods available to the contractor and the contractor does not pick them up within 20 days of the date of your notice of cancellation, you may keep them without any further obligation. If you fail to make the goods available to the contractor, or if you agree to return the goods to the contractor and fail to do so, then you remain liable for performance of all obligations under the contract.”

(C) The “Three-Day Right to Cancel” notice required by this paragraph shall comply with all of the following:

(i) The text of the notice is at least 12-point boldface type.

(ii) The notice is in immediate proximity to a space reserved for the owner’s signature.

(iii) The owner acknowledges receipt of the notice by signing and dating the notice form in the signature space.

(iv) The notice is written in the same language, e.g., Spanish, as that principally used in any oral sales presentation.

(v) The notice may be attached to the contract if the contract includes, in at least 12-point boldface type, a checkbox with the following statement: “The law requires that the contractor give you a notice explaining your right to cancel. Initial the checkbox if the contractor has given you a ‘Notice of the Three-Day Right to Cancel.’”

(vi) The notice shall be accompanied by a completed form in duplicate, captioned “Notice of Cancellation,” which shall also be attached to the agreement or offer to purchase and be easily detachable, and which shall contain the following statement written in the same language, e.g., Spanish, as used in the contract:

“Notice of Cancellation”

/enter date of transaction/

(Date)

“You may cancel this transaction, without any penalty or obligation, within three business days from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within 10 days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale, or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller’s expense and risk.

If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract.”

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, or send a telegram

to _____,
/name of seller/

at _____
/address of seller's place of business/

not later than midnight of _____.
(Date)

I hereby cancel this transaction. _____
(Date)

(Buyer's signature)

(7) (A) The following notice entitled "Seven-Day Right to Cancel" shall be provided to the buyer for any contract that is written for the repair or restoration of residential premises damaged by any sudden or catastrophic event for which a state of emergency has been declared by the President of the United States or the Governor, or for which a local emergency has been declared by the executive officer or governing body of any city, county, or city and county:

"Seven-Day Right to Cancel

You, the buyer, have the right to cancel this contract within seven business days. You may cancel by e-mailing, mailing, faxing, or delivering a written notice to the contractor at the contractor's place of business by midnight of the seventh business day after you received a signed and dated copy of the contract that includes this notice. Include your name, your address, and the date you received the signed copy of the contract and this notice.

If you cancel, the contractor must return to you anything you paid within 10 days of receiving the notice of cancellation. For your part, you must make available to the contractor at your residence, in substantially as good condition as you received it, any goods delivered to you under this contract or sale. Or, you may, if you wish, comply with the contractor's instructions on how to return the goods at the contractor's expense and risk. If you do make the goods available to the contractor and the contractor does not pick them up within 20 days of the date of

your notice of cancellation, you may keep them without any further obligation. If you fail to make the goods available to the contractor, or if you agree to return the goods to the contractor and fail to do so, then you remain liable for performance of all obligations under the contract.”

(B) The “Seven-Day Right to Cancel” notice required by this subdivision shall comply with all of the following:

(i) The text of the notice is at least 12-point boldface type.

(ii) The notice is in immediate proximity to a space reserved for the owner’s signature.

(iii) The owner acknowledges receipt of the notice by signing and dating the notice form in the signature space.

(iv) The notice is written in the same language, e.g., Spanish, as that principally used in any oral sales presentation.

(v) The notice may be attached to the contract if the contract includes, in at least 12-point boldface type, a checkbox with the following statement: “The law requires that the contractor give you a notice explaining your right to cancel. Initial the checkbox if the contractor has given you a ‘Notice of the Seven-Day Right to Cancel.’”

(vi) The notice shall be accompanied by a completed form in duplicate, captioned “Notice of Cancellation,” which shall also be attached to the agreement or offer to purchase and be easily detachable, and which shall contain the following statement written in the same language, e.g., Spanish, as used in the contract:

“Notice of Cancellation”

/enter date of transaction/

(Date)

“You may cancel this transaction, without any penalty or obligation, within seven business days from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within 10 days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale, or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract.”

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, or send a telegram
to _____,
/name of seller/
at _____
/address of seller's place of business/
not later than midnight of _____.
(Date)

I hereby cancel this transaction. _____
(Date)

(Buyer's signature)

SEC. 3. Section 7159.3 of the Business and Professions Code, as amended by Section 9 of Chapter 48 of the Statutes of 2005, is repealed.

SEC. 4. Section 7159.4 of the Business and Professions Code, as amended by Section 10 of Chapter 48 of the Statutes of 2005, is repealed.

SEC. 5. Section 7159.5 of the Business and Professions Code, as amended by Section 11 of Chapter 48 of the Statutes of 2005, 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, who 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 his or her agent or salesperson to comply with the following provisions is cause for discipline:

(1) The contract 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 may not exceed one thousand dollars (\$1,000) or 10 percent of the contract amount, whichever is less.

(4) If, in addition to a down payment, 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 may neither request nor accept payment that exceeds the value of the work performed or material delivered.

(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 mechanic's lien pursuant to Section 3114 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 Mechanics' Lien Warning which is a requirement specified in 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.

(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 his or her 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 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 within four years from the date the buyer signs the contract.

(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 within two years from the date the buyer signs the contract.

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

(c) 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, as defined in subdivision (e) of Section 1203.1b of the Penal Code. 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.

SEC. 6. Section 7159.10 of the Business and Professions Code, as amended by Section 13 of Chapter 48 of the Statutes of 2005, is amended to read:

7159.10. (a) (1) “Service and repair contract” means an agreement between a contractor or salesperson for a contractor, whether a general contractor or a specialty contractor, who is licensed or subject to be licensed pursuant to this chapter with regard to the transaction, and a homeowner or a tenant, for the performance of a home improvement as defined in Section 7151, that conforms to the following requirements:

(A) The contract amount is seven hundred fifty dollars (\$750) or less.

(B) The prospective buyer initiated contact with the contractor to request the work.

(C) The contractor does not sell the buyer goods or services beyond those reasonably necessary to take care of the particular problem that caused the buyer to contact the contractor.

(D) No payment is due, or accepted by the contractor, until the work is completed.

(2) As used in this subdivision, “the work is completed” means that all of the conditions that caused the buyer to contact the contractor for service and repairs have been fully corrected and, if applicable, the building department has accepted and approved the corrective work.

(b) For any contract written pursuant to subdivision (a) or otherwise presented to the buyer as a service and repair contract, unless all of the conforming requirements for service and repair contracts specified in subdivision (a) are met, the contract requirements for home improvements set forth in subdivisions (c), (d), and (e) of Section 7159 shall be applicable, including any rights to rescind the contract as set forth in Section 1689.6 or 1689.7 of the Civil Code, regardless of the aggregate contract price.

(c) If all of the requirements of subdivision (a) are met, only those notices and other requirements set forth in this section are applicable to the contract.

(d) Every service and repair contract described in subdivision (a) shall include, or otherwise comply with, all of the following:

(1) The contract, any changes to the contract, and any attachments shall be in writing and signed or acknowledged by the parties as set forth in this section, and shall be written in the same language (for example Spanish) as principally used in the oral sales presentation.

(2) The writing shall be legible.

(3) Any printed form shall be readable. Unless a larger typeface is specified in this article, the text shall be in at least 10-point typeface and the headings shall be in at least 10-point boldface type.

(4) Before any work is started, the contractor shall give the buyer a copy of the contract signed and dated by the buyer and by the contractor or the contractor's representative.

(5) The name, business address, and license number of the contractor.

(6) The date the contract was signed.

(7) A notice concerning commercial general liability insurance. This notice may be provided as an attachment to the contract if the contract includes the statement, "A notice concerning commercial general liability insurance is attached to this contract." The notice shall include the heading "Commercial General Liability Insurance (CGL)" followed by whichever of the following statements is both relevant and correct:

(A) "(The name on the license or 'This contractor') does not carry commercial general liability insurance."

(B) "(The name on the license or 'This contractor') carries commercial general liability insurance written by (the insurance company). You may call the (insurance company) at ____ to check the contractor's insurance coverage."

(C) "(The name on the license or 'This contractor') is self-insured."

(8) A notice concerning workers' compensation insurance. This notice may be provided as an attachment to the contract if the contract includes the statement "A notice concerning workers' compensation insurance is attached to this contract." The notice shall include the heading "Workers' Compensation Insurance" followed by whichever of the following statements is both relevant and correct:

(A) “(The name on the license or ‘This contractor’) has no employees and is exempt from workers’ compensation requirements.”

(B) “(The name on the license or ‘This contractor’) carries workers’ compensation insurance for all employees.”

(e) Every service and repair contract described in subdivision (a) shall provide the following information, notices, and disclosures in the contract:

(1) Notice of the type of contract in at least 10-point boldface type: “Service and Repair.”

(2) A notice in at least 12-point boldface type, signed and dated by the buyer: “Notice to the Buyer: The law requires that service and repair contracts must meet all of the following requirements:

(A) The price must be no more than seven hundred and fifty dollars (\$750).

(B) You, the buyer, must have initiated contact with the contractor to request the work.

(C) The contractor must not sell you goods or services beyond those reasonably necessary to take care of the particular problem that caused you to contact the contractor.

(D) No payment is due and the contractor may not accept any payment until the work is completed.”

(3) The notice in at least 12-point boldface type: “Notice to the Buyer: You are entitled to a completely filled in and signed copy of this agreement before any work may be started.”

(4) If applicable, the heading “List of Documents to be Incorporated into the Contract,” followed by the list of documents to be incorporated into the contract.

(5) Where the contract is a fixed contract amount, the heading: “Contract Price” followed by the amount of the contract in dollars and cents.

(6) If a finance charge will be charged, the heading: “Finance Charge” followed by the amount in dollars and cents. The finance charge is to be set out separately from the contract amount.

(7) Where the contract is estimated by a time and materials formula, the heading “Estimated Contract Price” followed by the estimated contract amount in dollars and cents. The contract must disclose the set rate and the estimated cost of materials. The

contract must also disclose how time will be computed, for example, in increments of quarter hours, half hours, or hours, and the statement: “The actual contract amount of a time and materials contract may not exceed the estimated contract amount without written authorization from the buyer.”

(8) The heading: “Description of the Project and Materials to be Used and Equipment to be Installed” followed by a description of the project and materials to be used and equipment to be installed.

(9) The statement: “The law requires that the contractor offer you any parts that were replaced during the service call. If you do not want the parts, initial the checkbox labeled ‘OK for contractor to take replaced parts.’”

(10) A checkbox labeled “OK for contractor to take replaced parts.”

(11) If a service charge is charged, the heading “Amount of Service Charge” followed by the service charge, and the statement “You may be charged only one service charge, including any trip charge or inspection fee.”

(12) (A) The contract, or an attachment to the contract as specified under subparagraph (C) of this paragraph, must include, in immediate proximity to the space reserved for the buyer’s signature, the following statement, in a size equal at least to 12-point boldface type, which shall be dated and signed by the buyer:

“YOUR RIGHTS TO CANCEL BEFORE WORK BEGINS

(A) You, the buyer, have the right to cancel this contract until:

1. You receive a copy of this contract signed and dated by you and the contractor; and
2. The contractor starts work.

(B) However, even if the work has begun you, the buyer, may still cancel the contract for any of the reasons specified in items 1 through 4 of this paragraph. If any of these reasons occur, you may cancel the contract within three business days of signing the contract for normal service and repairs, or within seven business days of signing a contract to repair or correct conditions resulting from any sudden or catastrophic event for which a state of emergency has been declared by the President of the United States or the Governor, or for which a local emergency has been

declared by the executive officer or governing body of any city, county, or city and county:

1. You may cancel the contract if the price, including all labor and materials, is more than seven hundred fifty dollars (\$750).

2. You may cancel the contract if you did not initiate the contact with the contractor to request the work.

3. You may cancel the contract if the contractor sold you goods or services beyond those reasonably necessary to take care of the particular problem that caused you to contact the contractor.

4. You may cancel the contract if the payment was due or the contractor accepted any money before the work was complete.

(C) If any of these reasons for canceling occurred, you may cancel the contract as specified under paragraph (B) above by e-mailing, mailing, faxing, or delivering a written notice to the contractor at the contractor's place of business within three business days or, if applicable, seven business days of the date you received a signed and dated copy of this contract. Include your name, your address, and the date you received a signed copy of the contract and this notice.

If you cancel, the contractor must return to you anything you paid within 10 days of receiving the notice of cancellation. For your part, you must make available to the contractor at your residence, in substantially as good condition as you received it, any goods delivered to you under this contract. Or, you may, if you wish, comply with the contractor's instructions on how to return the goods at the contractor's expense and risk. If you make the goods available to the contractor and the contractor does not pick them up within 20 days of the date of your notice of cancellation, you may keep them without any further obligation. If you fail to make the goods available to the contractor, or if you agree to return the goods to the contractor and fail to do so, then you remain liable for performance of all obligations under the contract."

(B) This paragraph does not apply to home improvement contracts entered into by a person who holds an alarm company operator's license issued pursuant to Chapter 11.6 (commencing with Section 7590), provided the person complies with Sections 1689.5, 1689.6, and 1689.7 of the Civil Code, as applicable.

(C) The notice required in this paragraph may be incorporated as an attachment to the contract if the contract includes a checkbox and whichever statement is relevant in at least 12-point boldface type:

(i) “The law requires that the contractor give you a notice explaining your right to cancel. Initial the checkbox if the contractor has given you a ‘Notice of Your Right to Cancel.’”

(ii) “The law requires that the contractor give you a notice explaining your right to cancel contracts for the repair or restoration of residential premises damaged by a disaster. Initial the checkbox if the contractor has given you a ‘Notice of Your Right to Cancel.’”

(f) A bona fide service repairperson employed by a licensed contractor or subcontractor hired by a licensed contractor may enter into a service and repair contract on behalf of that contractor.

(g) The provisions of this section are not exclusive and do not relieve the contractor from compliance with any other applicable provision of law.

SEC. 7. Section 7159.11 of the Business and Professions Code, as amended by Section 14 of Chapter 48 of the Statutes of 2005, is amended to read:

7159.11. A violation of any provision of Section 7159.10 by a licensee, or a person subject to be licensed under this chapter, or by his or her agent or salesperson, is cause for discipline.

SEC. 8. Section 7159.12 of the Business and Professions Code, as amended by Section 15 of Chapter 48 of the Statutes of 2005, is repealed.

SEC. 9. Section 7159.13 of the Business and Professions Code, as amended by Section 16 of Chapter 48 of the Statutes of 2005, is repealed.

SEC. 10. Section 7167 of the Business and Professions Code, as added by Section 21 of Chapter 48 of the Statutes of 2005, is amended to read:

7167. (a) Any contract, the primary purpose of which is the construction of a swimming pool, that does not substantially comply with paragraph (4) or (5) of subdivision (c) or paragraph (7), (8), or (9) of subdivision (d) of Section 7159, shall be void and unenforceable by the contractor as contrary to public policy.

(b) Failure by the contractor to comply with paragraph (5) of subdivision (c) of Section 7159 as set forth in subdivision (a) of this section does not preclude the recovery of compensation for work performed based on quasi-contract, quantum meruit, restitution, or other similar legal or equitable remedies designed to prevent unjust enrichment.

SEC. 11. Section 1689.6 of the Civil Code, as amended by Section 25 of Chapter 48 of the Statutes of 2005, is amended to read:

1689.6. (a) (1) Except for a contract written pursuant to Section 7151.2 or 7159.10 of the Business and Professions Code, in addition to any other right to revoke an offer, the buyer has the right to cancel a home solicitation contract or offer until midnight of the third business day after the day on which the buyer signs an agreement or offer to purchase which complies with Section 1689.7.

(2) In addition to any other right to revoke an offer, the buyer has the right to cancel a home solicitation contract written pursuant to Section 7151.2 of the Business and Professions Code until midnight of the third business day after the buyer receives a signed and dated copy of the contract or offer to purchase that complies with Section 1689.7 of this code.

(3) (A) In addition to any other right to revoke an offer, the buyer has the right to cancel a home solicitation contract or offer to purchase written pursuant to Section 7159.10 of the Business and Professions Code, until the buyer receives a signed and dated copy of a service and repair contract that complies with the contract requirements specified in Section 7159.10 of the Business and Professions Code and the work commences.

(B) For any contract written pursuant to Section 7159.10 of the Business and Professions Code, or otherwise presented to the buyer as a service and repair contract, unless all of the conforming requirements listed under subdivision (a) of that section are met, the requirements set forth under Section 7159 of the Business and Professions Code shall be applicable, regardless of the aggregate contract price, including the right to cancel as set forth under this section.

(b) In addition to any other right to revoke an offer, any buyer has the right to cancel a home solicitation contract or offer for the purchase of a personal emergency response unit until midnight of

the seventh business day after the day on which the buyer signs an agreement or offer to purchase which complies with Section 1689.7. This subdivision shall not apply to a personal emergency response unit installed with, and as part of, a home security alarm system subject to the Alarm Company Act (Chapter 11.6 (commencing with Section 7590) of Division 3 of the Business and Professions Code) which has two or more stationary protective devices used to enunciate an intrusion or fire and is installed by an alarm company operator operating under a current license issued pursuant to the Alarm Company Act, which shall instead be subject to subdivision (a).

(c) In addition to any other right to revoke an offer, a buyer has the right to cancel a home solicitation contract or offer for the repair or restoration of residential premises damaged by a disaster that was not void pursuant to Section 1689.14, until midnight of the seventh business day after the buyer signs and dates the contract unless the provisions of Section 1689.15 are applicable.

(d) Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address specified in the agreement or offer.

(e) Notice of cancellation, if given by mail, is effective when deposited in the mail properly addressed with postage prepaid.

(f) Notice of cancellation given by the buyer need not take the particular form as provided with the contract or offer to purchase and, however expressed, is effective if it indicates the intention of the buyer not to be bound by the home solicitation contract or offer.

(g) “Personal emergency response unit,” for purposes of this section, means an in-home radio transmitter device or two-way radio device generally, but not exclusively, worn on a neckchain, wrist strap, or clipped to clothing, and connected to a telephone line through which a monitoring station is alerted of an emergency and emergency assistance is summoned.

SEC. 12. Section 1689.7 of the Civil Code, as amended by Section 27 of Chapter 48 of the Statutes of 2005, is amended to read:

1689.7. (a) (1) Except for contracts written pursuant to Sections 7151.2 and 7159.10 of the Business and Professions Code, in a home solicitation contract or offer, the buyer’s

agreement or offer to purchase shall be written in the same language, e.g., Spanish, as principally used in the oral sales presentation, shall be dated, shall be signed by the buyer, and except as provided in paragraph (2), shall contain in immediate proximity to the space reserved for his or her signature, a conspicuous statement in a size equal to at least 10-point boldface type, as follows: “You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right.”

(2) The statement required pursuant to this subdivision for a home solicitation contract or offer for the purchase of a personal emergency response unit, as defined in Section 1689.6, that is not installed with and as part of a home security alarm system subject to the Alarm Company Act (Chapter 11.6 (commencing with Section 7590) of Division 3 of the Business and Professions Code) that has two or more stationary protective devices used to enunciate an intrusion or fire and is installed by an alarm company operator operating under a current license issued pursuant to the Alarm Company Act, is as follows: “You, the buyer, may cancel this transaction at any time prior to midnight of the seventh business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right.”

(3) Except for contracts written pursuant to Sections 7151.2 and 7159.10 of the Business and Professions Code, the statement required pursuant to this subdivision for the repair or restoration of residential premises damaged by a disaster pursuant to subdivision (c) of Section 1689.6 is as follows: “You, the buyer, may cancel this transaction at any time prior to midnight of the seventh business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right.”

(4) A home solicitation contract written pursuant to Section 7151.2 of the Business and Professions Code shall be written in the same language, e.g., Spanish, as principally used in the oral sales presentation. The contract, or an attachment to the contract that is subject to Section 7159 of the Business and Professions Code shall include in immediate proximity to the space reserved for his or her signature, the following statement in a size equal to

at least 12-point boldface type, which shall be dated and signed by the buyer:

“Three-Day Right to Cancel

You, the buyer, have the right to cancel this contract within three business days. You may cancel by e-mailing, mailing, faxing, or delivering a written notice to the contractor at the contractor’s place of business by midnight of the third business day after you received a signed and dated copy of the contract that includes this notice. Include your name, your address, and the date you received the signed copy of the contract and this notice.

If you cancel, the contractor must return to you anything you paid within 10 days of receiving the notice of cancellation. For your part, you must make available to the contractor at your residence, in substantially as good condition as you received it, any goods delivered to you under this contract or sale. Or, you may, if you wish, comply with the contractor’s instructions on how to return the goods at the contractor’s expense and risk. If you do make the goods available to the contractor and the contractor does not pick them up within 20 days of the date of your notice of cancellation, you may keep them without any further obligation. If you fail to make the goods available to the contractor, or if you agree to return the goods to the contractor and fail to do so, then you remain liable for performance of all obligations under the contract.”

(b) The agreement or offer to purchase shall contain on the first page, in a type size no smaller than that generally used in the body of the document, the following: (1) the name and address of the seller to which the notice is to be mailed, and (2) the date the buyer signed the agreement or offer to purchase.

(c) Except for contracts written pursuant to Sections 7151.2 and 7159.10 of the Business and Professions Code, or except as provided in subdivision (d), the agreement or offer to purchase shall be accompanied by a completed form in duplicate, captioned “Notice of Cancellation” which shall be attached to the agreement or offer to purchase and be easily detachable, and which shall contain in type of at least 10-point the following statement written in the same language, e.g., Spanish, as used in the contract:

“Notice of Cancellation”

/enter date of transaction/

(Date)

“You may cancel this transaction, without any penalty or obligation, within three business days from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within 10 days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale, or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller’s expense and risk.

If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract.”

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, or send a telegram

to _____ ,

/name of seller/

at _____

/address of seller’s place of business/

not later than midnight of _____ .

(Date)

I hereby cancel this transaction. _____

(Date)

(Buyer’s signature)

(d) Any agreement or offer to purchase a personal emergency response unit, as defined in Section 1689.6, which is not installed with and as part of a home security alarm system subject to the Alarm Company Act which has two or more stationary protective devices used to enunciate an intrusion or fire and is installed by an alarm company operator operating under a current license issued pursuant to the Alarm Company Act, shall be subject to the requirements of subdivision (c), and shall be accompanied by the “Notice of Cancellation” required by subdivision (c), except that the first paragraph of that notice shall be deleted and replaced with the following paragraph:

You may cancel this transaction, without any penalty or obligation, within seven business days from the above date.

(e) A home solicitation contract written pursuant to Section 7151.2 of the Business and Professions Code for the repair or restoration of residential premises damaged by a disaster that is subject to subdivision (c) of Section 1689.6, shall be written in the same language, e.g., Spanish, as principally used in the oral sales presentation. The contract, or an attachment to the contract that is subject to Section 7159 of the Business and Professions Code shall include, in immediate proximity to the space reserved for his or her signature, the following statement in a size equal to at least 12-point boldface type, which shall be signed and dated by the buyer:

“Seven-Day Right to Cancel

You, the buyer, have the right to cancel this contract within seven business days. You may cancel by e-mailing, mailing, faxing, or delivering a written notice to the contractor at the contractor’s place of business by midnight of the seventh business day after you received a signed and dated copy of the contract that includes this notice. Include your name, your address, and the date you received the signed copy of the contract and this notice.

If you cancel, the contractor must return to you anything you paid within 10 days of receiving the notice of cancellation. For your part, you must make available to the contractor at your residence, in substantially as good condition as you received it, any goods delivered to you under this contract or sale. Or, you may, if you wish, comply with the contractor’s instructions on

how to return the goods at the contractor's expense and risk. If you do make the goods available to the contractor and the contractor does not pick them up within 20 days of the date of your notice of cancellation, you may keep them without any further obligation. If you fail to make the goods available to the contractor, or if you agree to return the goods to the contractor and fail to do so, then you remain liable for performance of all obligations under the contract.”

(f) The seller shall provide the buyer with a copy of the contract or offer to purchase and the attached notice of cancellation, and shall inform the buyer orally of his or her right to cancel and the requirement that cancellation be in writing, at the time the home solicitation contract or offer is executed.

(g) Until the seller has complied with this section the buyer may cancel the home solicitation contract or offer.

(h) “Contract or sale” as used in subdivision (c) means “home solicitation contract or offer” as defined by Section 1689.5.

SEC. 13. Section 1689.15 of the Civil Code, as amended by Section 30 of Chapter 48 of the Statutes of 2005, is amended to read:

1689.15. Notwithstanding any other provision of law, a contractor who is duly licensed pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code may commence work on a service and repair project as soon as the buyer receives a signed and dated copy of a service and repair contract that meets all of the contract requirements specified in Section 7159.10 of the Business and Professions Code. The buyer retains any right of cancellation applicable to home solicitations under Sections 1689.5 to 1689.14, inclusive, until such time as the buyer receives a signed and dated copy of a service and repair contract that meets all of the contract requirements specified in Section 7159.10 of the Business and Professions Code and the licensee in fact commences that project, at which time any cancellation rights provided in Sections 1689.5 to 1689.14, inclusive, are extinguished by operation of law.

Approved _____, 2005

Governor