

Introduced by Committee on Business, Professions and Economic Development (Senators Figueroa (Chair), Aanestad, Campbell, Florez, Morrow, Murray, and Simitian)

March 30, 2005

An act to amend Sections 5641.4, 6714, 7018.5, 7159.4, 7159.5, 7159.6, 7159.10, 7159.11, 7159.12, 7159.13, and 7159.14 of, to amend and repeal Sections 7030, 7159, and 7159.3 of, and to amend, repeal, and add Sections 7164 and 7167 of, the Business and Professions Code, and to amend Section 1689.15 of, and to amend and repeal Sections 1689.5, 1689.6, 1689.7, and 1689.13 of, the Civil Code, and to repeal Section 21 of Chapter 566 of the Statutes of 2004, relating to professions and vocations, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1113, as introduced, Committee on Business, Professions and Economic Development. Professions and vocations.

(1) Existing law provides for the licensing and regulation of landscape architects by the California Architects Board. Existing law exempts landscape contractors from regulatory and licensing provisions governing landscape architects under certain conditions.

This bill would revise and recast this provision.

(2) The Professional Engineers Act provides for the licensing and regulation of professional engineers and land surveyors until July 1, 2006, by the Board for Professional Engineers and Land Surveyors. The board is authorized to appoint an executive officer until July 1, 2005.

This bill would authorize the board to appoint an executive officer until July 1, 2006.

(3) Existing law provides for licensing and regulation of contractors by the Contractors' State License Board. Existing law requires a home

improvement contract to be in writing and to contain certain information, notices, and disclosures, including a statement that a consumer has a right to cancel or rescind the contract. Existing law also requires certain disclosures with respect to a service and repair contract. The provisions governing home improvement contracts and service and repair contracts become operative on July 1, 2005.

This bill would instead provide that these provisions become operative on January 1, 2006. The bill would revise and recast certain of these provisions and make other related changes in other provisions of law.

(4) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: no.

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

1 SECTION 1. Section 5641.4 of the Business and Professions
 2 Code is amended to read:
 3 5641.4. A landscape contractor licensed under the statutes of
 4 this state, *insofar as he or she works within the classification for*
 5 *which the license is issued*, may design systems and facilities for
 6 work to be performed and supervised by that landscape
 7 contractor, ~~insofar as he or she works within the classification for~~
 8 ~~which he or she is licensed. The licensed landscape contractor~~
 9 *and* is exempt from the provisions of this chapter, except that ~~he~~
 10 ~~or she~~ *a landscape contractor* may not use the title “landscape
 11 architect” unless he or she holds a license as required under this
 12 chapter.
 13 SEC. 2. Section 6714 of the Business and Professions Code is
 14 amended to read:
 15 6714. The board shall appoint an executive officer at a salary
 16 to be fixed and determined by the board with the approval of the
 17 Director of Finance.
 18 This section shall become inoperative on July 1, ~~2005~~ *2006*,
 19 and, as of January 1, ~~2006~~ *2007*, is repealed, unless a later
 20 enacted statute, that becomes effective on or before January 1,
 21 ~~2006~~ *2007*, deletes or extends the dates on which it becomes
 22 inoperative and is repealed.

1 SEC. 3. Section 7018.5 of the Business and Professions Code
2 is amended to read:

3 7018.5. (a) The board shall prescribe a form entitled “Notice
4 to Owner” which shall state:

5 “Under the California Mechanics’ Lien Law, any contractor,
6 subcontractor, laborer, supplier, or other person or entity who
7 helps to improve your property, but is not paid for his or her
8 work or supplies, has a right to place a lien on your home, land,
9 or property where the work was performed and to sue you in
10 court to obtain payment.

11 This means that after a court hearing, your home, land, and
12 property could be sold by a court officer and the proceeds of the
13 sale used to satisfy what you owe. This can happen even if you
14 have paid your contractor in full if the contractor’s
15 subcontractors, laborers, or suppliers remain unpaid.

16 To preserve their rights to file a claim or lien against your
17 property, certain claimants such as subcontractors or material
18 suppliers are each required to provide you with a document
19 called a “Preliminary Notice.” Contractors and laborers who
20 contract with owners directly do not have to provide such notice
21 since you are aware of their existence as an owner. A preliminary
22 notice is not a lien against your property. Its purpose is to notify
23 you of persons or entities that may have a right to file a lien
24 against your property if they are not paid. In order to perfect their
25 lien rights, a contractor, subcontractor, supplier, or laborer must
26 file a mechanics’ lien with the county recorder which then
27 becomes a recorded lien against your property. Generally, the
28 maximum time allowed for filing a mechanics’ lien against your
29 property is 90 days after substantial completion of your project.

30 TO INSURE EXTRA PROTECTION FOR YOURSELF AND
31 YOUR PROPERTY, YOU MAY WISH TO TAKE ONE OR
32 MORE OF THE FOLLOWING STEPS:

33 (1) Require that your contractor supply you with a payment
34 and performance bond (not a license bond), which provides that
35 the bonding company will either complete the project or pay
36 damages up to the amount of the bond. This payment and
37 performance bond as well as a copy of the construction contract
38 should be filed with the county recorder for your further
39 protection. The payment and performance bond will usually cost
40 from 1 to 5 percent of the contract amount depending on the

1 contractor's bonding ability. If a contractor cannot obtain such
2 bonding, it may indicate his or her financial incapacity.

3 (2) Require that payments be made directly to subcontractors
4 and material suppliers through a joint control. Funding services
5 may be available, for a fee, in your area which will establish
6 voucher or other means of payment to your contractor. These
7 services may also provide you with lien waivers and other forms
8 of protection. Any joint control agreement should include the
9 addendum approved by the registrar.

10 (3) Issue joint checks for payment, made out to both your
11 contractor and subcontractors or material suppliers involved in
12 the project. The joint checks should be made payable to the
13 persons or entities which send preliminary notices to you. Those
14 persons or entities have indicated that they may have lien rights
15 on your property, therefore you need to protect yourself. This
16 will help to insure that all persons due payment are actually paid.

17 (4) Upon making payment on any completed phase of the
18 project, and before making any further payments, require your
19 contractor to provide you with unconditional "Waiver and
20 Release" forms signed by each material supplier, subcontractor,
21 and laborer involved in that portion of the work for which
22 payment was made. The statutory lien releases are set forth in
23 exact language in Section 3262 of the Civil Code. Most
24 stationery stores will sell the "Waiver and Release" forms if your
25 contractor does not have them. The material suppliers,
26 subcontractors, and laborers that you obtain releases from are
27 those persons or entities who have filed preliminary notices with
28 you. If you are not certain of the material suppliers,
29 subcontractors, and laborers working on your project, you may
30 obtain a list from your contractor. On projects involving
31 improvements to a single-family residence or a duplex owned by
32 individuals, the persons signing these releases lose the right to
33 file a mechanics' lien claim against your property. In other types
34 of construction, this protection may still be important, but may
35 not be as complete.

36 To protect yourself under this option, you must be certain that
37 all material suppliers, subcontractors, and laborers have signed
38 the "Waiver and Release" form. If a mechanics' lien has been
39 filed against your property, it can only be voluntarily released by
40 a recorded "Release of Mechanics' Lien" signed by the person or

1 entity that filed the mechanics' lien against your property unless
2 the lawsuit to enforce the lien was not timely filed. You should
3 not make any final payments until any and all such liens are
4 removed. You should consult an attorney if a lien is filed against
5 your property.”

6 (b) Each contractor licensed under this chapter, prior to
7 entering into a contract with an owner for work specified as
8 home improvement or swimming pool construction pursuant to
9 Section 7159, shall give a copy of this “Notice to Owner” to the
10 owner, the owner’s agent, or the payer. The failure to provide
11 this notice as required shall constitute grounds for disciplinary
12 action.

13 *(c) This section shall be repealed on January 1, 2006.*

14 SEC. 4. Section 7030 of the Business and Professions Code,
15 as amended by Section 2 of Chapter 633 of the Statutes of 1998,
16 is amended to read:

17 7030. (a) Every person licensed pursuant to this chapter shall
18 include the following statement in at least 10-point type on all
19 written contracts with respect to which the person is a prime
20 contractor:

21 “Contractors are required by law to be licensed and regulated
22 by the Contractors’ State License Board which has jurisdiction to
23 investigate complaints against contractors if a complaint
24 regarding a patent act or omission is filed within four years of the
25 date of the alleged violation. A complaint regarding a latent act
26 or omission pertaining to structural defects must be filed within
27 10 years of the date of the alleged violation. Any questions
28 concerning a contractor may be referred to the Registrar,
29 Contractors’ State License Board, P.O. Box 26000, Sacramento,
30 California 95826.”

31 (b) At the time of making a bid or prior to entering into a
32 contract to perform work on residential property with four or
33 fewer units, whichever occurs first, a contractor shall provide the
34 following notice in capital letters in at least 10-point roman
35 boldface type or in contrasting red print in at least 8-point roman
36 boldface type:

37 “STATE LAW REQUIRES ANYONE WHO CONTRACTS TO
38 DO CONSTRUCTION WORK TO BE LICENSED BY THE
39 CONTRACTORS’ STATE LICENSE BOARD IN THE
40 LICENSE CATEGORY IN WHICH THE CONTRACTOR IS

1 GOING TO BE WORKING—IF THE TOTAL PRICE OF THE
2 JOB IS \$500 OR MORE (INCLUDING LABOR AND
3 MATERIALS).
4 LICENSED CONTRACTORS ARE REGULATED BY LAWS
5 DESIGNED TO PROTECT THE PUBLIC. IF YOU
6 CONTRACT WITH SOMEONE WHO DOES NOT HAVE A
7 LICENSE, THE CONTRACTORS' STATE LICENSE BOARD
8 MAY BE UNABLE TO ASSIST YOU WITH A COMPLAINT.
9 YOUR ONLY REMEDY AGAINST AN UNLICENSED
10 CONTRACTOR MAY BE IN CIVIL COURT, AND YOU
11 MAY BE LIABLE FOR DAMAGES ARISING OUT OF ANY
12 INJURIES TO THE CONTRACTOR OR HIS OR HER
13 EMPLOYEES.
14 YOU MAY CONTACT THE CONTRACTORS' STATE
15 LICENSE BOARD TO FIND OUT IF THIS CONTRACTOR
16 HAS A VALID LICENSE. THE BOARD HAS COMPLETE
17 INFORMATION ON THE HISTORY OF LICENSED
18 CONTRACTORS, INCLUDING ANY POSSIBLE
19 SUSPENSIONS, REVOCATIONS, JUDGMENTS, AND
20 CITATIONS. THE BOARD HAS OFFICES THROUGHOUT
21 CALIFORNIA. PLEASE CHECK THE GOVERNMENT
22 PAGES OF THE WHITE PAGES FOR THE OFFICE
23 NEAREST YOU OR CALL 1-800-321-CSLB FOR MORE
24 INFORMATION.”

25 (c) Failure to comply with the notice requirements set forth in
26 subdivision (a) or (b) of this section is cause for disciplinary
27 action.

28 (d) *This section shall be repealed on January 1, 2006.*

29 SEC. 5. Section 7030 of the Business and Professions Code,
30 as amended by Section 2 of Chapter 566 of the Statutes of 2004,
31 is amended to read:

32 7030. (a) Except for contractors writing home improvement
33 contracts pursuant to Section 7151.2 and contractors writing
34 service and repair contracts pursuant to Section 7159.10, every
35 person licensed pursuant to this chapter shall include the
36 following statement in at least 10-point type on all written
37 contracts with respect to which the person is a prime contractor:

38 “Contractors are required by law to be licensed and regulated
39 by the Contractors' State License Board which has jurisdiction to
40 investigate complaints against contractors if a complaint

1 regarding a patent act or omission is filed within four years of the
2 date of the alleged violation. A complaint regarding a latent act
3 or omission pertaining to structural defects must be filed within
4 10 years of the date of the alleged violation. Any questions
5 concerning a contractor may be referred to the Registrar,
6 Contractors' State License Board, P.O. Box 26000, Sacramento,
7 CA 95826."

8 (b) Every person licensed pursuant to this chapter shall include
9 the following statement in at least 12-point type in all home
10 improvement contracts written pursuant to Section 7151.2 and
11 service and repair contracts written pursuant to Section 7159.10:

12 "Information about the Contractors' State License Board
13 (CSLB): CSLB is the state consumer protection agency that
14 licenses and regulates construction contractors.

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

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

26 For more information:

27 Visit CSLB's Web site at www.cslb.ca.gov

28 Call CSLB at 800-321-CSLB (2752)

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

30 (c) Failure to comply with the notice requirements set forth in
31 subdivision (a) or (b) of this section is cause for disciplinary
32 action.

33 (d) *This section shall become operative on January 1, 2006.*

34 SEC. 6. Section 7159 of the Business and Professions Code,
35 as amended by Section 4 of Chapter 982 of the Statutes of 1999,
36 is amended to read:

37 7159. This section applies only to home improvement
38 contracts, as defined in Section 7151.2, between a contractor,
39 whether a general contractor or a specialty contractor, who is
40 licensed or subject to be licensed pursuant to this chapter with

1 regard to the transaction and who contracts with an owner or
2 tenant for work upon a residential building or structure, or upon
3 land adjacent thereto, for proposed repairing, remodeling,
4 altering, converting, modernizing, or adding to the residential
5 building or structure or land adjacent thereto, and where the
6 aggregate contract price specified in one or more improvement
7 contracts, including all labor, services, and materials to be
8 furnished by the contractor, exceeds five hundred dollars (\$500).

9 Every home improvement contract and every contract, the
10 primary purpose of which is the construction of a swimming
11 pool, is subject to this section. Every contract and any changes in
12 the contract subject to this section shall be evidenced by a writing
13 and shall be signed by all the parties to the contract. The writing
14 shall contain all of the following:

15 (a) The name, address, and license number of the contractor,
16 and the name and registration number of any salesperson who
17 solicited or negotiated the contract.

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

20 (c) A plan and scale drawing showing the shape, size,
21 dimensions, and construction and equipment specifications for a
22 swimming pool and for other home improvements, a description
23 of the work to be done and description of the materials to be used
24 and the equipment to be used or installed, and the agreed
25 consideration for the work.

26 (d) If the payment schedule contained in the contract provides
27 for a downpayment to be paid to the contractor by the owner or
28 the tenant before the commencement of work, the downpayment
29 may not exceed two hundred dollars (\$200) or 2 percent of the
30 contract price for swimming pools, or one thousand dollars
31 (\$1,000) or 10 percent of the contract price for other home
32 improvements, excluding finance charges, whichever is less.

33 (e) A schedule of payments showing the amount of each
34 payment as a sum in dollars and cents. In no event may the
35 payment schedule provide for the contractor to receive, nor may
36 the contractor actually receive, payments in excess of 100
37 percent of the value of the work performed on the project at any
38 time, excluding finance charges, except that the contractor may
39 receive an initial downpayment authorized by subdivision (d).
40 With respect to a swimming pool contract, the final payment may

1 be made at the completion of the final plastering phase of
2 construction, provided that any installation or construction of
3 equipment, decking, or fencing required by the contract is also
4 completed. A failure by the contractor without lawful excuse to
5 substantially commence work within 20 days of the approximate
6 date specified in the contract when work will begin shall
7 postpone the next succeeding payment to the contractor for that
8 period of time equivalent to the time between when substantial
9 commencement was to have occurred and when it did occur. The
10 schedule of payments shall be stated in dollars and cents, and
11 shall be specifically referenced to the amount of work or services
12 to be performed and to any materials and equipment to be
13 supplied. With respect to a contract that provides for a schedule
14 of monthly payments to be made by the owner or tenant and for a
15 schedule of payments to be disbursed to the contractor by a
16 person or entity to whom the contractor intends to assign the
17 right to receive the owner's or tenant's monthly payments, the
18 payments referred to in this subdivision mean the payments to be
19 disbursed by the assignee and not those payments to be made by
20 the owner or tenant.

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

28 (g) The requirements set forth in subdivisions (d), (e), and (f)
29 do not apply when the contract provides for the contractor to
30 furnish a performance and payment bond, lien and completion
31 bond, bond equivalent, or joint control approved by the registrar
32 covering full performance and completion of the contract and the
33 bonds or joint control is or are furnished by the contractor, or
34 when the parties agree for full payment to be made upon or for a
35 schedule of payments to commence after satisfactory completion
36 of the project. The contract shall contain, in close proximity to
37 the signatures of the owner and contractor, a notice in at least
38 10-point type stating that the owner or tenant has the right to
39 require the contractor to have a performance and payment bond.

1 (h) No extra or change-order work may be required to be
2 performed without prior written authorization of the person
3 contracting for the construction of the home improvement or
4 swimming pool. No change-order is enforceable against the
5 person contracting for home improvement work or swimming
6 pool construction unless it clearly sets forth the scope of work
7 encompassed by the change-order and the price to be charged for
8 the changes. Any change-order forms for changes or extra work
9 shall be incorporated in, and become a part of, the contract.
10 Failure to comply with the requirements of this subdivision does
11 not preclude the recovery of compensation for work performed
12 based upon quasi-contract, quantum meruit, restitution, or other
13 similar legal or equitable remedies designed to prevent unjust
14 enrichment.

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

20 (j) The language of the notice required pursuant to Section
21 7018.5.

22 (k) What constitutes substantial commencement of work
23 pursuant to the contract.

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

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

31 A failure by the contractor without lawful excuse to
32 substantially commence work within 20 days from the
33 approximate date specified in the contract when work will begin
34 is a violation of this section.

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

39 The writing may also contain other matters agreed to by the
40 parties to the contract.

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

5 For purposes of this section, the board shall, by regulation,
6 determine what constitutes “without lawful excuse.”

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

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

16 (n) Any person who violates this section as part of a plan or
17 scheme to defraud an owner of a residential or nonresidential
18 structure, including a mobilehome or manufactured home, in
19 connection with the offer or performance of repairs to the
20 structure for damage caused by a natural disaster, shall be
21 ordered by the court to make full restitution to the victim based
22 on the person’s ability to pay, as defined in subdivision (e) of
23 Section 1203.1b of the Penal Code. In addition to full restitution,
24 and imprisonment authorized by this section, the court may
25 impose a fine of not less than five hundred dollars (\$500) nor
26 more than twenty-five thousand dollars (\$25,000), based upon
27 the defendant’s ability to pay. This subdivision applies to natural
28 disasters for which a state of emergency is proclaimed by the
29 Governor pursuant to Section 8625 of the Government Code or
30 for which an emergency or major disaster is declared by the
31 President of the United States.

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

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

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

4 *(p) This section shall be repealed on January 1, 2006.*

5 SEC. 7. Section 7159 of the Business and Professions Code,
6 as added by Section 4 of Chapter 566 of the Statutes of 2004, is
7 amended to read:

8 7159. This section and Sections 7159.3 to 7159.6, inclusive,
9 apply to all home improvement contracts, as defined in Section
10 7151.2, between a contractor, whether a general or a specialty
11 contractor, who is licensed or subject to be licensed pursuant to
12 this chapter with regard to the transaction and who contracts with
13 an owner or tenant for home improvement work, *where the*
14 *aggregate contract price specified in one or more improvement*
15 *contracts, including all labor, services, and materials to be*
16 *furnished by the contractor exceeds five hundred dollars (\$500),*
17 except that this section and Sections 7159.3 to 7159.6, inclusive,
18 do not apply to service and repair contracts as defined in Section
19 7159.10.

20 A violation of this section by a licensee or a person subject to
21 be licensed under this chapter, or by his or her agent or
22 salesperson, is cause for discipline.

23 (a) A home improvement contract and any changes to the
24 contract shall be in writing and signed by the parties.

25 (b) The writing shall be legible.

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

30 (d) Before any work is started, the contractor shall give the
31 buyer a copy of the contract signed and dated by both the
32 contractor and the buyer. The buyer's receipt of the copy triggers
33 the buyer's rights under the Home Solicitation Act, if the right to
34 cancel is applicable, provided that the contract complies with the
35 Home Solicitation Act.

36 (e) A change-order form for changes or extra work shall be
37 incorporated into the contract and shall become part of the
38 contract if it is in writing and signed by the parties.

1 (f) Change orders required by the building department at the
2 jobsite shall be considered incorporated into the contract without
3 being signed by both the parties.

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

7 *(h) This section shall become operative on January 1, 2006.*

8 SEC. 8. Section 7159.3 of the Business and Professions Code,
9 as added by Section 10 of Chapter 1005 of the Statutes of 2000,
10 is amended to read:

11 7159.3. (a) A home improvement contract and an estimate
12 for home improvement work shall be accompanied by and
13 include all of the following:

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

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

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

25 (b) This section shall become operative three months after the
26 board adopts the regulations referenced in paragraph (1) of
27 subdivision (a).

28 *(c) This section shall be repealed on January 1, 2006.*

29 SEC. 9. Section 7159.3 of the Business and Professions Code,
30 as added by Section 6 of Chapter 566 of the Statutes of 2004, is
31 amended to read:

32 7159.3. This section applies to all home improvement
33 contracts, as defined in Section 7151.2, between an owner or
34 tenant and a contractor, whether a general contractor or a
35 specialty contractor, who is licensed or subject to be licensed
36 pursuant to this chapter with regard to the transaction. Failure by
37 the licensee, or a person subject to be licensed under this chapter,
38 or by his or her agent or salesperson, to provide the following
39 information, notices, and disclosures in the contract is cause for
40 discipline:

1 (a) The name, business address, and license number of the
2 contractor and the description of the license classification
3 relevant to the project.

4 (b) The name and registration number of the home
5 improvement salesperson, if any.

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

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

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

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

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

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

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

33 (e) *This section shall become operative on January 1, 2006.*

34 SEC. 10. Section 7159.4 of the Business and Professions
35 Code is amended to read:

36 7159.4. This section applies to all home improvement
37 contracts, as defined in Section 7151.2, between an owner or
38 tenant and a contractor, whether a general contractor or a
39 specialty contractor, who is licensed or subject to be licensed
40 pursuant to this chapter with regard to the transaction. Failure by

1 the licensee, or a person subject to be licensed under this chapter,
2 or by his or her agent or salesperson, to provide the following
3 information, notices, and disclosures in the contract is cause for
4 discipline:

5 (a) Notice of the type of contract in at least 10-point boldface
6 type: “Home Improvement.”

7 (b) The notice in at least 12-point boldface type: “Notice to the
8 Buyer: You are entitled to a completely filled in copy of this
9 agreement, signed by both you and the contractor, before any
10 work may be started.”

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

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

17 (e) The heading: “Description of the Project and Description
18 of the Significant Materials to be Used and Equipment to be
19 Installed,” followed by a description of the project and a
20 description of the significant materials to be used and equipment
21 to be installed.

22 (f) For swimming pools, in addition to the project description
23 required under subdivision (e), a plan and scale drawing showing
24 the shape, size, dimensions, and the construction and equipment
25 specifications.

26 (g) If a down payment will be charged, the heading: “Down
27 Payment” and a space where the actual down payment appears
28 followed by the text in at least 12-point boldface type: “THE
29 DOWNPAYMENT MAY NOT EXCEED \$1,000 OR 10
30 PERCENT OF THE CONTRACT PRICE, WHICHEVER IS
31 LESS.”

32 (h) If any payment, besides the down payment, is to be made
33 before the project is completed, the contract shall include a
34 schedule with a heading labeled “Schedule of Progress
35 Payments,” stated in dollars and cents and specifically
36 referencing the amount of work or services to be performed and
37 any materials and equipment to be supplied, and the following
38 statement in at least 12-point boldface type:

39 “The schedule of progress payments must specifically describe
40 each phase of work, including the type and amount of work or

1 services scheduled to be supplied in each phase, along with the
2 amount of each proposed progress payment. IT IS AGAINST
3 THE LAW FOR A CONTRACTOR TO COLLECT PAYMENT
4 FOR WORK NOT YET COMPLETED, OR FOR MATERIALS
5 NOT YET DELIVERED. HOWEVER, A CONTRACTOR
6 MAY REQUIRE A DOWNPAYMENT.”

7 (i) The heading: “Approximate Start Date” and “Approximate
8 Completion Date,” each followed by the approximate dates for
9 start and completion.

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

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

15 “Extra Work and Change Orders become part of the contract
16 once the order is prepared in writing and signed by the parties.
17 The order must describe the scope of the extra or change, the cost
18 to be added or subtracted from the contract, and the effect the
19 order will have on the schedule of progress payments. Change
20 orders required by the building department at the jobsite shall be
21 considered incorporated into the contract without being signed by
22 both parties.”

23 (l) (1) Except when the contract is negotiated at the
24 contractor’s place of business, the statement found in paragraph
25 (4) of subdivision (a) of Section 1689.7 of the Civil Code for the
26 three-day right to cancel or the statement found in paragraph (2)
27 of subdivision (e) of Section 1689.7 for the seven-day right to
28 cancel, whichever is relevant. A statement that complies with
29 Section 1689.7 may be attached to the contract if the contract
30 includes a checkbox and whichever statement is relevant in at
31 least 12-point boldface type:

32 (A) “The law requires that the contractor give you a notice
33 explaining your right to cancel. Initial the checkbox if the
34 contractor has given you a ‘Notice of the Three-Day Right to
35 Cancel.’”

36 (B) “The law requires that the contractor give you a notice
37 explaining your right to cancel. Initial the checkbox if the
38 contractor has given you a ‘Notice of the Seven-Day Right to
39 Cancel.’”

1 (2) This subdivision does not apply to home improvement
2 contracts entered into by a person who holds an alarm company
3 operator’s license issued pursuant to Chapter 11.6 (commencing
4 with Section 7590), provided the person complies with Sections
5 1689.5, 1689.6, and 1689.7 of the Civil Code, as applicable.

6 (m) The signatures of the contractor or the contractor’s
7 representative, and the buyer.

8 (n) The date the contract was signed.

9 (o) A statement with the heading “Mechanics’ Lien Warning”
10 as follows:

11 “MECHANICS LIEN WARNING:

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

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

23 To preserve their right to record a lien, each subcontractor and
24 material supplier must provide you with a document called a
25 ‘20-day Preliminary Notice.’ This notice is not a lien. The
26 purpose of the notice is to let you know that the person who
27 sends you the notice has the right to record a lien on your
28 property if he or she is not paid.

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

33 You will not get Preliminary Notices from your prime
34 contractor or from laborers who work on your project. The law
35 assumes that you already know they are improving your
36 property.

37 PROTECT YOURSELF FROM LIENS. You can protect
38 yourself from liens by getting a list from your contractor of all
39 the subcontractors and material suppliers that work on your
40 project. Find out from your contractor when these subcontractors

1 started work and when these suppliers delivered goods or
2 materials. Then wait 20 days, paying attention to the Preliminary
3 Notices you receive.

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

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

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

16 *(p) This section shall become operative on January 1, 2006.*

17 SEC. 11. Section 7159.5 of the Business and Professions
18 Code is amended to read:

19 7159.5. This section applies to all home improvement
20 contracts, as defined in Section 7151.2, between an owner or
21 tenant and a contractor, whether a general contractor or a
22 specialty contractor, who is licensed or subject to be licensed
23 pursuant to this chapter with regard to the transaction.

24 (a) Failure by the licensee or a person subject to be licensed
25 under this chapter, or by his or her agent or salesperson to
26 comply with the following provisions is cause for discipline:

27 (1) The contract shall include the agreed contract amount in
28 dollars and cents. The contract amount shall include the entire
29 cost of the contract, including profit, labor, and materials, but
30 excluding finance charges.

31 (2) If there is a separate finance charge between the contractor
32 and the person contracting for home improvement, the finance
33 charge shall be set out separately from the contract amount.

34 (3) If a down payment will be charged, the down payment may
35 not exceed one thousand dollars (\$1,000) or 10 percent of the
36 contract amount, whichever is less.

37 (4) If, in addition to a down payment, the contract provides for
38 payments to be made prior to completion of the work, the
39 contract shall include a schedule of payments in dollars and cents

1 specifically referencing the amount of work or services to be
2 performed and any materials and equipment to be supplied.

3 (5) Except for a down payment, the contractor may neither
4 request nor accept payment that exceeds the value of the work
5 performed or material delivered.

6 (6) Upon any payment by the person contracting for home
7 improvement, and prior to any further payment being made, the
8 contractor shall, if requested, obtain and furnish to the person a
9 full and unconditional release from any potential lien claimant
10 claim or mechanic's lien pursuant to Section 3114 of the Civil
11 Code for any portion of the work for which payment has been
12 made. The person contracting for home improvement may
13 withhold all further payments until these releases are furnished.

14 (7) If the contract provides for a payment of a salesperson's
15 commission out of the contract price, that payment shall be made
16 on a pro rata basis in proportion to the schedule of payments
17 made to the contractor by the disbursing party in accordance with
18 paragraph (4).

19 (8) A contractor furnishing a performance and payment bond,
20 lien and completion bond, or a bond equivalent or joint control
21 approved by the registrar covering full performance and payment
22 is exempt from paragraphs (3), (4), and (5), and need not include,
23 as part of the contract, the Mechanics' Lien Warning found in
24 subdivision (o) of Section 7159.4. A contractor furnishing these
25 bonds, bond equivalents, or a joint control approved by the
26 registrar may accept payment prior to completion. If the contract
27 provides for a contractor to furnish joint control, the contractor
28 shall not have any financial or other interest in the joint control.

29 (b) A violation of paragraph (1), (3), or (5) of subdivision (a)
30 by a licensee or a person subject to be licensed under this
31 chapter, or by his or her agent or salesperson, is a misdemeanor
32 punishable by a fine of not less than one hundred dollars (\$100)
33 nor more than five thousand dollars (\$5,000), or by imprisonment
34 in a county jail not exceeding one year, or by both fine and
35 imprisonment.

36 (1) An indictment or information against a person who is not
37 licensed but who is required to be licensed under this chapter
38 shall be brought, or a criminal complaint filed, for a violation of
39 this section within four years from the date the buyer signs the
40 contract.

1 (2) An indictment or information against a person who is
2 licensed under this chapter shall be brought, or a criminal
3 complaint filed, for a violation of this section within two years
4 from the date the buyer signs the contract.

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

8 (c) Any person who violates this section as part of a plan or
9 scheme to defraud an owner or tenant of a residential or
10 nonresidential structure, including a mobilehome or
11 manufactured home, in connection with the offer or performance
12 of repairs to the structure for damage caused by a natural
13 disaster, shall be ordered by the court to make full restitution to
14 the victim based on the person's ability to pay, as defined in
15 subdivision (e) of Section 1203.1b of the Penal Code. In addition
16 to full restitution, and imprisonment authorized by this section,
17 the court may impose a fine of not less than five hundred dollars
18 (\$500) nor more than twenty-five thousand dollars (\$25,000),
19 based upon the defendant's ability to pay. This subdivision
20 applies to natural disasters for which a state of emergency is
21 proclaimed by the Governor pursuant to Section 8625 of the
22 Government Code, or for which an emergency or major disaster
23 is declared by the President of the United States.

24 (d) *This section shall become operative on January 1, 2006.*

25 SEC. 12. Section 7159.6 of the Business and Professions
26 Code is amended to read:

27 7159.6. (a) An extra work or change order is not enforceable
28 against a buyer unless the change order sets forth all of the
29 following:

30 (1) The scope of work encompassed by the order.

31 (2) The amount to be added or subtracted from the contract.

32 (3) The effect the order will make in the progress payments or
33 the completion date.

34 (b) The buyer may not require a contractor to perform extra or
35 change-order work without providing written authorization.

36 (c) Failure to comply with the requirements of this section
37 does not preclude the recovery of compensation for work
38 performed based upon legal or equitable remedies designed to
39 prevent unjust enrichment.

40 (d) *This section shall become operative on January 1, 2006.*

1 SEC. 13. Section 7159.10 of the Business and Professions
2 Code is amended to read:

3 7159.10. (a) “Service and repair contract” means an
4 agreement between a contractor or salesperson for a contractor,
5 whether a general contractor or a specialty contractor, who is
6 licensed or subject to be licensed pursuant to this chapter with
7 regard to the transaction, and a homeowner or a tenant, for the
8 performance of a home improvement as defined in Section 7151,
9 that meets the following requirements:

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

12 (2) The prospective buyer initiated contact with the contractor
13 to request the work.

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

17 (4) No payment is due until the work is completed.

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

22 *(c) This section shall become operative on January 1, 2006.*

23 SEC. 14. Section 7159.11 of the Business and Professions
24 Code is amended to read:

25 7159.11. This section applies to service and repair contracts
26 as defined in Section 7159.10. A violation of this section by a
27 licensee, or a person subject to be licensed under this chapter, or
28 by his or her agent or salesperson, is cause for discipline.

29 (a) A service and repair contract and any changes to the
30 contract shall be in writing and signed by the parties.

31 (b) The writing shall be legible.

32 (c) Any printed form shall be readable. Unless a larger
33 typeface is specified in this article, the text shall be in at least
34 10-point typeface and the headings shall be in at least 10-point
35 boldface type.

36 (d) Before any work is started, the contractor shall give the
37 buyer a copy of the contract signed and dated by the buyer and
38 the contractor. The buyer’s receipt of the copy triggers the
39 buyer’s rights under the Home Solicitation Act, if the right to

1 cancel is applicable, provided that the contract complies with the
2 Home Solicitation Act.

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

6 (f) *This section shall become operative on January 1, 2006.*

7 SEC. 15. Section 7159.12 of the Business and Professions
8 Code is amended to read:

9 7159.12. This section applies to service and repair contracts,
10 as defined in Section 7159.10. Failure by the licensee, or a
11 person subject to be licensed under this chapter, or by his or her
12 agent or salesperson, to provide the following information,
13 notices, and disclosures in the contract is cause for discipline:

14 (a) The name, business address, and license number of the
15 contractor and the description of the license classification
16 relevant to the project.

17 (b) The name and registration number of the home
18 improvement salesperson, if any.

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

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

28 (2) "(The name on the license or 'This contractor') carries
29 commercial general liability insurance written by (the insurance
30 company). You may call the (insurance company) at
31 _____ to check the contractor's insurance coverage."

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

34 (d) A notice concerning workers' compensation insurance.
35 This notice may be provided as an attachment to the contract if
36 the contract includes the statement "A notice concerning
37 workers' compensation insurance is attached to this contract."
38 The notice shall include the heading "Workers' Compensation
39 Insurance" followed by whichever of the following statements is
40 correct:

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

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

6 *(e) This section shall become operative on January 1, 2006.*

7 SEC. 16. Section 7159.13 of the Business and Professions
8 Code is amended to read:

9 7159.13. This section applies to service and repair contracts
10 as defined in Section 7159.10. Failure by the licensee, or a
11 person subject to be licensed under this chapter, or by his or her
12 agent or salesperson, to provide the following information,
13 notices, and disclosures in the contract is cause for discipline:

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

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

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

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

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

27 (4) No payment is due until the work is completed.”

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

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

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

38 (f) Where the contract is estimated by a time and materials
39 formula, the heading “Estimated Contract Price” followed by the
40 estimated contract amount in dollars and cents. The contract must

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

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

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

15 (i) A checkbox labeled “OK for contractor to take replaced
16 parts.”

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

21 (k) If applicable, the heading “List of documents to be
22 incorporated into the contract,” followed by the list of documents
23 to be incorporated into the contract.

24 (l) (1) Except when the contract is negotiated at the
25 contractor’s place of business, the statement found in paragraph
26 (5) of subdivision (a) of Section 1689.7 of the Civil Code for the
27 right to cancel or the statement found in paragraph (2) of
28 subdivision (e) of Section 1689.7 for the right to cancel,
29 whichever is relevant. A statement that complies with Section
30 1689.7 may be attached to the contract if the contract includes a
31 checkbox and whichever statement is relevant in at least 12-point
32 boldface type:

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

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

1 (2) This subdivision does not apply to home improvement
2 contracts entered into by a person who holds an alarm company
3 operator's license issued pursuant to Chapter 11.6 (commencing
4 with Section 7590), provided the person complies with Sections
5 1689.5, 1689.6, and 1689.7 of the Civil Code, as applicable.

6 (m) The signatures of the contractor or the contractor's
7 representative, and the buyer.

8 (n) The date the contract was signed.

9 (o) *This section shall become operative on January 1, 2006.*

10 SEC. 17. Section 7159.14 of the Business and Professions
11 Code is amended to read:

12 7159.14. (a) This section applies to a service and repair
13 contract as defined in Section 7159.10. A violation of this section
14 by a licensee or a person subject to be licensed under this
15 chapter, or by his or her agent or salesperson, is cause for
16 discipline.

17 (1) The contract may not exceed seven hundred fifty dollars
18 (\$750).

19 (2) The contract shall state the agreed contract amount, which
20 may be stated as either a fixed contract amount in dollars and
21 cents or, if a time and materials formula is used, as an estimated
22 contract amount in dollars and cents.

23 (3) The contract amount shall include the entire cost of the
24 contract including profit, labor and materials but excluding
25 finance charges.

26 (4) The actual contract amount of a time and materials contract
27 may not exceed the estimated contract amount without written
28 authorization from the buyer.

29 (5) The prospective buyer must have initiated contact with the
30 contractor to request work.

31 (6) The contractor may not sell the buyer goods or services
32 beyond those reasonably necessary to take care of the particular
33 problem that caused the buyer to contact the contractor.

34 (7) No payment may be due before the project is completed.

35 (8) A service and repair contractor may charge only one
36 service charge. For purposes of this chapter, a service charge
37 includes such charges as a service or trip charge, or an inspection
38 fee.

39 (9) A service and repair contractor charging a service charge
40 must disclose in all advertisements that there is a service charge

1 and, when the customer initiates the call for service, must
2 disclose the amount of the service charge.

3 (10) The service and repair contractor must offer to the
4 customer any parts that were replaced.

5 (11) Upon any payment by the buyer, the contractor shall, if
6 requested, obtain and furnish to the buyer a full and
7 unconditional release from any potential lien claimant claim or
8 mechanics' lien pursuant to Section 3114 of the Civil Code for
9 any portion of the work for which payment has been made.

10 (b) A violation of paragraph (1), (2), (3), (4), (5), (6), or (8) of
11 subdivision (a) by a licensee or a person subject to be licensed
12 under this chapter, or by his or her agent or salesperson, is a
13 misdemeanor punishable by a fine of not less than one hundred
14 dollars (\$100) nor more than five thousand dollars (\$5,000) or by
15 imprisonment in a county jail not exceeding one year, or by both
16 fine and imprisonment.

17 (1) An indictment or information against a person who is not
18 licensed but who is required to be licensed under this chapter
19 shall be brought, or a criminal complaint filed, for a violation of
20 this section within four years from the date the buyer signs the
21 contract.

22 (2) An indictment or information against a person who is
23 licensed under this chapter shall be brought, or a criminal
24 complaint filed, for a violation of this section within two years
25 from the date the buyer signs the contract.

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

29 (c) Any person who violates this section as part of a plan or
30 scheme to defraud an owner or tenant of a residential or
31 nonresidential structure, including a mobilehome or
32 manufactured home, in connection with the offer or performance
33 of repairs to the structure for damage caused by a natural
34 disaster, shall be ordered by the court to make full restitution to
35 the victim based on the person's ability to pay, as defined in
36 subdivision (e) of Section 1203.1b of the Penal Code. In addition
37 to full restitution, and imprisonment authorized by this section,
38 the court may impose a fine of not less than five hundred dollars
39 (\$500) nor more than twenty-five thousand dollars (\$25,000),
40 based upon the defendant's ability to pay. This subdivision

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

5 *(d) This section shall become operative on January 1, 2006.*

6 SEC. 18. Section 7164 of the Business and Professions Code
7 is amended to read:

8 7164. (a) Notwithstanding Section 7044, every contract and
9 any changes in a contract, between an owner and a contractor, for
10 the construction of a single-family dwelling to be retained by the
11 owner for at least one year shall be evidenced in writing signed
12 by both parties.

13 (b) The writing shall contain the following:

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

15 (2) The approximate dates when the work will begin and be
16 substantially completed.

17 (3) A legal description of the location where the work will be
18 done.

19 (4) The language of the notice required pursuant to Section
20 7018.5.

21 (5) (A) A statement prepared by the board through regulation
22 that emphasizes the value of commercial general liability
23 insurance and encourages the owner to verify the contractor's
24 insurance coverage and status.

25 (B) A check box indicating whether or not the contractor
26 carries commercial general liability insurance, and if that is the
27 case, the name and the telephone number of the insurer.

28 (c) The writing may also contain other matters agreed to by
29 the parties to the contract. The writing shall be legible and shall
30 clearly describe any other document which is to be incorporated
31 into the contract. Prior to commencement of any work, the owner
32 shall be furnished a copy of the written agreement, signed by the
33 contractor. The provisions of this section are not exclusive and
34 do not relieve the contractor from compliance with all other
35 applicable provisions of law.

36 (d) Every contract subject to the provisions of this section
37 shall contain, in close proximity to the signatures of the owner
38 and contractor, a notice in at least 10-point bold type or in all
39 capital letters, stating that the owner has the right to require the

1 contractor to have a performance and payment bond and that the
2 expense of the bond may be borne by the owner.

3 (e) The requirements in ~~paragraphs~~ *paragraph* (5) of
4 subdivision (b) shall become operative three months after the
5 board adopts the regulations referenced in ~~subparagraph~~
6 *subparagraph* (A) of paragraph (5) of subdivision (b).

7 (f) *This section shall be repealed on January 1, 2006.*

8 SEC. 19. Section 7164 is added to the Business and
9 Professions Code, to read:

10 7164. (a) Notwithstanding Section 7044, every contract and
11 any changes in a contract, between an owner and a contractor, for
12 the construction of a single-family dwelling to be retained by the
13 owner for at least one year shall be evidenced in writing signed
14 by both parties.

15 (b) The writing shall contain the following:

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

17 (2) The approximate dates when the work will begin and be
18 substantially completed.

19 (3) A legal description of the location where the work will be
20 done.

21 (4) A statement with the heading “Mechanics’ Lien Warning”
22 as follows:

23 “MECHANICS LIEN WARNING:

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

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

35 To preserve their right to record a lien, each subcontractor and
36 material supplier must provide you with a document called a
37 ‘20-day Preliminary Notice.’ This notice is not a lien. The
38 purpose of the notice is to let you know that the person who
39 sends you the notice has the right to record a lien on your
40 property if he or she is not paid.

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

5 You will not get Preliminary Notices from your prime
6 contractor or from laborers who work on your project. The law
7 assumes that you already know they are improving your
8 property.

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

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

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

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

28 (5) (A) A statement prepared by the board through regulation
29 that emphasizes the value of commercial general liability
30 insurance and encourages the owner to verify the contractor's
31 insurance coverage and status.

32 (B) A check box indicating whether or not the contractor
33 carries commercial general liability insurance, and if that is the
34 case, the name and the telephone number of the insurer.

35 (c) The writing may also contain other matters agreed to by
36 the parties to the contract. The writing shall be legible and shall
37 clearly describe any other document which is to be incorporated
38 into the contract. Prior to commencement of any work, the owner
39 shall be furnished a copy of the written agreement, signed by the
40 contractor. The provisions of this section are not exclusive and

1 do not relieve the contractor from compliance with all other
2 applicable provisions of law.

3 (d) Every contract subject to the provisions of this section
4 shall contain, in close proximity to the signatures of the owner
5 and contractor, a notice in at least 10-point bold type or in all
6 capital letters, stating that the owner has the right to require the
7 contractor to have a performance and payment bond and that the
8 expense of the bond may be borne by the owner.

9 (e) The requirements in paragraph (5) of subdivision (b) shall
10 become operative three months after the board adopts the
11 regulations referenced in subparagraph (A) of paragraph (5) of
12 subdivision (b).

13 (f) This section shall become operative on January 1, 2006.

14 SEC. 20. Section 7167 of the Business and Professions Code
15 is amended to read:

16 7167. (a) Any contract the primary purpose of which is the
17 construction of a swimming pool which does not substantially
18 comply with the applicable provisions of subdivisions (b), (c),
19 (d), (e), (f), and (h) of Section 7159, shall be void and
20 unenforceable by the contractor as contrary to public policy.

21 (b) *This section shall be repealed on January 1, 2006.*

22 SEC. 21. Section 7167 is added to the Business and
23 Professions Code, to read:

24 7167. (a) Except as otherwise provided by this section, a
25 contract, the primary purpose of which is the construction of a
26 swimming pool, that does not substantially comply with the
27 provisions of Section 7159.4, shall be void and unenforceable by
28 the contractor as contrary to public policy.

29 (b) Failure to comply with subdivision (k) of Section 7159.4
30 does not preclude the recovery of compensation for work
31 performed based on quasi-contract, quantum meruit, restitution,
32 or other similar legal or equitable remedies designed to prevent
33 unjust enrichment.

34 (c) This section shall be operative on January 1, 2006.

35 SEC. 22. Section 1689.5 of the Civil Code, as amended by
36 Section 1 of Chapter 51 of the 1st Extraordinary Session of the
37 Statutes of 1994, is amended to read:

38 1689.5. As used in Sections 1689.6 to 1689.11, inclusive, and
39 in Section 1689.14:

1 (a) “Home solicitation contract or offer” means any contract,
2 whether single or multiple, or any offer which is subject to
3 approval, for the sale, lease, or rental of goods or services or
4 both, made at other than appropriate trade premises in an amount
5 of twenty-five dollars (\$25) or more, including any interest or
6 service charges. “Home solicitation contract” does not include
7 any contract under which the buyer has the right to rescind
8 pursuant to Title 1, Chapter 2, Section 125 of the Federal
9 Consumer Credit Protection Act (P.L. 90-321) and the
10 regulations promulgated pursuant thereto, or any contract for
11 repair services with a contractor who is duly licensed pursuant to
12 Chapter 9 (commencing with Section 7000) of Division 3 of the
13 Business and Professions Code, if (1) the contract price is less
14 than one hundred dollars (\$100), (2) the negotiation between the
15 parties was initiated by the prospective buyer, and (3) the
16 contract contains a written and dated statement signed by the
17 prospective buyer stating that the negotiation between the parties
18 was initiated by the prospective buyer.

19 (b) “Appropriate trade premises,” means premises where
20 either the owner or seller normally carries on a business, or
21 where goods are normally offered or exposed for sale in the
22 course of a business carried on at those premises.

23 (c) “Goods” means tangible chattels bought for use primarily
24 for personal, family, or household purposes, including
25 certificates or coupons exchangeable for these goods, and
26 including goods that, at the time of the sale or subsequently, are
27 to be so affixed to real property as to become a part of the real
28 property whether or not severable therefrom, but does not include
29 any vehicle required to be registered under the Vehicle Code, nor
30 any goods sold with this vehicle if sold under a contract governed
31 by Section 2982, and does not include any mobilehome, as
32 defined in Section 18008 of the Health and Safety Code, nor any
33 goods sold with this mobilehome if either are sold under a
34 contract subject to Section 18036.5 of the Health and Safety
35 Code.

36 (d) “Services” means work, labor and services, including, but
37 not limited to, services furnished in connection with the repair,
38 restoration, alteration, or improvement of residential premises, or
39 services furnished in connection with the sale or repair of goods
40 as defined in Section 1802.1, and courses of instruction,

1 regardless of the purpose for which they are taken, but does not
2 include the services of attorneys, real estate brokers and
3 salesmen, securities dealers or investment counselors, physicians,
4 optometrists, or dentists, nor financial services offered by banks,
5 savings institutions, credit unions, industrial loan companies,
6 personal property brokers, consumer finance lenders, or
7 commercial finance lenders, organized pursuant to state or
8 federal law, that are not connected with the sale of goods or
9 services, as defined herein, nor the sale of insurance that is not
10 connected with the sale of goods or services as defined herein,
11 nor services in connection with the sale or installation of
12 mobilehomes or of goods sold with a mobilehome if either are
13 sold or installed under a contract subject to Section 18036.5 of
14 the Health and Safety Code, nor services for which the tariffs,
15 rates, charges, costs, or expenses, including in each instance the
16 time sale price, is required by law to be filed with and approved
17 by the federal government or any official, department, division,
18 commission, or agency of the United States or of the state.

19 (e) “Business day” means any calendar day except Sunday, or
20 the following business holidays: New Year’s Day, Washington’s
21 Birthday, Memorial Day, Independence Day, Labor Day,
22 Columbus Day, Veterans’ Day, Thanksgiving Day, and
23 Christmas Day.

24 (f) *This section shall be repealed on January 1, 2006.*

25 SEC. 23. Section 1689.5 of the Civil Code, as amended by
26 Section 15 of Chapter 566 of the Statutes of 2004, is amended to
27 read:

28 1689.5. As used in Sections 1689.6 to 1689.11, inclusive, and
29 in Section 1689.14:

30 (a) “Home solicitation contract or offer” means any contract,
31 whether single or multiple, or any offer which is subject to
32 approval, for the sale, lease, or rental of goods or services or
33 both, made at other than appropriate trade premises in an amount
34 of twenty-five dollars (\$25) or more, including any interest or
35 service charges. “Home solicitation contract” does not include
36 any contract under which the buyer has the right to rescind
37 pursuant to Title 1, Chapter 2, Section 125 of the Federal
38 Consumer Credit Protection Act (P.L. 90-321) and the
39 regulations promulgated pursuant thereto.

1 (b) “Appropriate trade premises,” means premises where
2 either the owner or seller normally carries on a business, or
3 where goods are normally offered or exposed for sale in the
4 course of a business carried on at those premises.

5 (c) “Goods” means tangible chattels bought for use primarily
6 for personal, family, or household purposes, including
7 certificates or coupons exchangeable for these goods, and
8 including goods that, at the time of the sale or subsequently, are
9 to be so affixed to real property as to become a part of the real
10 property whether or not severable therefrom, but does not include
11 any vehicle required to be registered under the Vehicle Code, nor
12 any goods sold with this vehicle if sold under a contract governed
13 by Section 2982, and does not include any mobilehome, as
14 defined in Section 18008 of the Health and Safety Code, nor any
15 goods sold with this mobilehome if either are sold under a
16 contract subject to Section 18036.5 of the Health and Safety
17 Code.

18 (d) “Services” means work, labor and services, including, but
19 not limited to, services furnished in connection with the repair,
20 restoration, alteration, or improvement of residential premises, or
21 services furnished in connection with the sale or repair of goods
22 as defined in Section 1802.1, and courses of instruction,
23 regardless of the purpose for which they are taken, but does not
24 include the services of attorneys, real estate brokers and
25 salesmen, securities dealers or investment counselors, physicians,
26 optometrists, or dentists, nor financial services offered by banks,
27 savings institutions, credit unions, industrial loan companies,
28 personal property brokers, consumer finance lenders, or
29 commercial finance lenders, organized pursuant to state or
30 federal law, that are not connected with the sale of goods or
31 services, as defined herein, nor the sale of insurance that is not
32 connected with the sale of goods or services as defined herein,
33 nor services in connection with the sale or installation of
34 mobilehomes or of goods sold with a mobilehome if either are
35 sold or installed under a contract subject to Section 18036.5 of
36 the Health and Safety Code, nor services for which the tariffs,
37 rates, charges, costs, or expenses, including in each instance the
38 time sale price, is required by law to be filed with and approved
39 by the federal government or any official, department, division,
40 commission, or agency of the United States or of the state.

1 (e) “Business day” means any calendar day except Sunday, or
2 the following business holidays: New Year’s Day, Washington’s
3 Birthday, Memorial Day, Independence Day, Labor Day,
4 Columbus Day, Veterans’ Day, Thanksgiving Day, and
5 Christmas Day.

6 (f) *This section shall become operative on January 1, 2006.*

7 SEC. 24. Section 1689.6 of the Civil Code, as amended by
8 Section 2 of Chapter 51 of the 1st Extraordinary Session of the
9 Statutes of 1994, is amended to read:

10 1689.6. (a) In addition to any other right to revoke an offer,
11 the buyer has the right to cancel a home solicitation contract or
12 offer until midnight of the third business day after the day on
13 which the buyer signs an agreement or offer to purchase which
14 complies with Section 1689.7.

15 (b) In addition to any other right to revoke an offer, any buyer
16 has the right to cancel a home solicitation contract or offer for the
17 purchase of a personal emergency response unit until midnight of
18 the seventh business day after the day on which the buyer signs
19 an agreement or offer to purchase which complies with Section
20 1689.7. This subdivision shall not apply to a personal emergency
21 response unit installed with, and as part of, a home security alarm
22 system subject to the Alarm Company Act (Chapter 11.6
23 (commencing with Section 7590) of Division 3 of the Business
24 and Professions Code) which has two or more stationary
25 protective devices used to enunciate an intrusion or fire and is
26 installed by an alarm company operator operating under a current
27 license issued pursuant to the Alarm Company Act, which shall
28 instead be subject to subdivision (a).

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

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

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

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

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

12 *(h) This section shall be repealed on January 1, 2006.*

13 SEC. 25. Section 1689.6 of the Civil Code, as amended by
14 Section 16 of Chapter 566 of the Statutes of 2004, is amended to
15 read:

16 1689.6. (a) (1) Except for a contract written pursuant to
17 Section 7151.2 or 7159.10 of the Business and Professions Code,
18 in addition to any other right to revoke an offer, the buyer has the
19 right to cancel a home solicitation contract or offer until midnight
20 of the third business day after the day on which the buyer signs
21 an agreement or offer to purchase which complies with Section
22 1689.7.

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

29 (3) In addition to any other right to revoke an offer, the buyer
30 has the right to cancel a home solicitation contract or offer to
31 purchase written pursuant to Section 7159.10 of the Business and
32 Professions Code, until the buyer receives a signed and dated
33 copy of a service and repair contract that complies with Section
34 1689.7 of this code and meets the contract requirements found in
35 Section 7159.10 of the Business and Professions Code and the
36 work commences.

37 (b) In addition to any other right to revoke an offer, any buyer
38 has the right to cancel a home solicitation contract or offer for the
39 purchase of a personal emergency response unit until midnight of
40 the seventh business day after the day on which the buyer signs

1 an agreement or offer to purchase which complies with Section
2 1689.7. This subdivision shall not apply to a personal emergency
3 response unit installed with, and as part of, a home security alarm
4 system subject to the Alarm Company Act (Chapter 11.6
5 (commencing with Section 7590) of Division 3 of the Business
6 and Professions Code) which has two or more stationary
7 protective devices used to enunciate an intrusion or fire and is
8 installed by an alarm company operator operating under a current
9 license issued pursuant to the Alarm Company Act, which shall
10 instead be subject to subdivision (a).

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

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

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

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

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

33 (h) *This section shall become operative on January 1, 2006.*

34 SEC. 26. Section 1689.7 of the Civil Code, as amended by
35 Section 3 of Chapter 51 of the 1st Extraordinary Session of the
36 Statutes of 1994, is amended to read:

37 1689.7. (a) (1) In a home solicitation contract or offer the
38 buyer’s agreement or offer to purchase shall be written in the
39 same language, e.g., Spanish, as principally used in the oral sales
40 presentation, shall be dated, signed by the buyer, and except as

1 provided in paragraph (2), shall contain in immediate proximity
2 to the space reserved for his or her signature a conspicuous
3 statement in a size equal to at least 10-point bold type, as
4 follows: “You, the buyer, may cancel this transaction at any time
5 prior to midnight of the third business day after the date of this
6 transaction. See the attached notice of cancellation form for an
7 explanation of this right.”

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

22 (3) The statement required pursuant to this subdivision for the
23 repair or restoration of residential premises damaged by a
24 disaster pursuant to subdivision (c) of Section 1689.6 is as
25 follows: “You, the buyer, may cancel this transaction at any time
26 prior to midnight of the seventh business day after the date of this
27 transaction. See the attached notice of cancellation form for an
28 explanation of this right.”

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

34 (c) Except as provided in subdivision (d), the agreement or
35 offer to purchase shall be accompanied by a completed form in
36 duplicate, captioned “Notice of Cancellation” which shall be
37 attached to the agreement or offer to purchase and be easily
38 detachable, and which shall contain in type of at least 10-point
39 the following statement written in the same language, e.g.,
40 Spanish, as used in the contract:

1 "Notice of Cancellation"
 2 /enter date of transaction/
 3 _____
 4 (Date)
 5

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

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

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

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

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

29
 30 to _____ ,
 31 /name of seller/
 32 at _____
 33 /address of seller's place of business/

34 not later than midnight of _____ .
 35 (Date)

36 I hereby cancel this transaction. _____
 37 (Date)

38 _____
 39 (Buyer's signature)

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

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

14 (e) Any agreement or offer to purchase services for the repair
15 or restoration of residential premises damaged by a disaster that
16 is subject to subdivision (c) of Section 1689.6, shall be subject to
17 the requirements of subdivision (c) of this section, and shall be
18 accompanied by the “Notice of Cancellation” required by
19 subdivision (c) of this section, except that the first paragraph of
20 that notice shall be deleted and replaced with the following
21 paragraph:

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

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

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

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

33 (i) *This section shall be repealed on January 1, 2006.*

34 SEC. 27. Section 1689.7 of the Civil Code, as amended by
35 Section 17 of Chapter 566 of the Statutes of 2004, is amended to
36 read:

37 1689.7. (a) (1) Except for contracts written pursuant to
38 Sections 7151.2 and 7159.10 of the Business and Professions
39 Code, in a home solicitation contract or offer, the buyer’s
40 agreement or offer to purchase shall be written in the same

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

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

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

33 (4) A home solicitation contract written pursuant to Section
34 7151.2 of the Business and Professions Code shall be written in
35 the same language, e.g., Spanish, as principally used in the oral
36 sales presentation. The contract, or an attachment to the contract
37 that complies with subdivision (1) of Section 7159.4 of the
38 Business and Professions Code shall include in immediate
39 proximity to the space reserved for his or her signature, the

1 following statement in a size equal to at least 12-point boldface
2 type, which shall be dated and signed by the buyer:

3 “Three-Day Right to Cancel

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

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

26 (5) A home solicitation contract written pursuant to Section
27 7159.10 of the Business and Professions Code shall be written in
28 the same language, e.g., Spanish, as principally used in the oral
29 sales presentation. The contract, or an attachment to the contract
30 that complies with subdivision ~~(k)~~ (l) of Section 7159.13 of the
31 Business and Professions Code shall include, in immediate
32 proximity to the space reserved for his or her signature, the
33 following statement in a size equal at least to 12-point boldface
34 type, which shall be dated and signed by the buyer:

35 “YOUR RIGHTS TO CANCEL BEFORE WORK BEGINS

36 You, the buyer, have the right to cancel this contract until:

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

1 However, even if the work has begun you, the buyer, may still
2 cancel the contract within three business days if the contract
3 price is more than seven hundred fifty dollars (\$750), or if you,
4 did not initiate the contact with the contractor to request the
5 work, or if the contractor sold you goods or services beyond
6 those reasonably necessary to take care of the particular problem
7 that caused you to contact the contractor, or if the payment was
8 due before the work was complete.

9 If any of these reasons for canceling occurred, you may cancel
10 the contract by e-mailing, mailing, faxing, or delivering a written
11 notice to the contractor at the contractor's place of business
12 within three business days of the date you received a signed and
13 dated copy of this contract. Include your name, your address, and
14 the date you received a signed copy of the contract and this
15 notice.

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

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

35 (c) Except for contracts written pursuant to Sections 7151.2
36 and 7159.10 of the Business and Professions Code, or except as
37 provided in subdivision (d), the agreement or offer to purchase
38 shall be accompanied by a completed form in duplicate,
39 captioned "Notice of Cancellation" which shall be attached to the
40 agreement or offer to purchase and be easily detachable, and

1 which shall contain in type of at least 10-point the following
2 statement written in the same language, e.g., Spanish, as used in
3 the contract:

4
5
6
7
8
9

“Notice of Cancellation”

/enter date of transaction/

(Date)

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

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

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

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

1 To cancel this transaction, mail or deliver a signed and dated copy of this
 2 cancellation notice, or any other written notice, or send a telegram
 3 to _____ ,
 4 /name of seller/
 5 at _____
 6 /address of seller’s place of business/
 7 not later than midnight of _____ .
 8 (Date)
 9 I hereby cancel this transaction. _____
 10 (Date)
 11 _____
 12 (Buyer’s signature)

13
 14 (d) Any agreement or offer to purchase a personal emergency
 15 response unit, as defined in Section 1689.6, which is not installed
 16 with and as part of a home security alarm system subject to the
 17 Alarm Company Act which has two or more stationary protective
 18 devices used to enunciate an intrusion or fire and is installed by
 19 an alarm company operator operating under a current license
 20 issued pursuant to the Alarm Company Act, shall be subject to
 21 the requirements of subdivision (c), and shall be accompanied by
 22 the “Notice of Cancellation” required by subdivision (c), except
 23 that the first paragraph of that notice shall be deleted and
 24 replaced with the following paragraph:

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

27 (e) (1) Except for contracts written pursuant to Sections
 28 7151.2 and 7159.10 of the Business and Professions Code, any
 29 agreement or offer to purchase services for the repair or
 30 restoration of residential premises damaged by a disaster that is
 31 subject to subdivision (c) of Section 1689.6, shall be subject to
 32 the requirements of subdivision (c) of this section, and shall be
 33 accompanied by the “Notice of Cancellation” required by
 34 subdivision (c) of this section, except that the first paragraph of
 35 that notice shall be deleted and replaced with the following
 36 paragraph:

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

39 (2) A home solicitation contract written pursuant to Section
 40 7151.2 of the Business and Professions Code for the repair or

1 restoration of residential premises damaged by a disaster that is
2 subject to subdivision (c) of Section 1689.6, shall be written in
3 the same language, e.g. Spanish, as principally used in the oral
4 sales presentation. The contract, or an attachment to the contract
5 that complies with subdivision (l) of Section 7159.4 of the
6 Business and Professions Code shall include, in immediate
7 proximity to the space reserved for his or her signature, the
8 following statement in a size equal to at least 12-point boldface
9 type, which shall be signed and dated by the buyer:

10 “Seven-Day Right to Cancel

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

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

33 (3) A home solicitation contract written pursuant to Section
34 7159.10 of the Business and Professions Code for the repair or
35 restoration of residential premises damaged by a disaster that is
36 subject to subdivision (c) of Section 1689.6, be written in the
37 same language, e.g. Spanish, as principally used in the oral sales
38 presentation. The contract, or an attachment to the contract that
39 complies with subdivision ~~(k)~~ (l) of Section ~~7159.4~~ 7159.13 of
40 the Business and Professions Code shall include, in immediate

1 proximity to the space reserved for his or her signature, the
2 following statement in a size equal to at least 12-point boldface
3 type, which shall be signed and dated by the buyer:

4 “YOUR RIGHTS TO CANCEL BEFORE WORK BEGINS

5 You, the buyer, have the right to cancel until both of the
6 following events have occurred:

7 1. You receive a copy of this contract, signed and dated by you
8 and the contractor; and

9 2. The contractor starts work.

10 However, even if the work has begun, you, the buyer, may still
11 cancel the contract within seven business days if the contract
12 price is more than seven hundred fifty dollars (\$750), or if you
13 did not initiate the contact with the contractor to request the
14 work, or if the contractor sold you goods or services beyond
15 those reasonably necessary to take care of the particular problem
16 that caused you to contact the contractor, or if the payment was
17 due before the work was complete.

18 If any of these reasons for canceling occurred, you may cancel
19 the contract by e-mailing, mailing, faxing, or delivering a written
20 notice to the contractor at the contractor’s place of business
21 within seven business days of the date you received a signed and
22 dated copy of the contract that includes this notice. Include your
23 name, your address, and the date you received a signed copy of
24 the contract and this notice.

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

39 (f) The seller shall provide the buyer with a copy of the
40 contract or offer to purchase and the attached notice of

1 cancellation, and shall inform the buyer orally of his or her right
2 to cancel and the requirement that cancellation be in writing, at
3 the time the home solicitation contract or offer is executed.

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

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

8 (i) *This section shall become operative on January 1, 2006.*

9 SEC. 28. Section 1689.13 of the Civil Code, as amended by
10 Section 4 of Chapter 51 of the 1st Extraordinary Session of the
11 Statutes of 1994, is amended to read:

12 1689.13. (a) Sections 1689.5 to 1689.7, inclusive, Sections
13 1689.10 to 1689.12, inclusive, and Section 1689.14 shall not
14 apply to a contract that is initiated by the buyer or his or her
15 agent or insurance representative and that is executed in
16 connection with the making of emergency or immediate
17 necessity repairs or services that are necessary for the immediate
18 protection of persons or real or personal property, provided that
19 the buyer furnishes the seller with a separate dated and signed
20 personal statement describing the situation requiring immediate
21 remedy and expressly acknowledging and waiving the right to
22 cancel the sale within three or seven business days, whichever
23 applies.

24 (b) *This section shall be repealed on January 1, 2006.*

25 SEC. 29. Section 1689.13 of the Civil Code, as added by
26 Section 19 of Chapter 566 of the Statutes of 2004, is amended to
27 read:

28 1689.13. Sections 1689.5, 1689.6, 1689.7, 1689.10, 1689.12,
29 and 1689.14 do not apply to a contract that meets all of the
30 following requirements:

31 (a) The contract is initiated by the buyer or his or her agent or
32 insurance representative.

33 (b) The contract is executed in connection with making of
34 emergency or immediately necessary repairs that are necessary
35 for the immediate protection of persons or real or personal
36 property.

37 (c) The buyer gives the seller a separate statement that is dated
38 and signed that describes the situation that requires immediate
39 remedy, and expressly acknowledges and waives the right to

1 cancel the sale within three or seven business days, whichever
2 applies.

3 *(d) This section shall become operative on January 1, 2006.*

4 SEC. 30. Section 1689.15 of the Civil Code is amended to
5 read:

6 1689.15. *(a)* Notwithstanding any other provision of law, a
7 contractor who is duly licensed pursuant to Chapter 9
8 (commencing with Section 7000) of Division 3 of the Business
9 and Professions Code may commence work on a service and
10 repair project as soon as the buyer receives a signed and dated
11 copy of a service and repair contract that meets the contract
12 requirements found in Section 7159.10 of the Business and
13 Professions Code. The buyer retains any right of cancellation
14 applicable to home solicitations under Sections 1689.5 to
15 1689.14, inclusive, until such time as the buyer receives a signed
16 and dated copy of a service and repair contract that meets the
17 contract requirements found in Section 7159.10 of the Business
18 and Professions Code and complies with Section 1689.7, and the
19 licensee in fact commences that project, at which time the buyer
20 is deemed to have waived, and has waived, any cancellation right
21 provided in Sections 1689.5 to 1689.14, inclusive.

22 *(b) This section shall become operative on January 1, 2006.*

23 SEC. 31. Section 21 of Chapter 566 of the Statutes of 2004 is
24 repealed.

25 ~~SEC. 21. This act shall become operative on July 1, 2005.~~

26 SEC. 32. This act is an urgency statute necessary for the
27 immediate preservation of the public peace, health, or safety
28 within the meaning of Article IV of the Constitution and shall go
29 into immediate effect. The facts constituting the necessity are:

30 In order to implement necessary changes to various provisions
31 regulating professions and vocations as quickly as possible, it is
32 necessary for this act to take effect immediately.