

1 A bill to be entitled
 2 An act relating to construction contracting offenses;
 3 amending s. 489.126, F.S.; providing a just cause
 4 defense for certain criminal offenses and disciplinary
 5 violations; providing a rebuttable presumption;
 6 deleting an intent requirement for contractor
 7 offenses; revising elements of offenses; providing
 8 legislative findings; revising criminal penalties for
 9 contractor offenses; providing an effective date.

10
 11 Be It Enacted by the Legislature of the State of Florida:

12
 13 Section 1. Section 489.126, Florida Statutes, is amended
 14 to read:

15 489.126 Moneys received by contractors.—

16 (1) For purposes of this section, the term "contractor"
 17 includes all definitions as set forth in s. 489.105(3), and any
 18 person performing or contracting or promising to perform work
 19 described therein, without regard to the licensure of the
 20 person.

21 (2) (a) A contractor who receives, as initial payment,
 22 money totaling more than 10 percent of the contract price for
 23 repair, restoration, improvement, or construction to residential
 24 real property must:

25 1.~~(a)~~ Apply for permits necessary to do work within 30

26 | days after the date payment is made, except where the work does
 27 | not require a permit under the applicable codes and ordinances;7
 28 | and

29 | ~~2.(b)~~ Start the work within 90 days after the date all
 30 | necessary permits for work, if any, are issued,

31 |
 32 | unless the contractor has just cause for failing to apply for
 33 | the necessary permits, starting the work, or refunding the
 34 | payment, or unless the person who made the payment agreed, in
 35 | writing, to a longer period to apply for the necessary permits
 36 | or start the work or to longer periods for both.

37 | (b)1. There is a presumption that a contractor does not
 38 | have just cause if the contractor fails to apply for the
 39 | necessary permits, start the work, or refund payments, within 30
 40 | days after receiving written demand to apply for the necessary
 41 | permits, start the work, or refund the payment, from the person
 42 | who made the payment.

43 | 2. Written demand must be made to the contractor in the
 44 | form of a letter sent via certified mail, return receipt
 45 | requested, which includes a demand to apply for the necessary
 46 | permits, start the work, or refund the payment, mailed to the
 47 | address listed in the contracting agreement. If there is no
 48 | address for the contractor listed in the contracting agreement,
 49 | or no written agreement exists, the letter must be mailed to the
 50 | address listed with the Department of Business and Professional

51 Regulation for licensing purposes or the local construction
52 industry licensing board, if applicable.

53 (c) The burden is on the contractor to prove just cause
54 and to rebut the presumption under paragraph (b).

55 (3) (a) A contractor who receives money for repair,
56 restoration, addition, improvement, or construction of
57 residential real property in excess of the value of the work
58 performed shall not, ~~with intent to defraud the owner,~~ fail or
59 refuse to perform any work for any 90-day period.

60 (b) It is prima facie evidence ~~Proof~~ that a contractor
61 received money for the repair, restoration, addition,
62 improvement, or construction of residential real property and
63 that the amount received exceeds the value of the work performed
64 by the contractor when ~~and that~~:

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

67 2. The failure to perform any such work during the 90-day
68 ~~60-day~~ period was not related to the owner's termination of the
69 contract or a material breach of the contract by the owner; and

70 3. The contractor failed, to perform for 90 days without
71 just cause or terminated the contract without proper
72 notification to the owner.

73 (c)1. There is a presumption that a contractor does not
74 have just cause if the contractor fails to perform work, or
75 refund the money received in excess of the value of the work

76 performed, within 30 days after receiving a written demand to
77 perform the work, or refund the money received in excess of the
78 value of the work performed, from the person who made the
79 payment.

80 2. Written demand must be made to the contractor in the
81 form of a letter sent via certified mail, return receipt
82 requested, which includes a demand to perform work, or refund
83 the money received in excess of the value of the work performed,
84 mailed to the address listed in the contracting agreement. If
85 there is no address for the contractor listed in the contracting
86 agreement, or no written agreement exists, the letter must be
87 mailed to the address listed with the department for licensing
88 purposes or the local construction industry licensing board, if
89 applicable ~~for an additional 30-day period after the date of~~
90 ~~mailing of notification as specified in paragraph (c), to~~
91 ~~perform any work for which he or she contracted,~~

92
93 ~~gives rise to an inference that the money in excess of the value~~
94 ~~of the work performed was taken with the intent to defraud.~~

95 ~~(c) Notification as contemplated in paragraph (b) consists~~
96 ~~of a certified letter, return receipt requested, mailed to the~~
97 ~~address of the contractor as listed in the written contracting~~
98 ~~agreement. The letter must indicate that the contractor has~~
99 ~~failed to perform any work for a 60-day period, that the failure~~
100 ~~to perform the work was not the result of the owner's~~

101 ~~termination of the contract or a material breach of the contract~~
102 ~~by the owner, and that the contractor must recommence~~
103 ~~construction within 30 days after the date of mailing of the~~
104 ~~letter. If there is no address for the contractor listed in the~~
105 ~~written contracting agreement, or no written agreement exists,~~
106 ~~the letter must be mailed to the address of the contractor~~
107 ~~listed in the building permit application.~~

108 (d) The burden is on the contractor to prove just cause
109 and to rebut the presumption under paragraph (c).

110 (e) Proper notification of termination for purposes of
111 paragraph (b) must be made by the contractor in the form of a
112 letter sent via certified mail, return receipt requested, which
113 includes the reason for termination of the contract or the
114 reason for failure to perform mailed to the last address of the
115 owner in the written contracting agreement. If there is no
116 address for the owner listed in the contracting agreement, or no
117 written agreement exists, the letter must be mailed to the
118 address where the work was to be performed or the address listed
119 on the permit, if applicable.

120 (4) The Legislature finds that vigorous enforcement of
121 residential contracting laws are necessary to protect consumers
122 and the state's economy, and therefore, this section shall be
123 strictly construed ~~Any person who violates any provision of this~~
124 ~~section is guilty of theft and shall be prosecuted and punished~~
125 ~~under s. 812.014.~~

126 (5) A violation of subsection (2) is a:

127 (a) Misdemeanor of the first degree, punishable as
128 provided in s. 775.082 or s. 775.083, if the total money
129 received is less than \$1,000.

130 (b) Felony of the third degree, punishable as provided in
131 s. 775.082, s. 775.083, or s. 775.084, if the total money
132 received is at least \$1,000 but less than \$20,000.

133 (c) Felony of the second degree, punishable as provided in
134 s. 775.082, s. 775.083, or s. 775.084, if the total money
135 received is at least \$20,000 but less than \$50,000.

136 (d) Felony of the first degree, punishable as provided in
137 s. 775.082, s. 775.083, or s. 775.084, if the total money
138 received is \$50,000 or more.

139 (6) A violation of subsection (3) is a:

140 (a) Misdemeanor of the first degree, punishable as
141 provided in s. 775.082 or s. 775.083, if the total money
142 received exceeding the value of the work performed is less than
143 \$1,000.

144 (b) Felony of the third degree, punishable as provided in
145 s. 775.082, s. 775.083, or s. 775.084, if the total money
146 received exceeding the value of the work performed is \$1,000 or
147 more but less than \$20,000.

148 (c) Felony of the second degree, punishable as provided in
149 s. 775.082, s. 775.083, or s. 775.084, if the total money
150 received exceeding the value of the work performed is \$20,000 or

151 more but less than \$50,000.

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

156 Section 2. This act shall take effect October 1, 2019.