

BILL ANALYSIS

Senate Research Center
86R27123 JES-F

C.S.S.B. 985
By: Kolkhorst
Business & Commerce
4/29/2019
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

BACKGROUND

Texas law currently prohibits certain contractors in disaster areas from taking up-front money unless they have held a physical business address in the county or adjacent county for at least one year. This law, found in Chapter 58 of the Business & Commerce Code, provides other valuable protections for those rebuilding in disaster areas.

THE PROBLEM

When disaster hits, we see the best come out in people as communities and Good Samaritans come together for the common good. Unfortunately, we also see the worst. All too often, conartists, who generally are not even contractors, descend upon ravaged communities and take advantage of those in desperate need of help. This includes pressure tactics for upfront payments that result in no work and the scammers never to be seen again.

THE SOLUTION

Enhance current penalties against disaster remediators who travel outside their normal business area and violate state law prohibiting certain up-front payments by creating criminal penalties for those violators. The bill does allow up-front payments if the payment is escrowed with a licensed third party. Furthermore, the bill creates a defense for those who refund the money within a certain amount a time, and provides an exemption for properly approved charities.

THE COMMITTEE SUBSTITUTE

Amends the bill to clarify who may be considered an escrow service officer for purposes of the bill, referencing Section 2652.001, Insurance Code.

C.S.S.B. 985 amends current law relating to restrictions under disaster remediation contracts and creates a criminal offense.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 58.001(1) and (2), Business & Commerce Code, as follows:

(1) Redefines "disaster remediation" to mean the removal, cleaning, sanitizing, demolition, reconstruction, or other treatment of existing improvements to real property performed because of damage or destruction to that property caused by a natural disaster.

(2) Redefines "disaster remediation contractor" to mean a person who engages in disaster remediation for compensation, other than a person who has a permit, license, registration, or other authorization from the Texas Commission on Environmental Quality for the

collection, transportation, treatment, storage, processing, or disposal of solid waste, but does not include an entity approved by the Internal Revenue Service as tax exempt under Section 501(c)(3), Internal Revenue Code of 1986.

SECTION 2. Amends Section 58.003(b), Business & Commerce Code, as follows:

(b) Provides that a disaster remediation contractor:

(1) is prohibited from requiring a person to make a full or partial payment under a contract before the contractor begins work, unless the amount of such payment is held in escrow with an escrow officer who meets the requirements of Section 2652.001 (License and Bond or Deposit Required), Insurance Code, rather than is prohibited from requiring a person to make a full or partial payment under a contract before the contractor begins work; and

(2)–(3) makes no changes to these subdivisions.

SECTION 3. Amends Section 58.004, Business & Commerce Code, as follows:

Sec. 58.004. New heading: PENALTIES. (a) Creates this subdivision from existing text and makes no further changes to this subsection.

(b) Provides that a disaster remediation contractor who violates Section 58.003(b)(1) or (2) (relating to prohibiting a disaster remediation contractor from requiring that the amount of any partial payment under the contract exceed an amount reasonably proportionate to the work performed, including any materials delivered) commits an offense. Provides that an offense under this section is:

(1) a Class B misdemeanor if the offense was committed without the intent to defraud the person contracting for disaster remediation services; or

(2) a felony of the third degree if the offense was committed with the intent to defraud the person contracting for disaster remediation services.

(c) Provides that it is a defense to prosecution under this section if the disaster remediation contractor refunds any payment made in violation of Section 58.003(b)(1) or (2) not later than the 15th day following the receipt of a written demand alleging a violation of Section 58.003(b)(1) or (2) sent by certified mail to the disaster remediation contractor's last known business address or the address of the disaster remediation contractor's registered agent.

SECTION 4. Makes application of this Act prospective.

SECTION 5. Effective date: September 1, 2019.