

OFFICE OF DISTRICT ATTORNEY
STEPHEN M. HOWE, DISTRICT ATTORNEY

January 31, 2013

House Corrections and Juvenile Justice Committee
Attention: Representative John Rubin, Chairman
State Capitol, Room 151B South
Topeka, Kansas 66612-1504

Re: House Bill 2065

Dear Chairman Rubin,

Thank you for the opportunity to submit our written response in support of HB 2065.

Over the last 15 years, our office has seen a consistent pattern of fraud being perpetrated by unscrupulous home repair contractors. The vast majority of these victims are elderly citizens. These actions have a serious impact on the victims' largest investment, their home. The contractor will often do shoddy work, leave the home in disrepair and cause the homeowner to pay another contractor to fix the damage done by this offender. The ability to prosecute these perpetrators by using the criminal statutes, such as theft, is limited since the criminal intent requirement cannot be met when money was taken on a "future promise." For example, if you give me \$5,000 to remodel my house and I tell you, "with your \$5,000, I am going to purchase materials and supplies beginning next Monday." This is a future promise which prevents criminal prosecution.

The only other option to help victims is by attempting a civil action under the Consumer Protection Act. However, these actions result in limited outcomes. Once a default judgment is obtained against contractors, there is no way to enforce it and obtain restitution for the victims. Many times, the fraudulent contractors will change the name of the company and continue the criminal enterprise, or file bankruptcy and become judgment proof.


This bill gives prosecutors the leverage to force the contractors to repay the victims with the threat of jail time looming over their heads. History has shown that criminal prosecution provides the leverage needed to obtain the restitution and help reduce the likelihood of reoffending.

This type of criminal statute has been implemented in at least eight states. Those states are: New York, New Jersey, Maryland, Florida, Connecticut, Virginia, Ohio and Delaware. In each of these states, it has been an effective tool to insure justice for victims. This bill provides a meaningful way for victims of these crimes to be made whole, while holding these repeat offenders accountable for their actions.

You may note that this bill was previously introduced a few years ago, with the same goals of combating contractor fraud. While this version of the bill is substantially similar, a significant revision has been made in response to concerns previously voiced by various home builders associations. That revision removes language that would have required contractors to use funds only for the jobs for which they were received, instead of allowing them to apply those funds to other sources. Recognizing the accounting issues and practical burden of that provision, this version of the bill is being introduced with less stringent language. Essentially, HB 2065 now requires only that contractors complete the work they agree to provide.

We would ask this committee to support this bill as drafted. I thank you for your time and would be happy to answer any questions you may have regarding the proposed legislation.

Sincerely,



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