

BILL ANALYSIS

C.S.H.B. 2856
By: Morrison
Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

It has been reported that in the aftermath of Hurricane Harvey, some contractors pressured disaster survivors to provide upfront payments for contracting work that was never performed. C.S.H.B. 2856 seeks to protect against these scams by providing criminal penalties for certain violations by a disaster remediation contractor.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2856 amends the Business & Commerce Code to establish an exception to the prohibition against a disaster remediation contractor requiring a person to make a full or partial payment under a contract before the contractor begins work if the amount of such payment is held in escrow.

C.S.H.B. 2856 creates an offense for a disaster remediation contractor who unlawfully requires a person to make a full or partial payment under a contract before the contractor begins work or requires that the amount of any partial payment under the contract exceed an amount reasonably proportionate to the work performed, including any materials delivered. The bill establishes that that offense is a Class B misdemeanor if the offense was committed without the intent to defraud the person contracting for disaster remediation services or a felony of the third degree if the offense was committed with that intent.

C.S.H.B. 2856 establishes as a defense to prosecution for the offense that the disaster remediation contractor refunds any applicable payment made in violation of the law not later than the 15th day following the receipt of a written demand alleging the violation sent by certified mail to the contractor's last known business address or the address of the contractor's registered agent.

C.S.H.B. 2856 clarifies that the treatment of improvements to real property constituting disaster remediation applies with regard to existing improvements. The bill excludes an entity approved by the IRS as a tax exempt 501(c)(3) organization under the federal Internal Revenue Code of 1986 from the definition of disaster remediation contractor.

EFFECTIVE DATE

September 1, 2019.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2856 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute revises the exception to the prohibition against a disaster remediation contractor requiring a payment before the contractor begins work for a payment held in escrow to remove the necessary condition that the amount of the payment be held in escrow with a title insurance company or title insurance agent operating in accordance with state law.