

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.

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**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)]

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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)