



Kansas County & District Attorneys Association

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March 12, 2013

Senate Judiciary Committee
Attention: Senator Jeff King, Chairman
State Capitol, Room 346 South
Topeka, Kansas 66612-1504

Re: House Bill 2065

Dear Chairman King,

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.

This bill was previously introduced a few years ago, with the same goals of combating contractor fraud. The version introduced this year was substantially similar, but with a significant

revision made in response to concerns previously voiced by various home builders associations. That revision removed 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, the version of the bill introduced into the House had less stringent language. Essentially, HB 2065 as introduced required only that contractors complete the work they agree to provide.

You will notice that that provision was struck before it was passed out of the House Committee. While the removal of that language does limit our ability to prosecute some of these offenders, we continue to urge the passage of the bill before you as it allows us the opportunity to hold unscrupulous contractors accountable via the criminal code.

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

Sincerely,

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