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# SENATE BILL No. 8

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 35-43-6; IC 32-28-3-15.

**Synopsis:** Construction practices. Changes the criminal mental state needed to commit the crime of home improvement fraud from "knowingly" to the lesser degree of "recklessly". Adds reckless failure to complete promised home improvements within 90 days after materials are delivered to the work site and reckless failure to take reasonable steps to protect exposed parts of a home improvement construction site from weather related damage to other crimes defined as home improvement fraud. Simplifies the penalty structure applicable to the offense of home improvement fraud. Makes certain acts of home improvement fraud a Class A misdemeanor instead of a Class B misdemeanor. Moves the offense of construction deception from Title 32 of the Indiana Code to Title 35 of the Indiana Code.

**Effective:** July 1, 2003.

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January 7, 2003, read first time and referred to Committee on Criminal, Civil and Public Policy.

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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

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## SENATE BILL No. 8



A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 35-43-6-12 IS AMENDED TO READ AS
- 2 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 12. (a) A home
- 3 improvement supplier who enters into a home improvement contract
- 4 and ~~knowingly~~: **recklessly**:
- 5 (1) misrepresents a material fact relating to the terms of the home
- 6 improvement contract or the preexisting or existing condition of
- 7 any part of the property involved;
- 8 (2) creates or confirms a consumer's impression that is false; ~~and~~
- 9 ~~that the home improvement supplier does not believe to be true~~;
- 10 (3) promises performance that the home improvement supplier:
- 11 (A) does not intend to perform; ~~or~~
- 12 (B) knows will not be performed; ~~or~~
- 13 (C) **has recklessly failed to determine can or will be**
- 14 **performed**;
- 15 (4) uses or employs any deception, false pretense, or false promise
- 16 to cause a consumer to enter into a home improvement contract;
- 17 (5) enters into an unconscionable home improvement contract



1 with a home improvement contract price of four thousand dollars  
 2 (\$4,000) or more; or

3 (6) fails to comply with the provisions of IC 23-15-1 relating to  
 4 the use of an assumed name in the conduct or transaction of  
 5 business in Indiana and misrepresents or conceals either the home  
 6 improvement supplier's real name, business name, or business  
 7 address;

8 **(7) accepts payment in an amount that is at least equal to the**  
 9 **actual amount of the materials or labor, or both, for any part**  
 10 **of a home improvement contract and recklessly fails to**  
 11 **substantially complete the work for that part of the home**  
 12 **improvement contract within ninety (90) days after**  
 13 **substantially all the materials for that part of the home**  
 14 **improvement contract have been delivered to the site of the**  
 15 **work; or**

16 **(8) performs work that exposes the consumer's property to**  
 17 **damage from wind, water, or other weather related conditions**  
 18 **and recklessly fails to take reasonable precautions at the site**  
 19 **to protect the exposed area from weather related damage;**

20 commits home improvement fraud, a ~~Class B~~ **Class A** misdemeanor.  
 21 ~~except as provided in section 13(a) of this chapter.~~

22 (b) A home improvement supplier who, with the intent to enter into  
 23 a home improvement contract, ~~knowingly:~~ **recklessly:**

24 (1) damages the property of a consumer;

25 (2) does work on the property of a consumer without the  
 26 consumer's prior authorization;

27 (3) misrepresents that the supplier or another person is an  
 28 employee or agent of the federal government, the state, a political  
 29 subdivision of the state, or any other governmental agency or  
 30 entity; or

31 (4) misrepresents that the supplier or another person is an  
 32 employee or agent of any public or private utility;

33 commits **home improvement fraud**, a Class A misdemeanor. ~~except~~  
 34 ~~as provided in section 13(b) of this chapter.~~

35 **(c) An offense under this section is a Class D felony if:**

36 **(1) the consumer is at least sixty (60) years of age on the date**  
 37 **the contract is entered into;**

38 **(2) the home improvement supplier has committed at least one**  
 39 **(1) prior unrelated violation of this section; or**

40 **(3) the home improvement contract exceeds an aggregate**  
 41 **amount of ten thousand dollars (\$10,000).**

42 SECTION 2. IC 35-43-6-15 IS ADDED TO THE INDIANA CODE

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1 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
2 1, 2003]: **Sec. 15. A person:**

- 3 (1) **who:**
  - 4 (A) **performs labor, supplies services, or furnishes material**
  - 5 **or machinery in the construction, repair, or remodeling of**
  - 6 **any building, structure, or any other work;**
  - 7 (B) **accepts payment for the labor, services, material, or**
  - 8 **machinery so furnished and supplied; and**
  - 9 (C) **at the time of receiving the payment, has knowledge of**
  - 10 **the person's indebtedness to another for labor (including**
  - 11 **the cost of renting or leasing construction and other**
  - 12 **equipment and tools, whether or not an operator is also**
  - 13 **provided by the lessor), services, material, or machinery**
  - 14 **used or employed in the construction, repair, or**
  - 15 **remodeling;**
  - 16 (2) **who, at the time of receiving payment, and with intent to**
  - 17 **defraud, fails to notify in writing the person from whom the**
  - 18 **payment was received of the existence of the outstanding**
  - 19 **indebtedness; and**
  - 20 (3) **whose failure under subdivision (2) to notify the person**
  - 21 **from whom payment was received causes that person to suffer**
  - 22 **a loss;**

23 **commits construction deception, a Class D felony.**

24 SECTION 3. THE FOLLOWING ARE REPEALED [EFFECTIVE  
25 JULY 1, 2003]: IC 32-28-3-15; IC 35-43-6-13; IC 35-43-6-14.

26 SECTION 4. [EFFECTIVE JULY 1, 2003] **The amendment of**  
27 **IC 35-43-6-12, the addition of IC 35-43-6-15, and the repeal of**  
28 **IC 32-28-3-15, IC 35-43-6-13, and IC 35-43-6-14, all by this act,**  
29 **apply only to offenses committed after June 30, 2003.**

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