

By Senator Baxley

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1                                   A bill to be entitled  
 2           An act relating to consumer protection; amending s.  
 3           489.126, F.S.; revising the definition of the term  
 4           "contractor"; reducing the period of time within which  
 5           a contractor must begin to perform certain work on  
 6           residential real property after receiving initial  
 7           payment for such work and during which the contractor  
 8           may refuse to perform substantial work on such  
 9           property; defining the term "substantial work"; making  
 10          technical changes; amending s. 501.022, F.S.; removing  
 11          an exemption from permitting requirements for certain  
 12          solicitors, salespersons, and agents; providing an  
 13          effective date.

14  
 15 Be It Enacted by the Legislature of the State of Florida:

16  
 17           Section 1. Section 489.126, Florida Statutes, is amended to  
 18           read:

19           489.126 Moneys received by contractors.—

20           (1) For purposes of this section, the term "contractor" has  
 21           the same meaning as provided ~~includes all definitions as set~~  
 22           ~~forth~~ in s. 489.105(3), and includes any person who performs,  
 23           contracts to perform, or promises to perform services performing  
 24           ~~or contracting or promising to perform work~~ described in that  
 25           subsection, or who provides or performs, contracts to provide or  
 26           perform, or promises to provide or perform goods or services,  
 27           respectively, related to a residential home and the extended  
 28           parcel of land on which the home is located, including, but not  
 29           limited to, driveways, lawns, trees, gardens, landscaping areas,

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30 walls, and other vegetation or fixtures located therein, without  
31 regard to the licensure of the person.

32 (2) A contractor who receives, as initial payment, money  
33 totaling more than 10 percent of the contract price for the  
34 repair, restoration, improvement, or construction of or addition  
35 to residential real property must:

36 (a) Apply for permits necessary to do work within 30 days  
37 after the date payment is made, unless ~~except where~~ the work  
38 does not require a permit under the applicable codes and  
39 ordinances, and

40 (b) Start the work within 30 ~~90~~ days after the date all  
41 necessary permits for work, if any, are issued,  
42  
43 unless the person who made the payment agreed, in writing, to a  
44 longer period to apply for the necessary permits or start the  
45 work or to longer periods for both.

46 (3) (a) A contractor who receives money for repair,  
47 restoration, addition, improvement, or construction of  
48 residential real property in excess of the value of the work  
49 performed may ~~shall~~ not, with intent to defraud the owner, fail  
50 or refuse to perform any substantial work for any 30-day ~~90-day~~  
51 period after the date all necessary permits for work, if any,  
52 are issued.

53 (b) Proof that a contractor received money for ~~the~~ repair,  
54 restoration, addition, improvement, or construction of  
55 residential real property and that the amount received exceeds  
56 the value of the work performed by the contractor and that:

57 1. The contractor failed to perform any substantial ~~of the~~  
58 work for which he or she contracted during any 30-day ~~60-day~~

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59 period;

60 2. The failure to perform any substantial ~~such~~ work during  
61 the 30-day ~~60-day~~ period was not related to the owner's  
62 termination of the contract or a material breach of the contract  
63 by the owner; and

64 3. The contractor failed, for an additional 30-day period  
65 after the ~~date of mailing of~~ notification as specified in  
66 paragraph (c), to perform any substantial work for which he or  
67 she contracted,

68  
69 gives rise to an inference that the money in excess of the value  
70 of the work performed was taken with the intent to defraud.

71 (c) Notification pursuant to ~~as contemplated in~~ paragraph  
72 (b) consists of a certified letter, return receipt requested,  
73 mailed to the address of the contractor as listed in the written  
74 contracting agreement. The letter must indicate that the  
75 contractor has failed to perform any substantial work for a 30-  
76 day ~~60-day~~ period, that the failure to perform the work was not  
77 the result of the owner's termination of the contract or a  
78 material breach of the contract by the owner, and that the  
79 contractor must resume work ~~recommence construction~~ within 30  
80 days after the date the letter is mailed ~~of mailing of the~~  
81 ~~letter~~. If there is not an ~~no~~ address for the contractor listed  
82 in the written contracting agreement, or if a ~~no~~ written  
83 contracting agreement does not exist ~~exists~~, the letter must be  
84 mailed to the address of the contractor listed in the building  
85 permit application.

86 (d) For the purposes of this subsection, the term  
87 "substantial work" means work performed by the contractor that

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88 equals or exceeds the amount of money received by the contractor  
89 for work to be performed on the residential real property.

90 (4) A ~~Any~~ person who violates ~~any provision of~~ this section  
91 commits is guilty of theft, punishable as provided in and shall  
92 be prosecuted and punished under s. 812.014.

93 Section 2. Paragraphs (a) and (b) of subsection (1) of  
94 section 501.022, Florida Statutes, are amended to read:

95 501.022 Home solicitation sale; permit required.-

96 (1) (a) It is unlawful for any person to conduct any home  
97 solicitation sale, as defined in s. 501.021, or to supervise  
98 excluded minors conducting such sales provided in subparagraph  
99 (b)4. ~~subparagraph (b)5.~~, in this state without first obtaining  
100 a valid home solicitation sale permit as provided in this  
101 section.

102 (b) The following are excluded from the operation of this  
103 section:

104 1. Bona fide agents, business representatives, or  
105 salespersons making calls or soliciting orders at the usual  
106 place of business of a customer regarding products or services  
107 for use in connection with the customer's business.

108 2. Solicitors, salespersons, or agents making a call or  
109 business visit upon the express invitation, oral or written, of  
110 an inhabitant of the premises or her or his agent.

111 3. Telephone solicitors, salespersons, or agents making  
112 calls which involve transactions that are unsolicited by the  
113 consumer and consummated by telephone and without any other  
114 contact between the buyer and the seller or its representative  
115 before ~~prior to~~ delivery of the goods or performance of the  
116 services.

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117 ~~4. Solicitors, salespersons, or agents conducting a sale,~~  
118 ~~lease, or rental of consumer goods or services by sample,~~  
119 ~~catalog, or brochure for future delivery.~~

120 4.5. Minors, as defined in s. 1.01(13), conducting home  
121 solicitation sales under the supervision of an adult supervisor  
122 who holds a valid home solicitation sale permit. Minors excluded  
123 from operation of this section must, however, carry personal  
124 identification which includes their full name, date of birth,  
125 residence address, and employer and the name and permit number  
126 of their adult supervisor.

127 5.6. Those sellers or their representatives that are  
128 currently regulated as to the sale of goods and services by  
129 chapter 475 or chapter 497.

130 6.7. Solicitors, salespersons, or agents making calls or  
131 soliciting orders on behalf of a religious, charitable,  
132 scientific, educational, or veterans' institution or  
133 organization holding a sales tax exemption certificate under s.  
134 212.08(7).

135 Section 3. This act shall take effect July 1, 2019.