

Introduced by \_\_\_\_\_

Date:

Subject: Home Improvement Fraud

Statement of purpose of bill as introduced: This bill proposes to amend the criminal Home Improvement Fraud statute to clarify that a contractor's failure to perform work together with the conversion of the owner's money to his or her own use is a criminal violation covered by this statute.

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 13 V.S.A. §2029 is amended to read:

Title 13: Crimes And Criminal Procedure; Chapter 47: Frauds

§ 2029. Home improvement fraud

(a) As used in this section:

(1) "Home improvement" includes the fixing, replacing, remodeling, removing, renovation, alteration, conversion, improvement, demolition, or rehabilitation of or addition to any building or land, or any portion thereof, which is used or designed to be used as a residence or dwelling unit. Home improvement shall include the construction, replacement, installation, paving, or improvement of driveways, roofs, and sidewalks, and the limbing, pruning, and removal of trees or shrubbery and other improvements to structures or upon land that is adjacent to a dwelling house.

(2) "Reasonable period of time for performance" means performance within the terms of the contract taking into account any unforeseen weather or natural disaster, which would reasonably extend the time for performance.

(b) A person commits the offense of home improvement fraud when he or she ~~knowingly~~ enters into a contract or agreement, written or oral, for \$500.00 or more, with an owner for home improvement, or into several contracts or agreements for \$2,500.00 or more in the aggregate, with more than one owner for home improvement, and he or she ~~knowingly~~:

~~(1) promises performance that he or she does not intend to perform or knows will not be performed, in whole or in part;~~

~~(2) knowingly~~ misrepresents a material fact relating to the terms of the contract or agreement or to the condition of any portion of the property involved; or

~~(3) knowingly~~ uses or employs any unfair or deceptive act or practice in order to induce, encourage, or solicit such person to enter into any contract or agreement or to modify the terms of the original contract or agreement; or

(43) when there is a declared state of emergency, knowingly charges for goods or services related to the emergency a price that exceeds two times the average price for the goods or services and the increase is not attributable to the additional costs incurred in connection with providing those goods or services; or

(4) fails to perform the contract or agreement, in whole or in part, within a reasonable period of time for performance and, when the owner requests performance or a refund of payment made, the person fails to either (a) refund the payment or make a repayment plan that is agreed to by the owner, or (b) make and comply with a definite plan for completion of the work that is agreed to by the owner.

~~.(c) It shall be a permissive inference that the person acted knowingly under subdivision (b)(1) of this section if the person fails to perform the contract or agreement and, when the owner requests performance of the contract or agreement or a refund of payments made, the person fails to:~~

~~(1) return the payments or deliver the materials or make and comply with a reasonable written repayment plan for the return of the payments; or~~

~~(2) make and comply with a reasonable written plan for completion of the contract or agreement.~~

~~(c)~~ Whenever a person is convicted of home improvement fraud or of fraudulent acts related to home improvement:

(1) the person shall notify the office of attorney general;

(2) the court shall notify the office of the attorney general; and

(3) the office of attorney general shall place the person's name on the home improvement fraud registry.

~~(ed)~~(1) A person who violates subsection (b) of this section shall be imprisoned not more than two years or fined not more than \$1,000.00, or both, if the loss to a single consumer is less than \$1,000.00.

(2) A person who is convicted of a second or subsequent violation of subdivision (1) of this subsection shall be imprisoned not more than three years or fined not more than \$5,000.00, or both.

(3) A person who violates subsection (b) of this section shall be imprisoned not more than three years or fined not more than \$5,000.00, or both, if:

(A) the loss to a single consumer is \$1,000.00 or more; or

(B) the loss to more than one consumer is \$2,500.00 or more in the aggregate.

(4) A person who is convicted of a second or subsequent violation of subdivision (3) of this subsection shall be imprisoned not more than five years or fined not more than \$10,000.00, or both.

(5) A person who violates subsection (e~~c~~) or (f~~e~~) of this section shall be imprisoned for not more than two years or fined not more than \$1,000.00, or both.

(e~~f~~) A person who is sentenced pursuant to subdivision (e~~d~~) (2), (3), or (4) of this section, or convicted of fraudulent acts related to home improvement, may engage in home improvement activities for compensation only if:

(1) the work is for a company or individual engaged in home improvement activities, and the person first notifies the company or individual of the conviction and notifies the office of attorney general of the person's current address and telephone number; the name, address, and telephone number of the company or individual for whom the person is going to work; and the date on which the person will start working for the company or individual; or

(2) the person notifies the office of attorney general of the intent to engage in home improvement activities, and that the person has filed a surety bond or an irrevocable letter of credit with the office in an amount of not less than \$50,000.00, and pays on a regular basis all fees associated with maintaining such bond or letter of credit.

(g~~f~~) The office of attorney general shall release the letter of credit at such time when:

(1) any claims against the person relating to home improvement fraud have been paid;

(2) there are no pending actions or claims against the person for home improvement fraud; and

(3) the person has not been engaged in home improvement activities for at least six years and has signed an affidavit so attesting.

~~(h) A person who is convicted of fraudulent acts related to home improvement shall be required to comply with subsections (d) and (f) of this section.~~