

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 time period within which a
 5 contractor must perform substantial 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";
 10 amending s. 501.022, F.S.; removing an exemption from
 11 permitting requirements for certain solicitors,
 12 salespersons, and agents; conforming a cross-
 13 reference; providing an 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
 18 to read:

19 489.126 Moneys received by contractors.—

20 (1) For purposes of this section, the term "contractor"
 21 has 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,
 30 | walls, and other vegetation or fixtures located thereon ~~therein,~~
 31 | without 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 the repair,
 47 | restoration, ~~addition,~~ improvement, or construction of or
 48 | addition to residential real property in excess of the value of
 49 | the work performed may ~~shall~~ not, with intent to defraud the
 50 | owner, fail or refuse to perform any substantial work for any

51 30-day ~~90-day~~ period after the date all necessary permits for
 52 work, if any, are issued.

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

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

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

65 3. The contractor failed, for an additional 30-day period
 66 after the ~~date of mailing of~~ notification as specified in
 67 paragraph (c), to perform any substantial work for which he or
 68 she contracted,
 69
 70 gives rise to an inference that the money in excess of the value
 71 of the work performed was taken with the intent to defraud.

72 (c) Notification pursuant to ~~as contemplated in~~ paragraph
 73 (b) consists of a certified letter, return receipt requested,
 74 mailed to the address of the contractor as listed in the written
 75 contracting agreement. The letter must indicate that the

76 contractor has failed to perform any substantial work for a 30-
 77 day ~~60-day~~ period, that the failure to perform the work was not
 78 the result of the owner's termination of the contract or a
 79 material breach of the contract by the owner, and that the
 80 contractor must resume work ~~recommence construction~~ within 30
 81 days after the date the letter is mailed ~~of mailing of the~~
 82 ~~letter~~. If there is not an ~~no~~ address for the contractor listed
 83 in the written contracting agreement, or if a ~~no~~ written
 84 contracting agreement does not exist ~~exists~~, the letter must be
 85 mailed to the address of the contractor listed in the building
 86 permit application.

87 (d) For the purposes of this subsection, the term
 88 "substantial work" means work performed by the contractor that
 89 equals or exceeds the amount of money received by the contractor
 90 for work to be performed on the residential real property.

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

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

96 501.022 Home solicitation sale; permit required.—

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

101 solicitation sale permit as provided in this 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.

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.