

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1791

Introduced by Assembly Member Buchanan
(Coauthor: Assembly Member Gatto)

February 21, 2012

An act to amend Section 12106 add Chapter 3.1 (commencing with Section 12114) to Part 2 of Division 2 of the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1791, as amended, Buchanan. Public contracts: state contracts: ~~information technology goods and services: computer software.~~

Existing law requires the Department of General Services to maintain policies and procedures governing the acquisition and disposal of information technology goods and services. Existing law authorizes the Department of General Services to adopt rules and regulations as are necessary to govern the acquisition and disposal of information technology goods and services.

This bill would require state agencies executing or amending a contract with any contractor or supplier to require that contractor or supplier to certify, as provided, that it does not use unlawful computer software in its business operations. This bill would require a state agency and any contractor or supplier to resolve disputes regarding failure to certify or false certification, as provided.

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necessary to govern the acquisition and disposal of information technology goods and services.

~~This bill would make a technical, nonsubstantive change to those provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

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

1 SECTION 1. *The Legislature finds and declares all of the*
2 *following:*

3 (a) *The State of California recognizes the critical importance*
4 *of information technology to the economic growth and*
5 *competitiveness of all industry sectors.*

6 (b) *The information technology industry is one of the most*
7 *vibrant sectors of California’s economy, employing 880,000*
8 *California workers in 2009 and generating \$76 billion in annual*
9 *wages.*

10 (c) *The illegal use of unlicensed computer software reduces the*
11 *profitability of California’s information technology and other*
12 *industries and their ability to create jobs and generate tax revenues*
13 *for the state. Studies show that reducing software piracy worldwide*
14 *by 10 percentage points would create \$142 billion in new economic*
15 *activity and 500,000 new high-tech jobs.*

16 (d) *Software theft is particularly pervasive in countries with a*
17 *poor record of enforcing intellectual property rights and other*
18 *laws against unfair and unethical business practices.*

19 (e) *In countries with weak rule of law, companies routinely use*
20 *large quantities of unlicensed computer software, often worth*
21 *millions of dollars, which unfairly reduces their business costs*
22 *and results in an unfair competitive advantage. This unfair*
23 *advantage translates into decreased sales, reduced market share,*
24 *and fewer jobs in California.*

25 (f) *When government contractors or suppliers unfairly reduce*
26 *their costs by stealing computer software, they harm competition*
27 *in California to the detriment of companies that lawfully acquire*
28 *the software they use.*

29 (g) *The State of California procures billions of dollars in goods*
30 *and services and awards hundreds of contracts annually and*
31 *should ensure that any tax dollars spent on procurements and*

1 *contracts go to businesses that conduct themselves within the*
2 *parameters of the law.*

3 *SEC. 2. Chapter 3.1 (commencing with Section 12114) is added*
4 *to Part 2 of Division 2 of the Public Contract Code, to read:*

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*CHAPTER 3.1. CERTIFICATION OF LAWFUL COMPUTER
SOFTWARE USE*

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9 *12114. It shall be the policy of the State of California that*
10 *contractors and suppliers shall use only lawful computer software*
11 *in their business operations.*

12 *12115. State agencies, in executing or amending a contract*
13 *with a contractor or supplier, shall require the contractor or*
14 *supplier to certify that it does not use unlawful computer software*
15 *in its business operations.*

16 *12116. If a contractor or supplier fails to make the certification*
17 *described in Section 12115, or if the state agency determines that*
18 *a contractor or supplier has made a false declaration or*
19 *certification pursuant to Section 12115, the parties shall deal in*
20 *good faith and attempt to resolve the dispute informally. If the*
21 *dispute persists, the contractor or supplier may submit to the state*
22 *agency a new certification pursuant to Section 12115 that shall*
23 *be fully supported by factual information and shall include a*
24 *written statement signed by an authorized person indicating that*
25 *the supporting data is accurate and complete.*

26 *12117. The Department of General Services shall add a*
27 *provision setting forth the certification requirement described in*
28 *Section 12115 to the Patent, Copyright, and Trade Secret Indemnity*
29 *provisions of the General Provisions for Non-IT Commodities and*
30 *to the Patent, Copyright, and Trade Secret Indemnity provisions*
31 *of the IT General Provisions.*

32 *12118. For purposes of this chapter, "state agency" means*
33 *each agency, department, board, commission, and office of the*
34 *executive branch.*

35 *12119. The invalidity of any portion of this chapter shall not*
36 *affect the validity of the remainder thereof.*

37 ~~SECTION 1. Section 12106 of the Public Contract Code is~~
38 ~~amended to read:~~

39 ~~12106. The Department of General Services may, in addition~~
40 ~~to fulfilling the mandatory requirements enumerated in Section~~

- 1 ~~12102, adopt rules and regulations as are necessary for the purposes~~
- 2 ~~of this chapter.~~

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