

*****Adopted*****

AMENDMENT No. 1 PROPOSED TO

House Bill NO. 1121

By Senator(s) Moffatt

1 **AMEND** by inserting after line 235 the following and
2 **renumbering subsequent sections:**

3 **SECTION *.** (1) As used in this section, unless the context
4 clearly requires otherwise:

5 (a) "Home repair" means the fixing, replacing,
6 altering, converting, modernizing, improving of or the making of
7 an addition to any real property primarily designed or used as a
8 residence.

9 (i) Home repair shall include the construction,
10 installation, replacement or improvement of driveways, swimming
11 pools, porches, kitchens, chimneys, chimney liners, garages,
12 fences, fallout shelters, central air conditioning, central
13 heating, boilers, furnaces, hot water heaters, electrical wiring,
14 sewers, plumbing fixtures, storm doors, storm windows, awnings and
15 other improvements to structures within the residence or upon the
16 land adjacent thereto.

17 (ii) Home repair shall not include the sale,
18 installation, cleaning or repair of carpets; the sale of goods or
19 materials by a merchant who does not directly or through a
20 subsidiary perform any work or labor in connection with the
21 installation or application of the goods or materials; the repair,
22 installation, replacement or connection of any home appliance
23 including, but not limited to, disposals, refrigerators, ranges,

garage door openers, television antennas, washing machines, telephones or other home appliances when the person replacing, installing, repairing or connecting such home appliance is an employee or agent of the merchant that sold the home appliance; or landscaping.

(b) "Person" means any individual, partnership, corporation, business, trust or other legal entity.

(c) "Residence" means a single or multiple family dwelling, including, but not limited to, a single family home, apartment building, condominium, duplex, townhouse or mobile home which is used or intended to be used by its occupants as their dwelling place.

(2) A person commits the offense of home repair fraud when he knowingly:

(a) Enters into an agreement or contract, written or oral, with a person for home repair, and he knowingly:

(i) Misrepresents a material fact relating to the terms of the contract or agreement or the preexisting or existing condition of any portion of the property involved, or creates or confirms another's impression which is false and which he does not believe to be true, or promises performance which he does not intend to perform or knows will not be performed;

(ii) Uses or employs any deception, false pretense or false promises in order to induce, encourage or solicit such person to enter into any contract or agreement;

(iii) Misrepresents or conceals either his real name, the name of his business or his business address; or

(iv) Uses deception, coercion or force to obtain the victim's consent to modification of the terms of the original contract or agreement;

(b) Damages the property of a person with the intent to enter into an agreement or contract for home repair; or

(c) Misrepresents himself or another to be an employee or agent of any unit of the federal, state or municipal government or any other governmental unit, or an employee or agent of any

public utility, with the intent to cause a person to enter into, with himself or another, any contract or agreement for home repair.

(4) Intent and knowledge shall be determined by an evaluation of all circumstances surrounding a transaction and the determination shall not be limited to the time of contract or agreement.

(5) Substantial performance shall not include work performed in a manner of little or no value or work that fails to comply with the appropriate municipal, county, state or federal regulations or codes.

(6) Violation of this section shall be punished as follows:

(a) A first conviction under this section shall be a misdemeanor and shall be punished by a fine not to exceed One Thousand Dollars (\$1,000.00) or imprisonment in the county jail not to exceed six (6) months, or both.

(b) A second or subsequent conviction under this section shall be punished as follows:

(i) By imprisonment in the custody of the Department of Corrections not to exceed two (2) years when the amount of the fraud is more than One Thousand Dollars (\$1,000.00) but less than Five Thousand Dollars (\$5,000.00).

(ii) By imprisonment in the custody of the Department of Corrections not to exceed five (5) years when the amount of the fraud is Five Thousand Dollars (\$5,000.00) or more, but less than Ten Thousand Dollars (\$10,000.00).

(iii) By imprisonment in the custody of the Department of Corrections not to exceed ten (10) years when the amount of the fraud is Ten Thousand Dollars (\$10,000.00) or more.

(iv) As a misdemeanor punishable by imprisonment in the county jail for not more than six (6) months when the amount of the fraud is One Thousand Dollars (\$1,000.00) or less.

(3) In addition to any other sentence it may impose, the court shall order that the defendant shall make restitution to the victim, either within a specified period of time or in specified

94 installments. The order shall not be enforceable during the
95 period of imprisonment unless the court expressly finds that the
96 defendant has assets to pay the amounts ordered at the time of
97 sentencing. Intentional refusal to obey the restitution order or
98 a failure by a defendant to make a good faith effort to make such
99 restitution may be considered a violation of the defendant's
100 probation and may be cause for revocation of his probation or
101 suspension of sentence.

102 **FURTHER, amend the title by inserting after the semicolon on**
103 **line 17 the following:**

104 TO CREATE THE OFFENSE OF HOME REPAIR FRAUD; TO ENACT EXCEPTIONS;
105 TO ENACT DEFINITIONS; TO PRESCRIBE THE ELEMENTS OF THE OFFENSE AND
106 THE PUNISHMENT THEREFOR;