By:  Kolkhorst S.B. No. 985

(In the Senate - Filed February 21, 2019; March 1, 2019, read first time and referred to Committee on Business & Commerce; April 30, 2019, reported adversely, with favorable Committee Substitute by the following vote: Yeas 9, Nays 0; April 30, 2019, sent to printer.)

COMMITTEE VOTE

                    Yea Nay Absent  PNV

Hancock              X

Nichols              X

Campbell             X

Creighton            X

Menéndez             X

Paxton               X

Schwertner           X

Whitmire             X

Zaffirini            X

COMMITTEE SUBSTITUTE FOR S.B. No. 985 By:  Nichols

A BILL TO BE ENTITLED

AN ACT

relating to restrictions under disaster remediation contracts; creating a criminal offense.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  Sections 58.001(1) and (2), Business & Commerce Code, are amended to read as follows:

(1)  "Disaster remediation" means 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)  "Disaster remediation contractor" means 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.  Section 58.003(b), Business & Commerce Code, is amended to read as follows:

(b)  A disaster remediation contractor:

(1)  may not require 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, Insurance Code;

(2)  may not require that the amount of any partial payment under the contract exceed an amount reasonably proportionate to the work performed, including any materials delivered; and

(3)  shall include in any contract for disaster remediation services the following statement in conspicuous, boldfaced type of at least 10 points in size: "This contract is subject to Chapter 58, Business & Commerce Code. A contractor may not require a full or partial payment before the contractor begins work and may not require partial payments in an amount that exceeds an amount reasonably proportionate to the work performed, including any materials delivered."

SECTION 3.  Section 58.004, Business & Commerce Code, is amended to read as follows:

Sec. 58.004.  PENALTIES [~~DECEPTIVE TRADE PRACTICE~~]. (a)  A violation of this chapter by a disaster remediation contractor is a false, misleading, or deceptive act or practice as defined by Section 17.46(b), and any remedy under Subchapter E, Chapter 17, is available for a violation of this chapter.

(b)  A disaster remediation contractor who violates Section 58.003(b)(1) or (2) commits an offense. 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)  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.  The changes in law made by this Act apply only to a disaster remediation contract entered into on or after the effective date of this Act. A disaster remediation contract entered into before the effective date of this Act is governed by the law in effect when the contract was entered into, and the former law is continued in effect for that purpose.

SECTION 5.  This Act takes effect September 1, 2019.

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