By: Morrison   H.B. No. 2856

A BILL TO BE ENTITLED

1   AN ACT

2 relating to restrictions under disaster remediation contracts;

3 creating a criminal offense.

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

5   SECTION 1. Sections 58.001(1) and (2), Business & Commerce

6 Code, are amended to read as follows:

7   (1) "Disaster remediation" means the removal,

8 cleaning, sanitizing, demolition, reconstruction, or other

9 treatment of existing improvements to real property performed

10 because of damage or destruction to that property caused by a

11 natural disaster.

12   (2) "Disaster remediation contractor" means a person

13 who engages in disaster remediation for compensation, other than a

14 person who has a permit, license, registration, or other

15 authorization from the Texas Commission on Environmental Quality

16 for the collection, transportation, treatment, storage,

17 processing, or disposal of solid waste, but does not include an

18 entity approved by the Internal Revenue Service as tax exempt under

19 Section 501(c)(3), Internal Revenue Code of 1986.

20   SECTION 2. Section 58.003(b), Business & Commerce Code, is

21 amended to read as follows:

22   (b) A disaster remediation contractor:

23   (1) may not require a person to make a full or partial

24 payment under a contract before the contractor begins work, unless

1 the amount of such payment is held in escrow with a title insurance

2 company or title insurance agent operating in accordance with Title

3 11, Insurance Code;

4   (2) may not require that the amount of any partial

5 payment under the contract exceed an amount reasonably

6 proportionate to the work performed, including any materials

7 delivered; and

8   (3) shall include in any contract for disaster

9 remediation services the following statement in conspicuous,

10 boldfaced type of at least 10 points in size: "This contract is

11 subject to Chapter 58, Business & Commerce Code. A contractor may

12 not require a full or partial payment before the contractor begins

13 work and may not require partial payments in an amount that exceeds

14 an amount reasonably proportionate to the work performed, including

15 any materials delivered."

16   SECTION 3. Section 58.004, Business & Commerce Code, is

17 amended to read as follows:

18   Sec. 58.004. PENALTIES [DECEPTIVE TRADE PRACTICE]. (a) A

19 violation of this chapter by a disaster remediation contractor is a

20 false, misleading, or deceptive act or practice as defined by

21 Section 17.46(b), and any remedy under Subchapter E, Chapter 17, is

22 available for a violation of this chapter.

23   (b) A disaster remediation contractor who violates Section

24 58.003(b)(1) or (2) commits an offense. An offense under this

25 section is:

26   (1) a Class B misdemeanor if the offense was committed

27 without the intent to defraud the person contracting for disaster

1 remediation services; or

2   (2) a felony of the third degree if the offense was

3 committed with the intent to defraud the person contracting for

4 disaster remediation services.

5   (c) It is a defense to prosecution under this section if the

6 disaster remediation contractor refunds any payment made in

7 violation of Section 58.003(b)(1) or (2) not later than the 15th day

8 following the receipt of a written demand alleging a violation of

9 Section 58.003(b)(1) or (2) sent by certified mail to the disaster

10 remediation contractor's last known business address or the address

11 of the disaster remediation contractor's registered agent.

12   SECTION 4. The changes in law made by this Act apply only to

13 a disaster remediation contract entered into on or after the

14 effective date of this Act.   A disaster remediation contract

15 entered into before the effective date of this Act is governed by

16 the law in effect when the contract was entered into, and the former

17 law is continued in effect for that purpose.

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