

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Banking and Insurance Committee

BILL: SB 634

SPONSOR: Senator Bennett

SUBJECT: Criminal Penalty for Unauthorized Fire Alarm System Agents

DATE: March 18, 2005

REVISED: 03/22/05

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------------|--------------------|-----------|------------------------|
| 1. | <u>Emrich</u> | <u>Deffenbaugh</u> | <u>BI</u> | <u>Fav/1 amendment</u> |
| 2. | <u></u> | <u></u> | <u>CJ</u> | <u></u> |
| 3. | <u></u> | <u></u> | <u>RI</u> | <u></u> |
| 4. | <u></u> | <u></u> | <u></u> | <u></u> |
| 5. | <u></u> | <u></u> | <u></u> | <u></u> |
| 6. | <u></u> | <u></u> | <u></u> | <u></u> |

Please see last section for Summary of Amendments

- Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

I. Summary:

Under chapter 489, F.S., the Electrical Contractors Licensing Board (ECLB) within the Department of Business and Professional Regulation (DBPR) regulates licensed fire alarm system contractors and certified unlimited electrical contractors, as well as their employees who are termed fire alarm system agents. The Division of State Fire Marshal (DSFM) within the Department of Financial Services (DFS) and certified local firesafety inspectors have the responsibility to inspect buildings and facilities and to inspect fire alarm systems regarding issues of fire safety, prevention, and control under chapter 633, F.S.¹

Senate Bill 634 amends chapter 633, F.S., the law relating to the DSFM, to provide that it is a first degree misdemeanor for any person to intentionally or willfully install, service, test, repair, improve, or inspect a fire alarm system without being in compliance with the provisions of s. 489.5185, F.S., which relates to requirements for fire alarm system agents. The maximum punishment for a first-degree misdemeanor is 1 year in prison and a \$1,000 fine.

This bill substantially amends section 633.702 of the Florida Statutes.

¹ S. 633.052, F.S.

II. Present Situation:

Fire Alarm System Regulation within the Department of Business and Professional Regulation

Under chapter 489, F.S., the Electrical Contractors Licensing Board (ECLB) within the Department of Business and Professional Regulation (DBPR) regulates and disciplines licensed fire alarm system contractors² and certified unlimited electrical contractors.³ These contractors employ persons, termed fire alarm system agents,⁴ who must meet specified criteria under s. 489.5185, F.S. Current DBPR licensing provisions provide that only the holder of a valid and active license as a fire alarm system contractor, an unlimited electrical contractor, or a person authorized to act as a fire alarm system agent may lawfully install, service, test, repair, improve, or inspect a fire alarm system. However, there are exceptions to this provision under s. 489.503, F.S.⁵

One of the grounds for disciplinary action by the ECLB includes a licensed fire alarm system contractor or a certified unlimited electrical contractor violating the fire prevention and control provisions under chapter 633, F.S.,⁶ or the applicable rules of the State Fire Marshal.⁷ When the ECLB finds such a violation has occurred, it may impose the following sanctions: revoke or suspend a person's certification or registration; impose a fine not to exceed \$5,000 for each count or separate offense; issue a reprimand; place a contractor on probation; restrict their scope of practice; or require financial restitution to the injured consumer.⁸ The DBPR also has authority to issue stop-work orders for all *unlicensed* work on a project if there is cause to believe that electrical or alarm system work is performed without a current, valid certification or registration.⁹ The above provisions apply to licensed fire alarm system contractors and certified

² An "alarm system contractor" is defined in s. 489.505(2), F.S., as "a person whose business includes the execution of contracts requiring the ability, experience, science, knowledge, and skill to lay out, fabricate, install, maintain, alter, repair, monitor, inspect, replace, or service alarm systems for compensation, including, but not limited to, all types of alarm systems for all purposes."

³ An "unlimited electrical contractor" is defined in s. 489.505(12), F.S., as "a person who conducts business in the electrical trade field and who has the experience, knowledge, and skill to install, repair, alter, add to, or design in compliance with law, electrical wiring, fixtures, appliances, apparatus, raceways, conduit, or any part thereof, which generates, transmits, transforms, or utilizes electrical energy in any form, including the electrical installations and systems within plants and substations, all in compliance with applicable plans, specifications, codes, laws, and regulations. The term means any person, firm, or corporation that engages in the business of electrical contracting under an express or implied contract; or that undertakes, offers to undertake, purports to have the capacity to undertake, or submits a bid to engage in the business of electrical contracting; or that does itself or by or through others engage in the business of electrical contracting."

⁴ A "fire alarm system agent" is defined in s. 489.505(28), F.S., as "a person who is employed by a licensed fire alarm contractor or certified unlimited electrical contractor; who is performing duties which are an element of an activity that constitutes fire alarm system contracting requiring certification under part II; and, whose specific duties include any of the following: altering, installing, maintaining, moving, repairing, replacing, servicing, selling onsite, or monitoring a fire alarm system for compensation."

⁵ There are 20 exemptions which range from public utility construction personnel to property owners doing work repairing a single-family home.

⁶ Chapter 633, F.S., sets forth the duties of the State Fire Marshal and the Division of State Fire Marshal pertaining to fire prevention and control. The Chief Financial Officer is designated as the State Fire Marshal under s. 633.01, F.S.

⁷ Section 489.533(1)(g), F.S.

⁸ Section 489.533(2), F.S.

⁹ Section 489.531(8), F.S.

unlimited electrical contractors, but the current law provides no disciplinary sanctions against a fire alarm system agent.

Under s. 489.531, F.S., it is a first degree misdemeanor for persons to practice contracting unless the person is certified or registered and it is a first degree misdemeanor to employ persons who are not certified or registered. Licensed fire alarm system contractors and certified unlimited electrical contractors are subject to these criminal provisions, however, fire alarm systems agents are not subject to these sanctions.

Section 489.5185, F.S., provides the requirements for fire alarm systems agents who are employed by certified unlimited electrical contractors or licensed fire alarm system contractors to service fire alarm systems. This law establishes provisions relating to age, initial training, fees, criminal background checks, identification cards, and continuing education for fire alarm system agents. Once qualified, the agent receives an identification card from the electrical or alarm system contractor.

According to representatives with both the DBPR and the ECLB, they have received many complaints over the years from local fire officials concerning persons servicing fire alarm systems who are *not authorized* as fire alarm system agents. The complaints come from home owners as well as businesses. These fire officials complain that they lack authority to enforce the firesafety provisions under s. 633, F.S., against unauthorized fire alarm system agents.

Firesafety Regulation within the Division of State Fire Marshal

The Division of State Fire Marshal (DSFM) within the Department of Financial Services (DFS) is charged with administering the inspection of buildings and fire alarm systems for compliance with firesafety regulations under chapter 633, F.S. The DSFM certifies local firesafety inspectors to inspect buildings and facilities for firesafety purposes on behalf of the state or any county, municipality, or special district.¹⁰

The DSFM has limited jurisdiction over licensed fire alarm system contractors and certified unlimited electrical contractors under chapter 633, F.S.¹¹ The DSFM must approve the installation of alarm systems, may inspect such systems, and may order a licensed fire alarm system contractor or a certified unlimited electrical contractor to take corrective action to bring the alarm system into compliance with firesafety standards.¹² The Department of Business and Professional Regulation and the ECLB may also participate in these proceedings, at their discretion, but not as a party.¹³

¹⁰ Section 633.052, F.S.

¹¹ Sections 633.70-633.702, F.S.

¹² Section 633.70(1), F.S.

¹³ Section 633.70(3), F.S.

Violations of the fire safety standards can result in criminal penalties.¹⁴ Specifically, s. 633.702(3), F.S., provides that it is a first-degree misdemeanor for any fire alarm system contractor or certified unlimited electrical contractor who intentionally or willfully:

- renders inoperative any fire alarm system which is required by the State Fire Marshal's rules, except when the system is being serviced, tested, repaired, inspected, or improved;
- improperly installs, services, tests, repairs, improves, or inspects a fire alarm system; or
- knowingly combines or conspires with any person by allowing one's certificate to be used by any uncertified person with intent to evade the provisions of this act. When a licensee allows his or her license to be used by one or more companies without having any active participation in the operation or management of said companies, such act constitutes prima facie evidence of any intent to evade the provisions of this act.

However, there are currently no criminal penalties which apply to persons who install, service, or repair fire alarm systems who do not comply with the requirements for being a fire alarm system agent.

III. Effect of Proposed Changes:

Section 1. Creates subsection (4) of s. 633.702, F.S. The bill makes it a first-degree misdemeanor as provided in ss. 775.082 or 775.083, F.S., for any person to intentionally or willfully install, service, test, repair, improve, or inspect a fire alarm system without being in compliance with s. 489.5185, F.S., which provides minimum requirements for fire alarm system agents. The maximum punishment for a first-degree misdemeanor is 1 year in prison and a \$1,000 fine.

This legislation will provide the DSFM and local firesafety officials with authority under the fire prevention code (chapter 633, F.S.) to take criminal enforcement action against persons who are not in compliance with the requirements for fire alarm system agents. According to these officials, the current enforcement process they use when they discover a fire alarm systems violation on a job site is to file a written complaint with DBPR and that agency only issues a warning letter to the violator which is not an effective deterrent.

Section 2. Provides that the act shall take effect on October 1, 2005.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

¹⁴ Section 633.14, F.S., provides that agents of the State Fire Marshal shall have the same authority to make arrests, carry firearms, and make searches and seizures as the sheriff or his or her deputies in the respective counties where such investigations or inspections may be held.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Persons who install, service, or repair fire alarm systems will be subject to a criminal penalty unless they are in compliance with the requirements for being a fire alarm system agent.

C. Government Sector Impact:

According to representatives with the Division of the State Fire Marshall, this bill has no financial impact on the agency.

Any expansion of the criminal laws has the potential to increase costs, primarily for law enforcement, state attorneys and public defenders. However, it is anticipated that so few individuals are likely to be prosecuted under this section that this bill is unlikely to create a measurable increase in expenditures.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

Barcode 140730 by Banking and Insurance:

The amendment revises the bill to specify that it is a first degree misdemeanor to intentionally or willfully install, service, test, repair, improve, or inspect a fire alarm system unless a person is one of the following:

- a holder of a valid and current active license as a certified unlimited electrical contractor as defined in part II of chapter 489;
- a holder of a valid and current active license as a licensed fire alarm contractor as defined in part II of chapter 489;
- an authorized fire alarm system agent under s. 489.5185, F.S.; or
- a person who is exempt under the contract licensing provisions of s. 489.503, F.S.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
