

1 S.104

2 Introduced by Senator Mullin

3 Referred to Committee on

4 Date:

5 Subject: Crimes; home improvement fraud; nonresidential improvement fraud

6 Statement of purpose of bill as introduced: This bill proposes to create a new
7 crime of nonresidential improvement fraud.

8 An act relating to nonresidential improvement fraud

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

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

11 § 2029. HOME IMPROVEMENT FRAUD

12 (a) As used in this section, “home improvement” includes the fixing,
13 replacing, remodeling, removing, renovation, alteration, conversion,
14 improvement, demolition, or rehabilitation of or addition to any building or
15 land, or any portion thereof, which is used or designed to be used as a
16 residence or dwelling unit. Home improvement shall include the construction,
17 replacement, installation, paving, or improvement of driveways, roofs, and
18 sidewalks, and the limbing, pruning, and removal of trees or shrubbery and
19 other improvements to structures or upon land that is adjacent to a dwelling
20 house.

1 (b)(1) A person commits the offense of home improvement fraud when he
2 or she enters into a contract or agreement, written or oral, for \$500.00 or more,
3 with an owner for home improvement, or into several contracts or agreements
4 for \$2,500.00 or more in the aggregate, with more than one owner for home
5 improvement, and he or she knowingly:

6 ~~(A)~~(1) fails to perform the contract or agreement, in whole or in
7 part; and

8 ~~(B)~~ when the owner requests performance or a refund of payment made,
9 the person fails to either:

10 ~~(i)~~(A) refund the payment; or

11 ~~(ii)~~(B) make and comply with a definite plan for completion of the
12 work that is agreed to by the owner;

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

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

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

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

3 (1) the person shall notify the Office of Attorney General;

4 (2) the court shall notify the Office of the Attorney General; and

5 (3) the Office of Attorney General shall place the person's name on the
6 Home Improvement and Nonresidential Improvement Fraud Registry.

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

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

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

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

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

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

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

4 (e) A person who is sentenced pursuant to subdivision (d)(2), (3), or (4) of
5 this section, subdivision 2029a(d)(2), (3), or (4) of this title, or convicted of
6 fraudulent acts related to home improvement, may engage in home
7 improvement activities for compensation only if:

8 (1) the work is for a company or individual engaged in home
9 improvement activities or nonresidential improvement activities, and the
10 person first notifies the company or individual of the conviction and notifies
11 the Office of Attorney General of the person's current address and telephone
12 number; the name, address, and telephone number of the company or
13 individual for whom the person is going to work; and the date on which the
14 person will start working for the company or individual; or

15 (2) the person notifies the Office of Attorney General of the intent to
16 engage in home improvement activities or nonresidential improvement
17 activities, and that the person has filed a surety bond or an irrevocable letter of
18 credit with the Office in an amount of not less than \$50,000.00, and pays on a
19 regular basis all fees associated with maintaining such bond or letter of credit.

20 (f) The Office of Attorney General shall release the letter of credit at such
21 time when:

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

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

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

8 (g) [Reserved.]

9 (h) [Repealed.]

10 Sec. 2. 13 V.S.A. § 2029a is added to read:

11 § 2029a. NONRESIDENTIAL IMPROVEMENT FRAUD

12 (a) As used in this section, “nonresidential improvement” includes the
13 fixing, replacing, remodeling, removing, renovation, alteration, conversion,
14 improvement, demolition, or rehabilitation of or addition to any building or
15 land, or any portion thereof, which is used or designed to be used as a business,
16 office, or municipal building or unit. Nonresidential improvement shall
17 include the construction, replacement, installation, paving, or improvement of
18 driveways, parking lots, signs, roofs, and sidewalks, and the limbing, pruning,
19 and removal of trees or shrubbery and other improvements to structures or
20 upon land that is adjacent to a business, office, or municipal building or unit.

1 (b) A person commits the offense of nonresidential improvement fraud
2 when he or she enters into a contract or agreement, written or oral, for
3 \$1,000.00 or more, with an owner for nonresidential improvement, or into
4 several contracts or agreements for \$5,000.00 or more in the aggregate, with
5 more than one owner for nonresidential improvement, and he or she
6 knowingly:

7 (1) fails to perform the contract or agreement, in whole or in part, and,
8 when the owner requests performance or a refund of payment made, the person
9 fails to either:

10 (A) refund the payment; or

11 (B) make and comply with a definite plan for completion of the work
12 that is agreed to by the owner;

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

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

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

1 (c) Whenever a person is convicted of nonresidential improvement fraud:

2 (1) the person shall notify the Office of Attorney General;

3 (2) the court shall notify the Office of the Attorney General; and

4 (3) the Office of Attorney General shall place the person's name on the
5 Home Improvement and Nonresidential Improvement Fraud Registry.

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

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

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

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

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

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

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

4 (e) A person who is sentenced pursuant to subdivision (d)(2), (3), or (4) of
5 this section or subdivision 2029(d)(2), (3), or (4) of this title may engage in
6 home improvement activities or nonresidential improvement activities for
7 compensation only if:

8 (1) the work is for a company or individual engaged in home
9 improvement activities or nonresidential improvement activities, and the
10 person first notifies the company or individual of the conviction and notifies
11 the Office of Attorney General of the person's current address and telephone
12 number; the name, address, and telephone number of the company or
13 individual for whom the person is going to work; and the date on which the
14 person will start working for the company or individual; or

15 (2) the person notifies the Office of Attorney General of the intent to
16 engage in home improvement activities or nonresidential improvement
17 activities, and that the person has filed a surety bond or an irrevocable letter of
18 credit with the Office in an amount of not less than \$50,000.00, and pays on a
19 regular basis all fees associated with maintaining such bond or letter of credit.

20 (f) The Office of Attorney General shall release the letter of credit at such
21 time when:

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

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

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

8 Sec. 3. EFFECTIVE DATE

9 This act shall take effect on July 1, 2017.