

Regular Session, 2014

HOUSE BILL NO. 417

BY REPRESENTATIVE LOPINTO

CRIME: Creates the crime of residential contractor fraud

1 AN ACT

2 To amend and reenact R.S. 14:202.1, relative to offenses against property; to provide for the
3 crime of residential contractor fraud; to provide for criminal penalties; to provide for
4 restitution; to delete provisions relating to home improvement fraud; and to provide
5 for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 14:202.1 is hereby amended and reenacted to read as follows:

8 §202.1. ~~Home improvement fraud~~ Residential contractor fraud; penalties

9 ~~A. Home improvement fraud is committed when a person who has~~
10 ~~contracted to perform any home improvement, or who has subcontracted for the~~
11 ~~performance of any home improvement, hereinafter referred to as "contractor",~~
12 ~~knowingly engages in any of the following actions:~~

13 (1) ~~The failure to perform any work during a forty-five-day period of time~~
14 ~~or longer after receiving payment.~~

15 (2) ~~The use by a contractor, or by an agent or employee of a contractor, of~~
16 ~~any deception, false pretense, or false promise to cause any person to enter into a~~
17 ~~contract for home improvements.~~

18 (3) ~~The damaging of any property of any person, by a contractor, or by an~~
19 ~~agent or employee of a contractor, with the intent to induce that person to enter into~~
20 ~~a contract for home improvements.~~

1 B. For purposes of this Section, "home improvement" means any alteration,
2 repair, modification, or other improvement to any immovable or movable property
3 primarily designed or used as a residence or to any structure within the residence or
4 upon the land adjacent thereto.

5 C. ~~The following shall constitute affirmative defenses to a violation of~~
6 Paragraph (A)(1) of this Section:

7 (1) ~~The work could not be performed due to excessive inclement weather~~
8 conditions, and the work to be performed is outdoors.

9 (2) ~~The work could not be performed due to the failure to receive necessary~~
10 materials.

11 (3) ~~The work could not be performed for justifiable medical reasons which~~
12 can be verified.

13 (4) ~~The work could not be performed due to the inability to access the job~~
14 site.

15 (5) ~~The parties have contracted to provisions which are different than those~~
16 provided by this statute, and those provisions are clear and unambiguous.

17 (6) ~~The contractor has written verification of job completion.~~

18 (7) ~~The work could not be performed due to the inability to obtain proper~~
19 work permits.

20 D. ~~Whoever commits the crime of home improvement fraud shall be fined~~
21 not more than one thousand dollars and shall be imprisoned for not more than six
22 months, when any of the following occur:

23 (1) ~~The home improvement fraud is an act specified in Paragraph (A)(1) of~~
24 this Section, and the person with whom the contract for the home improvement has
25 been entered into has been paid an amount of less than five hundred dollars.

26 (2) ~~The home improvement fraud is a first offense commission of an act~~
27 specified in Paragraph (A)(2) of this Section.

1 ~~(3) The home improvement fraud is an act specified in Paragraph (A)(3) of~~
2 ~~this Section, and the cost to repair the damaged property is in an amount which is~~
3 ~~less than five hundred dollars.~~

4 ~~E. Whoever commits the crime of home improvement fraud shall be~~
5 ~~imprisoned, with or without hard labor, for not more than two years, and shall be~~
6 ~~fined not more than five thousand dollars, when any of the following occur:~~

7 ~~(1) The home improvement fraud is an act specified in Paragraph (A)(1) of~~
8 ~~this Section, and the person with whom the contract for the home improvement has~~
9 ~~been entered into has been paid an amount of five hundred dollars or more, but less~~
10 ~~than one thousand five hundred dollars.~~

11 ~~(2) The home improvement fraud is a second offense commission of an act~~
12 ~~specified in Paragraph (A)(2) of this Section.~~

13 ~~(3) The home improvement fraud is an act specified in Paragraph (A)(3) of~~
14 ~~this Section, and the cost to repair the damaged property is in an amount which is~~
15 ~~valued at five hundred dollars or more, but less than one thousand five hundred~~
16 ~~dollars.~~

17 ~~F. Whoever commits the crime of home improvement fraud shall be fined~~
18 ~~not more than twenty thousand dollars and shall be imprisoned, with or without hard~~
19 ~~labor, for not more than ten years, if the home improvement fraud is committed~~
20 ~~under any of the following circumstances:~~

21 ~~(1) The home improvement fraud is an act specified in Paragraph (A)(1) of~~
22 ~~this Section, and the person with whom the contract for the home improvement has~~
23 ~~been entered into has been paid an amount of one thousand five hundred dollars or~~
24 ~~more.~~

25 ~~(2) The home improvement fraud is a third or subsequent offense~~
26 ~~commission of an act specified in Paragraph (A)(2) of this Section.~~

27 ~~(3) The home improvement fraud is an act specified in Paragraph (A)(3) of~~
28 ~~this Section, and the cost to repair the damaged property is in an amount which is~~
29 ~~valued at one thousand five hundred dollars or more.~~

1 ~~(4) The person with whom the contract for home improvement is entered~~
2 ~~into is a disabled person.~~

3 ~~(5) The person with whom the contract for home improvement is entered~~
4 ~~into is sixty years of age or older.~~

5 ~~G. For the purposes of this Section, the following shall apply:~~

6 ~~(1) Lack of knowledge of the person's age or disability shall not be a defense.~~

7 ~~(2) Restitution shall be ordered by the court.~~

8 A. Residential contractor fraud is the misappropriation or intentional taking
9 of anything of value which belongs to another, either without the consent of the other
10 to the misappropriation or taking, or by means of fraudulent conduct, practices, or
11 representations by a person who has contracted to perform any home improvement
12 or residential construction, or who has subcontracted for the performance of any
13 home improvement or residential construction. A misappropriation or intentional
14 taking may be inferred when a person does any of the following:

15 (1) Fails to perform any work during a forty-five-day period of time or
16 longer after receiving payment, unless a longer period is specified in the contract.

17 (2) Uses, or causes an agent or employee to use, any deception, false
18 pretense, or false promise to cause any person to enter into a contract for home
19 improvements or residential construction.

20 (3) Damages the property of any person with the intent to induce that person
21 to enter into a contract for home improvements or residential construction.

22 (4) Knowingly makes a material misrepresentation of fact in any application
23 for a permit required by state, municipal, or parochial law.

24 (5) Knowingly makes a material misrepresentation of fact in any lien placed
25 upon the property at issue.

26 (6) Fails to possess the required license for home improvements or
27 residential construction required by applicable state, municipal, or parochial statute.

28 (7) Knowingly employs a subcontractor who does not possess the required
29 license by applicable state, municipal, or parochial statute.

1 B. For purposes of this Section, "home improvement or residential
2 construction" means any alteration, repair, modification, construction, or other
3 improvement to any immovable or movable property primarily designed or used as
4 a residence or to any structure within the residence or upon the land adjacent to the
5 residence.

6 C.(1) When the misappropriation or intentional taking amounts to a value of
7 less than five hundred dollars, the offender shall be imprisoned for not more than six
8 months, fined not more than one thousand dollars, or both.

9 (2) When the misappropriation or intentional taking amounts to a value of
10 five hundred dollars or more, but less than one thousand five hundred dollars, the
11 offender shall be imprisoned, with or without hard labor, for not more than five
12 years, or may be fined not more than two thousand dollars, or both.

13 (3) When the misappropriation or intentional taking amounts to a value of
14 one thousand five hundred dollars or more, the offender shall be imprisoned, with
15 or without hard labor, for not more than ten years, or may be fined not more than
16 three thousand dollars, or both.

17 (4) In determining the amount of the misappropriation or intentional taking,
18 the court shall include the cost of repairing work fraudulently performed by the
19 contractor and the cost of completing work for which the contractor was paid but did
20 not complete.

21 D. In addition to the penalties provided by the provisions of this Section, a
22 person convicted of residential contractor fraud shall be ordered to make full
23 restitution to the victim and any other person who has suffered a financial loss as a
24 result of the offense. For the purposes of this Subsection, restitution to the victim
25 shall include the cost of repairing work fraudulently performed by the contractor and
26 the cost of completing work for which the contractor was paid but did not complete.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Lopinto

HB No. 417

Abstract: Creates the crime of residential contractor fraud and deletes provisions of law relating to home improvement fraud.

Proposed law creates the crime of residential contractor fraud and defines it as the misappropriation or intentional taking of anything of value which belongs to another either without the consent of the other or by means of fraudulent conduct, practices, or representations by a person who has contracted or subcontracted to perform any home improvement or residential construction. Provides for actions which may be inferred as a misappropriation or intentional taking.

Proposed law defines "home improvement or residential construction".

Proposed law requires the payment of restitution and provides for the following criminal penalties:

- (1) A fine of not more than \$1,000, imprisonment for not more than six months, or both when the misappropriation or taking amounts to a value of less than \$500.
- (2) A fine of not more than \$2,000, imprisonment with or without hard labor for not more than five years, or both when the misappropriation or taking amounts to a value of \$500 or more, but less than \$1,500.
- (3) A fine of not more than \$3,000, imprisonment with or without hard labor for not more than 10 years, or both when the misappropriation or taking amounts to a value of \$1,500 or more.

(Amends R.S. 14:202.1)