

AMENDED IN SENATE MAY 12, 2015

AMENDED IN SENATE APRIL 20, 2015

SENATE BILL

No. 561

Introduced by Senator Monning
(Coauthor: Assembly Member Achadjian)

February 26, 2015

An act to amend Sections 7152, 7153, 7153.2, 7153.3, 7154, 7155.5, and 7156 ~~of of, and to add Section 7156.6 to~~, the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

SB 561, as amended, Monning. Home improvement salespersons.

Existing law, the Contractors' State License Law, provides for the licensure and regulation of contractors, including home improvement contractors, by the Contractors' State License Board within the Department of Consumer Affairs. Existing law also provides for the registration and regulation of home improvement salespersons by the board. Existing law requires the board to appoint a registrar of contractors who is the executive officer and secretary of the board and is responsible for carrying out specified administrative duties. ~~Existing law requires the fees and civil penalties received under this law to be deposited in the Contractors' License Fund, a continuously appropriated fund.~~

Under existing law, a home improvement salesperson is a person employed by a licensed home improvement contractor to solicit, sell, negotiate, or execute contracts for home improvements, for the sale, installation, or furnishing of home improvement goods or services, or of swimming pools, spas, or hot tubs.

This bill would provide that such a salesperson ~~also be registered under the law~~ *is a person who is registered and engaged in the business of soliciting, selling, negotiating, or executing contracts for home improvements, for the sale, installation or furnishing of home improvement goods or services, or of swimming pools, spas, or hot tubs. The bill would require a home improvement salesperson to register with the board in order to engage in the business of, or act in the capacity of, a home improvement salesperson.*

Existing law makes it a crime for any person to engage in the occupation of home improvement salesperson for one or more home improvement contractors without a registration for each of the home improvement contractors by whom he or she is employed. Existing law makes it a crime for any person to engage in the occupation of salesperson of home improvement goods or services, as defined, without a registration.

This bill would instead make it a crime for any person to engage in the occupation of home improvement salesperson for one or more home improvement contractors without having, at the time of the sales transaction, a current and valid registration. The bill would instead make it a crime for any person to engage in the occupation of salesperson of home improvement goods or services without having, at the time of the sales transaction, a current and valid registration. By changing the definitions of these crimes, the bill would impose a state-mandated local program.

Under existing law, home improvement salesperson registrations expire subject to board determination, as described.

This bill would provide that these registrations expire 2 years from the last day of the month in which the registration was issued or 2 years from the date on which the renewed registration last expired.

Under existing law, a home improvement contractor who employs a person to sell home improvement contracts while that person is not registered by the registrar as a home improvement salesperson is subject to disciplinary action.

This bill would require a home improvement contractor to notify the registrar in writing about the ~~pending~~ employment of a registered home improvement salesperson. The bill would also require a home improvement contractor to notify the registrar when a registered home improvement salesperson ceases to be employed by the contractor. The bill would make a home improvement contractor who fails to report this information subject to disciplinary action by the registrar.

Existing law authorizes the board to make rules and regulations as are reasonably necessary to carry out the law and requires the rules and regulations to be adopted in accordance with the provisions of the Administrative Procedure Act.

The bill would authorize the board, by regulation, to implement a system to provide for the electronic transmission of home improvement salesperson applications and those aforementioned notices required to be made by a home improvement contractor.

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 7152 of the Business and Professions
2 Code is amended to read:

3 7152. (a) “Home improvement salesperson” is a ~~person,~~ *person*
4 who is registered under this chapter, ~~employed by a home~~
5 ~~improvement contractor licensed under this chapter to solicit, sell,~~
6 ~~negotiate, or execute~~ *and engaged in the business of soliciting,*
7 *selling, negotiating, or executing* contracts for home improvements,
8 for the sale, installation or furnishing of home improvement goods
9 or services, or of swimming pools, spas, or hot tubs.

10 (b) *A home improvement salesperson shall register with the*
11 *board in order to engage in the business of, or act in the capacity*
12 *of, a home improvement salesperson.*

13 ~~(b)~~

14 (c) The following shall not be required to be registered as home
15 improvement salespersons:

16 (1) An officer of record of a corporation licensed pursuant to
17 this chapter, or a manager, member, or officer of record of a limited
18 liability company licensed pursuant to this chapter.

19 (2) A general partner listed on the license record of a partnership
20 licensed pursuant to this chapter.

21 (3) A qualifying person, as defined in Section 7025.

1 (4) A salesperson whose sales are all made pursuant to
2 negotiations between the parties if the negotiations are initiated
3 by the prospective buyer at or with a general merchandise retail
4 establishment that operates from a fixed location where goods or
5 services are offered for sale.

6 (5) A person who contacts the prospective buyer for the
7 exclusive purpose of scheduling appointments for a registered
8 home improvement salesperson.

9 (6) A bona fide service repairperson who is in the employ of a
10 licensed contractor and whose repair or service call is limited to
11 the service, repair, or emergency repair initially requested by the
12 buyer of the service.

13 ~~(e)~~

14 (d) The exemption to registration provided under paragraphs
15 (1), (2), and (3) of subdivision ~~(b)~~ (c) shall apply only to those
16 individuals who, at the time of the sales transaction, are listed as
17 personnel of record for the licensee responsible for soliciting,
18 negotiating, or contracting for a service or improvement that is
19 subject to regulation under this article.

20 SEC. 2. Section 7153 of the Business and Professions Code is
21 amended to read:

22 7153. (a) It is a misdemeanor for any person to engage in the
23 occupation of salesperson for one or more home improvement
24 contractors within this state without having, at the time of the sales
25 transaction, a current and valid home improvement salesperson
26 registration issued by the registrar. If, upon investigation, the
27 registrar has probable cause to believe that a salesperson is in
28 violation of this section, the registrar may issue a citation pursuant
29 to Section 7028.7.

30 It is a misdemeanor for any person to engage in the occupation
31 of salesperson of home improvement goods or services within this
32 state without having, at the time of the sales transaction, a current
33 and valid home improvement salesperson registration issued by
34 the registrar.

35 (b) Any security interest taken by a contractor, to secure any
36 payment for the performance of any act or conduct described in
37 Section 7151 that occurs on or after January 1, 1995, is
38 unenforceable if the person soliciting the act or contract was not
39 a duly registered salesperson or was not exempt from registration

1 pursuant to Section 7152 at the time the homeowner signs the
2 home improvement contract solicited by the salesperson.

3 SEC. 3. Section 7153.2 of the Business and Professions Code
4 is amended to read:

5 7153.2. All home improvement salesperson registrations issued
6 under the provisions of this article shall expire two years from the
7 last day of the month in which the registration was issued, or two
8 years from the date on which the renewed registration last expired.

9 SEC. 4. Section 7153.3 of the Business and Professions Code
10 is amended to read:

11 7153.3. (a) To renew a home improvement salesperson
12 registration, which has not expired, the registrant shall before the
13 time at which the registration would otherwise expire, apply for
14 renewal on a form prescribed by the registrar and pay a renewal
15 fee prescribed by this chapter. Renewal of an unexpired registration
16 shall continue the registration in effect for the two-year period
17 following the expiration date of the registration, when it shall
18 expire if it is not again renewed.

19 (b) An application for renewal of registration is delinquent if
20 the application is not postmarked *or received via electronic*
21 *transmission as authorized by Section 7156.6* by the date on which
22 the registration would otherwise expire. A registration may,
23 however, still be renewed at any time within three years after its
24 expiration upon the filing of an application for renewal on a form
25 prescribed by the registrar and the payment of the renewal fee
26 prescribed by this chapter and a delinquent renewal penalty in the
27 amount of twenty-five dollars (\$25). If a registration is not renewed
28 within three years, the person shall make a new application for
29 registration pursuant to Section 7153.1.

30 (c) The registrar may refuse to renew a registration for failure
31 by the registrant to complete the application for renewal of
32 registration. If a registrant fails to return the application rejected
33 for insufficiency or incompleteness within 90 days from the
34 original date of rejection, the application and fee shall be deemed
35 abandoned. Any application abandoned may not be reinstated.
36 However, the person may file a new application for registration
37 pursuant to Section 7153.1.

38 The registrar may review and accept the petition of a person who
39 disputes the abandonment of his or her renewal application upon

1 a showing of good cause. This petition shall be received within 90
2 days of the date the application for renewal is deemed abandoned.

3 SEC. 5. Section 7154 of the Business and Professions Code is
4 amended to read:

5 7154. (a) A home improvement contractor licensed under this
6 chapter shall notify the registrar in writing, on a form prescribed
7 by the registrar, about the ~~pending~~ employment of a registered
8 home improvement salesperson, pursuant to the terms of this
9 article. This notification requirement shall include, but not be
10 limited to, the name and registration number of the home
11 improvement salesperson who is ~~pending employment~~ *employed*
12 by the contractor. The form shall be submitted prior to the home
13 improvement salesperson beginning work for the contractor.

14 (b) A home improvement contractor shall notify the registrar
15 in writing, on a form prescribed by the registrar, when a registered
16 home improvement salesperson ceases to be employed by the
17 contractor. This notification requirement shall include, but not be
18 limited to, the name and registration number of the home
19 improvement salesperson who had been employed by the
20 contractor. The form shall be submitted within 90 days after the
21 home improvement salesperson ceases to be employed by the
22 contractor.

23 (c) A home improvement contractor who employs a registered
24 home improvement salesperson to sell home improvement
25 contracts, but who fails to report to the registrar pursuant to
26 subdivision (a) or (b), is subject to disciplinary action by the
27 registrar.

28 (d) A home improvement contractor who employs a person to
29 sell home improvement contracts while that person is not registered
30 by the registrar as a home improvement salesperson as provided
31 in this article, is subject to disciplinary action by the registrar.

32 SEC. 6. Section 7155.5 of the Business and Professions Code
33 is amended to read:

34 7155.5. Violations of any provisions of this chapter by a home
35 improvement salesperson likewise constitute cause for disciplinary
36 action against the contractor by whom he or she was employed at
37 the time the violation occurred, whether or not the contractor had
38 knowledge of or participated in the act or omission constituting
39 violations of this chapter.

1 SEC. 7. Section 7156 of the Business and Professions Code is
2 amended to read:

3 7156. It shall be a misdemeanor and a cause for disciplinary
4 action to commit any of the following acts:

5 (a) For any home improvement salesperson to fail to account
6 for or to remit to his or her employing contractor any payment
7 received in connection with any home improvement transaction
8 or any other transaction involving a work of improvement.

9 (b) For any person to use a contract form in connection with
10 any home improvement transaction or any other transaction
11 involving a work of improvement if the form fails to disclose the
12 name of the contractor principal by whom he or she is employed.

13 SEC. 8. *Section 7156.6 is added to the Business and Professions*
14 *Code, to read:*

15 7156.6. (a) *Notwithstanding any other law, the board may*
16 *implement a system that provides for the electronic transmission*
17 *of an initial application or renewal application for the registration*
18 *required by this article and the electronic transmission of the*
19 *notices required by Section 7154.*

20 (b) *The board by regulation may specify the form and manner*
21 *of these transmissions, including the adoption of any protocols*
22 *necessary to ensure the validity and security of any information,*
23 *data, or document transmitted electronically. Upon the effective*
24 *date of the regulations, the electronic submission of an initial*
25 *registration application, a renewal application, or the electronic*
26 *transmission of a notice required by Section 7154 shall satisfy the*
27 *requirements of this article.*

28 ~~SEC. 8.~~

29 SEC. 9. No reimbursement is required by this act pursuant to
30 Section 6 of Article XIII B of the California Constitution because
31 the only costs that may be incurred by a local agency or school
32 district will be incurred because this act creates a new crime or
33 infraction, eliminates a crime or infraction, or changes the penalty
34 for a crime or infraction, within the meaning of Section 17556 of
35 the Government Code, or changes the definition of a crime within
36 the meaning of Section 6 of Article XIII B of the California
37 Constitution.

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