

1989

Session Law 89-343

Florida Senate & House of Representatives

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H 1495 GENERAL BILL/CS by Regulatory Reform; Mortham (Similar CS/S 491)

Contractors/Exemptions; provides that exemptions granted to employees of certain certified or registered construction or electrical contractors do not extend to employees of uncertified or unregistered contractors; revises definition of term "contracting"; provides for certification of electrical contractors as alarm system contractors under certain circumstances, etc. Amends 489.103,.105,.127,.503,.505,.511,.531. Effective Date: 07/05/89.

03/27/89 HOUSE Prefiled
03/29/89 HOUSE Referred to Regulatory Reform
04/04/89 HOUSE Introduced. referred to Regulatory Reform -HJ 142
04/10/89 HOUSE On Committee agenda—Regulatory Reform, 04/12/89, 1:15 pm, 21-HOB—For ratification of referral to subcommittee
04/12/89 HOUSE Subreferred to Subcommittee on Technical and Consumer Services
04/13/89 HOUSE On subcommittee agenda—Regulatory Reform, 04/17/89, 10:40 am, 21-HOB
04/17/89 HOUSE Subcommittee Recommendation: Favorable
04/21/89 HOUSE On Committee agenda—Regulatory Reform, 04/25/89, 3:45 pm, 21-HOB
04/25/89 HOUSE Preliminary Committee Action by Regulatory Reform: Favorable as a CS
05/01/89 HOUSE Comm. Report: CS by Regulatory Reform, placed on Calendar -HJ 337; CS read first time -HJ 337
05/03/89 HOUSE Placed on Special Order Calendar; Read second time -HJ 363
05/09/89 HOUSE Read third time; CS passed; YEAS 113 NAYS 0 -HJ 426
05/10/89 SENATE In Messages
05/16/89 SENATE Received, referred to Economic, Professional and Utility Regulation -SJ 363
05/18/89 SENATE Withdrawn from Economic, Professional and Utility Regulation; Substituted for CS/SB 491; CS passed; YEAS 39 NAYS 0 -SJ 399
05/24/89 Ordered enrolled
06/20/89 Signed by Officers and presented to Governor
07/05/89 Approved by Governor; Chapter No. 89-343

NOTES: Above bill history from Division of Legislative Information's *FINAL LEGISLATIVE BILL INFORMATION, 1989 SESSIONS*. Staff Analyses for bills amended beyond final committee action may not be in accordance with the enacted law. Journal page numbers (HJ & SJ) refer to daily Journals and may not be the same as final bound Journals.

AS PASSED BY THE 1989 LEGISLATURE

STORAGE NAME: h1495s-f.rr
DATE: June 5, 1989

HOUSE OF REPRESENTATIVES
COMMITTEE ON REGULATORY REFORM
FINAL STAFF ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: CS/HB 1495

RELATING TO: Construction and Electrical Contracting

SPONSOR(S): Committee on Regulatory Reform and Representative Mortham

EFFECTIVE DATE: July 1, 1989, or upon becoming a law, whichever comes later

CHAPTER #: 89-343, Laws of Florida

DATE BECAME LAW: July 5, 1989

COMPANION BILL(S): SB 491

OTHER COMMITTEES OF REFERENCE: (1)
(2)

I. SUMMARY:

This bill modifies the exemptions, definitions, and prohibitions provisions regarding construction and electrical contracting.

A. PRESENT SITUATION:

Chapter 489, Florida Statutes, is divided into three parts. This bill makes changes in only the first two parts. The first part covers construction contracting, the second part covers electrical contracting.

In Part I (construction contracting), exemptions from the provisions of chapter 489, Florida Statutes, are provided for some individuals who are employees of contractors.

To be exempt, an individual must:

- a) be an employee of, and subordinate to,
- b) a certificateholder or registrant, and
- c) not "holding himself out for hire", and
- d) not engaging in contracting, except as an employee.

Under Part II (electrical contracting), the exemption formula is very similar, with one difference.

To be exempt, an individual must:

- a) be an employee of, and subordinate to,
- b) a certificateholder, registrant, or business organization authorized to engage in contracting and
- c) does not "hold himself out for hire" and

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d) not engage in contracting, except as an employee.

"Contracting" is defined identically in each part of chapter 489, Florida Statutes. The definition simply states that contracting is "engaging in the business of contracting" (except for the exemptions provided for in each respective part of the chapter).

Under the prohibitions and penalties section of Part I (construction contracting), an individual is prohibited from falsely holding himself out as licensed. Additionally, he may not engage in, act in the capacity of, or advertise as, a contractor.

Under the prohibitions and penalties section of Part II (electrical contracting), he may not practice as a contractor. Additionally, he may not title himself as, or advertise himself as, an alarm or electrical contractor.

A contractor in Florida may be licensed at a local level, making him a registered contractor, or he may be licensed state-wide, making him a certified contractor. Presently, a registered unlimited electrical contractor, or a certified or registered specialty contractor, may be certified as an alarm systems contractor. If the contractor passed an examination prior to October 1, 1987 that the Electrical Contractors Licensing Board determines to be "substantially equivalent" to the state certification examination for alarm system contractors, then he may be certified as an alarm system contractor without further examination.

B. EFFECT OF PROPOSED CHANGES:

This bill changes the "exemptions" section of each part of chapter 489, Florida Statutes, intended to clarify legislative intent, and to provide additional restrictions to current law.

To be exempted from the provisions of chapter 489, Florida Statutes, under the changes made in this bill, the employee must:

- 1) be acting within the scope of the license held by his employer, and
- 2) acting with the knowledge and permission of the licensed employer.

The employee will not be exempt when he is employed by an unlicensed, or inappropriately licensed contractor, and if he:

- 1) represents himself, or his employer as being licensed, or
- 2) leads the consumer to believe that he (the employee) functions in an ownership or management capacity with the business, or
- 3) performs any of the acts which constitute contracting

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The bill changes the definition of "contracting", with the same definition inserted in both Part I, and Part II. The new definition includes the definitions established in the current statute, but also includes attempted sale of, or negotiation for, contracting. It further states that when licensure is necessary for the proposed activity, then the negotiation or attempted sale also requires the corresponding licensure.

The final modification is made under the prohibitions and penalties sections of each part of chapter 489, Florida Statutes. This bill would prohibit the individual from falsely representing the business organization as licensed, in addition to the current prohibitions against the individual falsely representing himself as licensed.

This bill provides an additional method of achieving state certification as an alarm system contractor. If a registered unlimited contractor, or a certified or registered specialty contractor, has (prior to October 1, 1987) passed an examination determined by the board to be "substantially equivalent" to the certification examination for an unlimited electrical contractor, he may be certified as an alarm systems contractor without further examination.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:

None

2. Recurring or Annualized Continuation Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

4. Appropriations Consequences:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:

None

2. Recurring or Annualized Continuation Effects:

None

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3. Long Run Effects Other Than Normal Growth:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None

2. Direct Private Sector Benefits:

None

3. Effects on Competition, Private Enterprise, and Employment Markets:

None

D. FISCAL COMMENTS:

III. LONG RANGE CONSEQUENCES:

IV. COMMENTS:

There have been cases in which the law has been interpreted in such a way that employees of unlicensed contractors have been exempted. The Pinellas County State Attorney's Consumer Fraud Division filed more than 50 criminal cases against unlicensed contractors, and resolves many more through non-criminal procedures. A number of these criminal cases have been lost due to the vague wording of parts of chapter 489, Florida Statutes.

The changes in the "definitions" sections clarify the full extent of activities that should be included under "contracting". The changes under the prohibitions and penalties sections were suggestions from the Florida Prosecuting Attorneys Association, and were added to make it clear that an employee who falsely holds himself or a business organization out to be certificated or registered is liable for a criminal act.

The greatest change made is in the "exemptions" sections. According to information supplied by the Assistant State Attorney, Consumer Fraud Division, Pinellas County, the present wording allows an employee to claim that he is unaware that his employer was not licensed. Many judges and juries believe that this is enough to acquit, even though knowledge is not an element of the crime. Being well aware of this, many employers insure that they are not involved with the transaction, leaving only "finger pointing" between the employer and the employee, and negating probability of convicting either one.

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V. SIGNATURES:

SUBSTANTIVE COMMITTEE:

Prepared by:



Gip Arthur

SECOND COMMITTEE OF REFERENCE:

Prepared by:

APPROPRIATIONS:

Prepared by:

Staff Director:



Patrick L. "Booter" Imhof

Staff Director:

Staff Director:

REVISED: _____

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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Masterton</u>	<u>Krasovsky</u>	1. <u>EPUR</u>	<u>FAV/CS</u>
2. _____	_____	2. _____	_____
3. _____	_____	3. _____	_____
4. _____	_____	4. _____	_____

SUBJECT: Contracting

BILL NO. AND SPONSOR: CS/SB 491 by Senator Malchon and others

I. SUMMARY:

A. Present Situation:

Chapter 489, part I, Florida Statutes, provides for regulation of various categories of construction contractors by the Construction Industry Licensing Board within the Department of Professional Regulation (DPR). The statute provides the licensure alternatives of certification, which means the contractor has met state requirements for licensure and may perform services on a state-wide basis; or registration, which means the contractor has met local requirements for licensure and is limited to performing services only within the local geographic area.

Part I sets forth exemptions from the licensing requirements, including an exemption for employees of certificateholders or registrants. In addition, the part provides relevant definitions, including a definition of "contracting," which means engaging in the business of a contractor. Also, the statute prohibits unlicensed contracting activity and makes it a first degree misdemeanor to violate this prohibition.

Chapter 489, part II, F.S., provides for the regulation of electrical and alarm contractors by the Electrical Contracting Licensing Board within the DPR. While electrical contractors may be either certified or registered, alarm contractors must be certified to perform their services. The part provides definitions of "employee" and "contracting" which are virtually identical to the definitions contained in chapter 489, part I, F.S. It also imposes a first degree misdemeanor penalty for unlicensed contracting activity.

B. Effect of Proposed Changes:

The bill substantially revises the employee exemption under both the construction and electrical contractor licensing statutes. Under the bill, the employee exemption does not apply to an employee of an unlicensed contractor if the employee holds himself or his employer out as a licensee, leads consumers to believe the employee is an owner or manager of a company, or performs any acts which constitute contracting. The bill states that the legislative intent is to place equal responsibility on the employees of unlicensed businesses for the protection of consumers of contracting services.

The bill also amends the definition of contracting in both the construction and electrical statutes to provide that the attempted sale of contracting services and the negotiation or bid for a contract to perform these services also constitute contracting.

The bill extends the prohibitions against unlicensed contracting in both the construction and electrical contracting

statutes to include a person holding out a business organization as a licensee or advertising a business organization as available to engage in contracting.

The bill also amends the statute to provide that if a registered unlimited electrical contractor has passed a local licensure examination equivalent to the state certified unlimited electrical contractor licensure examination, as determined by the ECLB, he need not take the state alarm contractor examination in order to qualify for certification as an alarm contractor. Current law requires the board to compare the registered unlimited electrical contractor examination to the alarm contractor examination to determine equivalency.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

To the extent that extending penalties for unlicensed contracting to employees of unlicensed contractors helps prevent unlicensed activity in the contracting industry, thereby improving the quality of contracting services offered to the public, consumers will benefit.

B. Government:

The department and state law enforcement authorities may incur additional costs to enforce the bill's provisions against individuals guilty of unlicensed contracting.

III. COMMENTS:

An identical bill, HB 1495, has been filed in the House for the 1989 session, has been referred to the Regulatory Reform Committee, and was reported favorably by the Technical and Consumer Services Subcommittee on April 17, 1989.

IV. AMENDMENTS:

None.