

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: SB 854

INTRODUCER: Senator Ingoglia

SUBJECT: Consumer Protection

DATE: March 24, 2025

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Renner	McKay	CM	Pre-meeting
2.			CJ	
3.			FP	

I. Summary:

SB 854 creates s. 501.0195, F.S., to require unlicensed vendors who receive money as an initial payment for providing home repair services to apply for permits within 30 days of receiving payment and initiate the work within 30 days if no permit is required, or initiate work within 30 days after the issuance of a permit.

Unless the customer agreed in writing to a longer period, an unlicensed vendor who has received payment fails to apply for permits within 30 days of receiving payment and initiate the work within 30 days if no permit is required, or initiate work within 30 days after the issuance of a permit, commits:

- A first degree misdemeanor if the total money received is less than \$1,000.
- A third degree felony if the total money received is less than \$1,000 and the unlicensed vendor has committed a second or subsequent violation within a 3-year period.
- A third degree felony if the total money received is greater than \$1,000 but less than \$20,000.
- A second degree felony if the total money received is greater than \$20,000 but less than \$200,000.
- A first degree felony if the total amount received is greater than \$200,000.

If an unlicensed vendor has just cause for failing to apply for the necessary permits or start the work, the unlicensed vendor has a complete defense against the crime.

The bill defines an unlicensed vendor as a person who provides residential home services without being a licensed contractor.

There is a rebuttable presumption that a contractor does not have just cause if the owner sends a certified letter to the contractor demanding that the contractor apply for permits, start work, or refund the money and the contractor fails to apply for the permits, start the work, or refund the

payment within 30 days of receiving the letter. The burden is on the contractor to prove just cause or rebut the presumption that the contractor does not have just cause.

The bill specifies that it is prima facie evidence that an unlicensed vendor received money to provide services in an amount that exceeds the value of the work he or she performed if:

- The unlicensed vendor failed to perform any work for 30 days;
- The failure to perform the work was not related to the owner terminating or materially breaching the contract; or
- The unlicensed vendor failed to perform work without just cause or terminated the contract without proper notice to the owner.

There is a rebuttable presumption that an unlicensed vendor does not have just cause if the owner sent a certified letter to the unlicensed vendor demanding that the unlicensed vendor perform work or refund the money in excess of the value of the work performed, and the unlicensed vendor does not refund the money or perform work within 30 days of receiving the letter.

The bill provides that the burden is on the unlicensed vendor to prove just cause or rebut the presumption that the unlicensed vendor does not have just cause.

The bill amends s. 501.022, F.S., relating to the requirements for Home Solicitation Sale permits to specify that business cards do not qualify as samples, catalogs, or brochures for solicitors, salespersons, and agents involved in sales or leases and thus do not need to obtain a permit.

The bill may have a positive indeterminate fiscal impact (unquantifiable increase in prison and jail beds) on the Department of Corrections and local jails. *See Section V. Fiscal Impact Statement.*

The bill takes effect July 1, 2025.

II. Present Situation:

Background

A contractor is a person who takes on a job or submits a bid to construct, repair, alter, remodel, add to, demolish, subtract from, or improve any building or structure, including related improvements to real estate, or for resale to others, and who has a job scope substantially similar to one or more of those described in s. 489.105(3)(a)-(q), F.S.¹

¹ These job scopes include a: general contractor, building contractor, residential contractor, sheet metal contractor, roofing contractor, class A air-conditioning contractor, class B air-conditioning contractor, class C-air-conditioning contractor, mechanical contractor, commercial pool/spa contractor, residential pool/spa contractor, swimming pool/spa servicing contractor, plumbing contractor, underground utility and excavation contractor, solar contractor, pollutant storage systems contractor, and specialty contractor.

Criminal Offenses

Construction Theft

A contractor commits theft under s. 489.126, F.S., if the contractor receives money totaling more than 10 percent of the contract price for repair, restoration, improvement, or construction to residential real property and failed to:²

- Apply for any necessary permits within 30 days after the payment is made, or
- Start the work within 90 days after the date all necessary permits are issued; and
- The person who made the payment did not agree, in writing, to a longer period of time to apply for the necessary permits, to start the work, or to longer periods for both.

If a contractor has just cause for failing to apply for the necessary permits or start the work, the contractor has a complete defense against the charge that the contractor committed construction theft. There is a rebuttable presumption that a contractor does not have just cause if:³

- The owner sent a certified letter to the contractor demanding that the contractor apply for permits, start work, or refund the money; and
- The contractor failed to apply for the permits, start the work, or refund the payment within 30 days of receiving the letter.

The burden is on the contractor to prove just cause or rebut the presumption that the contractor does not have just cause.

Construction Fraud

It is prima facie evidence that a contractor committed construction fraud, without consideration of the intent of the contractor if the state shows that:⁴

- The contractor failed to perform any work for 90 days;
- The failure to perform the work during the 90-day period was not related to the owner terminating or materially breaching the contract; or
- The contractor failed to perform work for the 90-day period without just cause or terminated the contract without proper notice to the owner.

There is a rebuttable presumption that a contractor does not have just cause if the owner sent a certified letter to the contractor demanding that the contractor perform work or refund the money in excess of the value of the work performed, and the contractor does not refund the money or perform work within 30 days of receiving the letter.⁵

A contractor must notify the property owner of the contract termination or explain the contractor's failure to perform. The contractor must send the notification by certified mail to the last address provided in the written contracting agreement, or if none is listed or no written

² Section 489.126(2)(a), F.S.

³ Section 489.126(2)(b), F.S.

⁴ Section 489.126(3)(b), F.S.

⁵ *Id.*

agreement exists the notification must be mailed to the address where work was to be performed or to the address listed on the permit.⁶

Penalties

The penalties for construction theft and construction fraud and the offense levels are as follows:

Total Money Received	Offense Level
≥ \$200,000	First Degree Felony ⁷
≥\$20,000 but < \$200,000	Second Degree Felony ⁸
≥\$1,000 but < \$20,000	Third Degree Felony ⁹
<\$1,000	First Degree Misdemeanor ¹⁰

From 2022 to 2025, 383 arrests and charges were filed, 377 charges were prosecuted, and 116 dispositions of guilt or adjudication were withheld on construction theft and fraud.¹¹

Theft

A person commits theft when he or she knowingly obtains the property of another person with the intent to permanently or temporarily deprive the other person of a right to the property or a benefit from the property or appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.¹² The defendant must have the intent to commit the crime at the time of, or prior to, the taking.¹³

Permits Required for Home Solicitation Sales

A home solicitation sale is defined as a sale, lease, or rental of consumer goods or services that takes place in a seller’s home and involves a purchase price of more than \$25.¹⁴ To conduct a home solicitation sale, the seller must obtain a Home Solicitation Sale permit.¹⁵ However, the following solicitors are exempt from the permit requirement:

- Bona fide agents, business representatives, or salespersons making calls or soliciting orders at the usual place of business of a customer regarding products or services for use in connection with the customer’s business.
- Solicitors, salespersons, or agents making calls or business visits at the invitation of an inhabitant of the premises or their agent.

⁶ *Id.*

⁷ A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

⁸ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

⁹ A third degree felony is punishable by up to 5 years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

¹⁰ A first degree misdemeanor is punishable by up to 1 year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

¹¹ Florida Office of State Courts Administrator, *Statewide Criminal Actions, Fl. Stat. 489.126, F.S., January 1, 2022-March 20, 2025*. On file with Senate Commerce and Tourism Committee.

¹² Section 812.014(1)(a), F.S.

¹³ See *Stramaglia v. State*, 603 So. 2d 536, 537-38 (Fla. 4th DCA 1992).

¹⁴ Section 501.021(1), F.S.

¹⁵ Section 501.022(1)(a), F.S.

- Telephone solicitors, salespersons, or agents calling or visiting the home by express invitation.
- Solicitors, salespersons, or agents conducting a sale, lease, or rental of consumer goods or services by sample, catalog, or brochure for future delivery.
- Minors conducting home solicitation sales under adult supervision who holds a valid home solicitation permit. Minors must carry certain personal identification.
- Sellers or their representatives regulated as to the sale of goods and services under chapters 475, F.S., (real estate brokers, sales associates, schools, and appraisers) and 495, F.S., (registration and protection of trademarks).
- Solicitors, salespersons, or agents making calls or soliciting orders for religious, charitable, scientific, educational, or veterans' organizations holding a sales tax exemption under s. 212.08(7), F.S.

III. Effect of Proposed Changes:

Section 1 creates s. 501.0195, F.S., to require unlicensed vendors who receive money as an initial payment for providing home repair services to apply for permits within 30 days of receiving payment and initiate the work within 30 days if no permit is required or initiate work within 30 days after the issuance of a permit.

Unless the customer agreed in writing to a longer period, an unlicensed vendor who has received payment fails to apply for permits within 30 days of receiving payment and initiate the work within 30 days if no permit is required, or initiate work within 30 days after the issuance of a permit, commits:

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If an unlicensed vendor has just cause for failing to apply for the necessary permits or start the work, the unlicensed vendor has a complete defense against the crime.

The bill defines an unlicensed vendor as a person who is not a contractor and who provides or promises to provide services related to a residential home or the extended parcel of land on which the home is located, including, but not limited to, driveways, lawns, trees, gardens, landscaping areas, walls, fences, or other vegetation or fixtures located on the premises.

There is a rebuttable presumption that a contractor does not have just cause if the owner sends a certified letter to the contractor demanding that the contractor apply for permits, start work, or refund the money and the contractor fails to apply for the permits, start the work, or refund the payment within 30 days of receiving the letter. The burden is on the contractor to prove just cause or rebut the presumption that the contractor does not have just cause.

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The bill provides that the burden is on the unlicensed vendor to prove just cause or rebut the presumption that the unlicensed vendor does not have just cause.

Section 2 amends s. 501.022, F.S., relating to the requirements for Home Solicitation Sale permits to specify that business cards do not qualify as samples, catalogs, or brochures for solicitors, salespersons, and agents involved in sales or leases and thus do not need to obtain a permit.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may prevent or reduce fraud in performing certain residential home repair services by unlicensed vendors.

C. Government Sector Impact:

The bill may have a positive indeterminate fiscal impact on the jail and prison bed population by creating new criminal penalties for an unlicensed vendor who agrees to do home repairs from an initial payment and doesn't apply for a permit within 30 days, start work within 30 days, or refund payment within 30 days.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 501.022 of the Florida Statutes.

This bill creates section 501.0195 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.