

Regular Session, 2014

SENATE BILL NO. 63

BY SENATOR MORRELL

CRIME/PUNISHMENT. Provides civil and criminal penalties relative to failure to meet contractual obligations for installation and maintenance of solar electric or solar thermal systems. (gov sig)

AN ACT

To amend and reenact R.S. 14:202.1(B) and (C), and to enact R.S. 14:202.1(A)(4) and 202.2, relative to criminal offenses against property; to provide criminal penalties relative to failure to meet certain contractual obligations for the installation and maintenance of a solar electric system or solar thermal system; to provide relative to definitions; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 14:202.1(B) and (C) are hereby amended and reenacted and R.S. 14:202.1(A)(4) and 202.2 are hereby enacted to read as follows:

§202.1. Home improvement fraud; penalties

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

\* \* \*

**(4) The material failure by a contractor to perform or complete the installation of a solar electric system or solar thermal system, as defined in R.S.**

1        **47:6030(C), or maintain or repair the system under the terms of a contact.**

2                B. For purposes of this Section, "home improvement" means any alteration,  
3        repair, modification, or other improvement to any immovable or movable property  
4        primarily designed or used as a residence or to any structure within the residence or  
5        upon the land adjacent thereto, **including the installation of a solar electric system**  
6        **or solar thermal system as defined in R.S. 47:6030(C).**

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

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

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

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

15                ~~(4)~~**(2)** The work could not be performed due to the inability to access the job  
16        site.

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

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

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

22                                \*           \*           \*

23        **§202.2. Solar electric and solar thermal system contractors; solar tax credit**  
24        **fraud**

25                **A. It shall be unlawful for any person who has received money from a**  
26        **contract for the sale, installation, maintenance, or repair of a solar electric**  
27        **system or solar thermal system, as defined in R.S. 47:6030(C), to claim a tax**  
28        **credit provided by R.S. 47:6030 or other provision of law against taxes owed to**  
29        **the state of Louisiana if the person:**

1                   (1) Has failed to perform or complete the installation of the system or  
2                   failed to maintain or repair the system under the terms of the contract.

3                   (2) Fails to maintain or repair the system under the terms of the contract  
4                   subsequent to claiming the tax credit.

5                   B.(1) When the aggregate amount of the tax credit claimed is one  
6                   thousand dollars or less, whoever violates the provisions of this Section upon  
7                   conviction may be fined not less than one hundred dollars nor more than five  
8                   hundred dollars, or imprisoned for not more than six months.

9                   (2) When the aggregate amount of the tax credit claimed is greater than  
10                  one thousand dollars, whoever violates the provisions of this Section upon  
11                  conviction may be fined not less than one hundred dollars nor more than five  
12                  hundred dollars, or imprisoned, with or without hard labor, for not more than  
13                  six months for each one thousand dollars of the tax credit claimed, provided  
14                  that the aggregate imprisonment shall not exceed five years.

15                  C. The district attorney shall notify the Department of Revenue in  
16                  writing of any prosecution under this Section.

17                  D. Nothing contained in this Section shall be construed to prevent the  
18                  state, through the attorney general, from asserting a cause of action to recover  
19                  damages or penalties, or assess or collect a penalty, resulting from a violation  
20                  of this Section.

21                  E. The remedies and rights provided under this Section are in addition  
22                  to and do not preclude any remedy otherwise available under law, including but  
23                  not limited to the provisions of R.S. 51:1401, et seq.

24                  F. Any person who is found liable under a civil action brought by the  
25                  attorney general resulting from a violation of this Section shall be liable to the  
26                  attorney general for all costs, expenses and fees related to investigations and  
27                  proceedings associated with the violation, including attorney fees. An action to  
28                  recover costs, expenses, fees, and attorney fees shall be ancillary to, and shall be  
29                  brought and heard in the same court as, the civil action resulting from a

1 violation of this Section.

2 G.(1) The attorney general may examine, or cause to be examined, by  
3 agents thereof, without notice, the conditions and affairs of any person who has  
4 received money from a contract for the sale, installation, maintenance, or repair  
5 of a solar electric system or solar thermal system, as defined in R.S. 47:6030(C),  
6 and who has claimed a tax credit.

7 (2) In connection with an examination authorized by this Subsection, the  
8 attorney general, or his agents, may examine under oath any person concerning  
9 the affairs and business of the person who has received money from a contract  
10 for the sale, installation, maintenance, or repair of a solar electric system or  
11 solar thermal system, as defined in R.S. 47:6030(C), and who has claimed a tax  
12 credit.

13 (3) The person who has received money from a contract for the sale,  
14 installation, maintenance, or repair of a solar electric system or solar thermal  
15 system, as defined in R.S. 47:6030(C), and who has claimed a tax credit shall  
16 pay the reasonable costs of the examination authorized by this Subsection, as  
17 determined by the attorney general, which funds shall be deposited in the state  
18 treasury for credit to the office of the attorney general. Failure to pay the  
19 examination fee within thirty days after receipt of demand from the attorney  
20 general shall automatically suspend the right of the person to do business in  
21 Louisiana until the fee is paid.

22 H. Nothing in this Section shall be construed to impose civil or criminal  
23 liability on any homeowner arising out of a contractor's failure to perform or  
24 on any third party purchasing the tax credits described in this Section from any  
25 homeowner or contractor.

26 Section 2. This Act shall become effective upon signature by the governor or, if not  
27 signed by the governor, upon expiration of the time for bills to become law without signature  
28 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
29 vetoed by the governor and subsequently approved by the legislature, this Act shall become

1 effective on the day following such approval.

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The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Alden A. Clement Jr.

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#### DIGEST

Morrell (SB 63)

Present law defines the crime of home improvement fraud.

Proposed law retains present law and adds to the definition of home improvement fraud the material failure by a contractor to perform or complete the installation of a solar electric system or solar thermal system, as defined in present law, or maintain or repair the system under the terms of a contact.

Present law defines "home improvement" as any alteration, repair, modification, or other improvement to any immovable or movable property primarily designed or used as a residence or to any structure within the residence or upon the land adjacent thereto.

Proposed law retains present law and adds that "home improvement" includes the installation of a solar electric system or solar thermal system as defined in present law.

Present law provides that following affirmative defenses to the crime of home improvement fraud:

- (1) The work could not be performed due to excessive inclement weather conditions, and the work to be performed is outdoors.
- (2) The work could not be performed due to the failure to receive necessary materials.
- (3) The work could not be performed for justifiable medical reasons that can be verified.
- (4) The work could not be performed due to the inability to access the job site.
- (5) The parties have contracted to provisions that are different than those provided by present law, and those provisions are clear and unambiguous.
- (6) The contractor has written verification of job completion.
- (7) The work could not be performed due to the inability to obtain proper work permits.

Proposed law deletes present law affirmative defenses (1), (2), (5), (6), and (7). Proposed law otherwise retains present law.

Proposed law creates the crime of solar tax credit fraud.

Proposed law makes it unlawful for any person who has received money from a contract for the sale, installation, maintenance, or repair of a solar electric system or solar thermal system, as defined in present law, to claim a tax credit provided by present law against taxes owed to the state if the person:

- (1) Has failed to perform or complete the installation of the system or failed to maintain or repair the system under the terms of the contract.
- (2) Fails to maintain or repair the system under the terms of the contract subsequent to claiming the tax credit.

Proposed law provides the following penalties for violating proposed law:

- (1) When the aggregate amount of the tax credit claimed is \$1,000 or less, the person is to be fined not less than \$100 nor more than \$500, or imprisoned for not more than six months.
- (2) When the aggregate amount of the tax credit claimed is greater than \$1,000, the person is to be fined not less than \$100 nor more than \$500, or imprisoned, with or without hard labor, for not less than 90 days nor more than six months, or both, for each \$1,000 of the tax credit claimed, provided that the aggregate imprisonment cannot exceed five years.

Proposed law provides that the district attorney is to notify the Dept. of Revenue in writing of any prosecution under proposed law.

Proposed law provides that nothing contained in proposed law is to be construed to prevent the state, through the attorney general, from asserting a cause of action to recover damages or penalties, or assess or collect a penalty, resulting from a violation of proposed law.

Proposed law provides that the remedies and rights provided under proposed law are in addition to and do not preclude any remedy otherwise available under present law.

Proposed law provides that any person who is found liable under a civil action brought by the attorney general resulting from a violation of proposed law is liable to the attorney general for all costs, expenses and fees related to investigations and proceedings associated with the violation, including attorney fees. Proposed law further provides that an action to recover costs, expenses, fees, and attorney fees is ancillary to, and is to be brought and heard in the same court as, the civil action resulting from a violation of proposed law.

Proposed law provides that the attorney general may examine, or cause to be examined, by agents thereof, without notice, the conditions and affairs of any person who has received money from a contract for the sale, installation, maintenance, or repair of a solar electric system or solar thermal system and who has claimed a tax credit. Proposed law provides that in connection with an examination authorized by proposed law, the attorney general, or his agents, may examine under oath any person concerning the affairs and business of the person who has received money from a contract for the sale, installation, maintenance, or repair of a solar electric system or solar thermal system and who has claimed a tax credit. Proposed law further provides that the person who has received money from a contract for the sale, installation, maintenance, or repair of a solar electric system or solar thermal system and who has claimed a tax credit must pay the reasonable costs of the examination authorized by proposed law, as determined by the attorney general, which funds are to be deposited in the state treasury for credit to the office of the attorney general. Proposed law further provides that failure to pay the examination fee within 30 days after receipt of demand from the attorney general will automatically suspend the right of the person to do business in Louisiana until the fee is paid.

Proposed law provides that nothing in proposed law can be construed to impose civil or criminal liability on any homeowner arising out of a contractor's failure to perform or on any third party purchasing the tax credits described in proposed law from any homeowner or contractor.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 14:202.1(B) and (C); adds R.S. 14:202.1(A)(4) and 202.2)

**Summary of Amendments Adopted by Senate****Committee Amendments Proposed by Senate Committee on Judiciary C to the original bill**

1. Adds provisions relative to solar electric and solar thermal systems to present law relative to the crime of home improvement fraud.
2. Deletes certain affirmative defenses to home improvement fraud from present law.
3. Adds provisions relative to the authority of the attorney general.
4. Adds provision exempting homeowners and third parties from civil and criminal liability.
5. Changes penalty for lowest grade offense from felony to misdemeanor.