By Senator Albritton

A bill to be entitled
An act relating to reduction of construction contracting fraud; amending s. 489.126, F.S.; deleting an intent requirement for contractor fraud offenses; revising elements of offenses; providing legislative findings; revising criminal penalties for contractor fraud offenses; amending s. 501.1375, F.S.; revising the maximum amount of a prospective buyer’s deposit for a residential dwelling which must be put into escrow; providing that a prospective buyer of a residential dwelling unit may not waive the right to have deposit funds placed in escrow; amending s. 713.345, F.S.; requiring escrow of certain payments received for the improvement of real property; providing criminal penalties; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (3) and (4) of section 489.126, Florida Statutes, are amended, and subsections (5) and (6) are added to that section, to read:

489.126 Moneys received by contractors.—
(3)(a) A contractor who receives money for repair, restoration, addition, improvement, or construction of residential real property in excess of the value of the work performed shall not, with intent to defraud the owner, fail or refuse to perform any work for any 90-day period.

(b) Proof that a contractor received money for the repair,
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restoration, addition, improvement, or construction of
residential real property and that the amount received exceeds
the value of the work performed by the contractor is shown when
and that:

1. The contractor failed to perform any of the work for
which he or she contracted during any 90-day 60-day period;

2. The failure to perform any such work during the 90-day
60-day period was not related to the owner’s termination of the
contract or a material breach of the contract by the owner; and

3. The contractor failed to perform for 90 days due to just
cause or terminated the contract without proper notification to
the owner, for an additional 30-day period after the date of
mailing of notification as specified in paragraph (c), to
perform any work for which he or she contracted,
gives rise to an inference that the money in excess of the value
of the work performed was taken with the intent to defraud.

(c) Proper notification for purposes of paragraph (b) must
be made by the contractor in the form of a letter that includes
the reason for termination of the contract or the failure to
perform sent via certified mail, return receipt requested,
mailed to the last address of the owner in the written
contracting agreement. If there is no address for the owner
listed in the contracting agreement, or no written agreement
exists, the letter must be mailed to the address of the payment
received or the letter must be filed as a notice of termination
with the building department with jurisdiction over the
improvement. Notification as contemplated in paragraph (b)
consists of a certified letter, return receipt requested, mailed
to the address of the contractor as listed in the written
contracting agreement. The letter must indicate that the
contractor has failed to perform any work for a 60 day period,
that the failure to perform the work was not the result of the
owner’s termination of the contract or a material breach of the
contract by the owner, and that the contractor must recommence
construction within 30 days after the date of mailing of the
letter. If there is no address for the contractor listed in the
written contracting agreement, or no written agreement exists,
the letter must be mailed to the address of the contractor
listed in the building permit application.

(4) The Legislature finds that vigorous enforcement of
residential contracting is necessary to protect consumers and
the state’s economy and, therefore, this section shall be
strictly construed Any person who violates any provision of this
section is guilty of theft and shall be prosecuted and punished
under s. 812.014.

(5) A violation of subsection (2) is a:
(a) Felony of the third degree, punishable as provided in
s. 775.082, s. 775.083, or s. 775.084, if the total money
received for permits is less than $20,000.
(b) Felony of the second degree, punishable as provided in
s. 775.082, s. 775.083, or s. 775.084, if the total money
received for permits is $20,000 or more but less than $50,000.
(c) Felony of the first degree, punishable as provided in
s. 775.082, s. 775.083, or s. 775.084, if the total money
received for permits is $50,000 or more.

(6) A violation of subsection (3) is a:
(a) Felony of the third degree, punishable as provided in
s. 775.082, s. 775.083, or s. 775.084, if the total money received exceeding the value of the work performed is less than $20,000.

(b) Felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the total money received exceeding the value of the work performed is $20,000 or more but less than $50,000.

(c) Felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the total money received exceeding the value of the work performed is $50,000 or more.

Section 2. Subsections (2) and (3) of section 501.1375, Florida Statutes, are amended to read:

501.1375 Deposits received for purchase of residential dwelling units; placement in escrow; waiver; exceptions.—

(2) NOTICE TO BUYER OF RIGHT TO HAVE DEPOSIT FUNDS PLACED IN ESCROW ACCOUNT.—In all offers to purchase, sales agreements, or written contracts made between a building contractor or a developer and a prospective buyer of a one-family or two-family residential dwelling unit, the building contractor or developer shall notify the prospective buyer that any deposit (up to 5 percent of the purchase price) made by the buyer to the building contractor or developer shall, unless waived in writing by the buyer, be deposited in an escrow account with a savings and loan association, bank, or trust company; an attorney who is a member of The Florida Bar; a licensed Florida real estate broker; or a title insurance company authorized to insure title to real property in this state. The funds, if escrowed, may be deposited in separate accounts or commingled with other escrow
or trust accounts. Any such offer, agreement, or contract used by the building contractor or developer with respect to the sale of a one-family or two-family residential dwelling unit shall contain the following legend in conspicuous type: THE BUYER OF A ONE-FAMILY OR TWO-FAMILY RESIDENTIAL DWELLING UNIT HAS THE RIGHT TO HAVE ALL DEPOSIT FUNDS (UP TO 10 PERCENT OF THE PURCHASE PRICE) DEPOSITED IN AN ESCROW ACCOUNT. THIS RIGHT MAY BE WAIVED, IN WRITING, BY THE BUYER.

(3) ESCROW ACCOUNTS; WITHDRAWALS.—If the buyer of a one-family or two-family residential dwelling unit does not waive the right to have deposits placed in an escrow account, the building contractor or developer shall place the funds (up to 5 percent of the purchase price) in an escrow account. The account shall be clearly denoted on the records of the escrow holder as an escrow account. All withdrawals from the account shall require the signatures of both the building contractor or developer and the buyer or the buyer’s agent, except as provided in this section.

Section 3. Section 713.345, Florida Statutes, is amended to read:

713.345 Moneys received for real property improvements; penalty for misapplication.—
(1)(a) A person, firm, or corporation, or an agent, officer, or employee thereof, who receives any payment on account of improving real property must apply such portion of any payment to the payment of all amounts then due and owing for services and labor which were performed on, or materials which were furnished for, such improvement before receipt of the payment. This paragraph does not prevent any person from
withholding any payment, or any part of a payment, in accordance
with the terms of a contract for services, labor, or materials,
or pursuant to a bona fide dispute regarding the amount due, if
any, for such services, labor, or materials.

(b) Any person who knowingly and intentionally fails to
comply with paragraph (a) is guilty of misapplication of
construction funds, punishable as follows:

1. If the amount of payments misapplied has an aggregate
value of $100,000 or more, the violator commits is guilty of a
felony of the first degree, punishable as provided in s.
775.082, s. 775.083, or s. 775.084.

2. If the amount of payments misapplied has an aggregate
value of $1,000 or more but less than $100,000, the violator
commits is guilty of a felony of the second degree, punishable
as provided in s. 775.082, s. 775.083, or s. 775.084.

3. If the amount of payments misapplied has an aggregate
value of less than $1,000, the violator commits is guilty of a
felony of the third degree, punishable as provided in s.
775.082, s. 775.083, or s. 775.084.

(c) A permissive inference that a person knowingly and
intentionally misapplied construction funds in violation of this
subsection is created when a valid lien has been recorded
against the property of an owner for labor, services, or
materials; the person who ordered the labor, services, or
materials has received sufficient funds to pay for such labor,
services, or materials; and the person has failed, for a period
of at least 45 days from receipt of the funds, to remit
sufficient funds to pay for such labor, services, or materials,
except for funds withheld pursuant to paragraph (a).
(d) A state attorney or the statewide prosecutor, upon the filing of an indictment or information against a contractor, subcontractor, or sub-subcontractor which charges such person with a violation of paragraph (b), shall forward a copy of the indictment or information to the Department of Business and Professional Regulation. The Department of Business and Professional Regulation shall promptly open an investigation into the matter and, if probable cause is found, shall furnish a copy of any investigative report to the state attorney or statewide prosecutor who furnished a copy of the indictment or information and to the owner of the property which is the subject of the investigation.

(2)(a) A person, firm, or corporation or an agent, officer, or employee thereof who receives any payment on account of improving real property more than 5 percent of the project’s cost must place such payment in an escrow account with a savings and loan association, bank, or trust company; an attorney who is a member of The Florida Bar; or a licensed Florida real estate broker, or must provide a certified letter detailing the amount and date of any payments made to subcontractors out of the payment received within 30 days after receipt of payment.

(b) A person who violates paragraph (a) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) This section does not apply to mortgage bankers or their agents, servants, or employees for their acts in the usual course of the business of lending or disbursing mortgage funds.

Section 4. This act shall take effect July 1, 2019.