

SENATE/HOUSE FILE \_\_\_\_\_  
BY (PROPOSED ATTORNEY GENERAL  
BILL)

**A BILL FOR**

1 An Act relating to registration and bonding requirements for  
2 contractors, and providing criminal and civil penalties.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 91C.2, subsection 3, Code 2019, is  
2 amended to read as follows:

3 3. ~~An~~ In addition to any bond required by section 91C.6B,  
4 an out-of-state contractor shall either file a surety bond,  
5 as provided in section 91C.7, with the division of labor  
6 services in the amount of twenty-five thousand dollars or  
7 shall provide a statement to the division of labor services  
8 that the contractor is prequalified to bid on projects for the  
9 department of transportation pursuant to section 314.1.

10 Sec. 2. Section 91C.6, Code 2019, is amended to read as  
11 follows:

12 **91C.6 Rules.**

13 The labor commissioner shall adopt rules, pursuant to  
14 chapter 17A, determined to be reasonably necessary for phasing  
15 in, administering, and enforcing the system of contractor  
16 registration and bonding established by this chapter.

17 Sec. 3. NEW SECTION. **91C.6A State contracts with**  
18 **unregistered contractors prohibited.**

19 A contractor who is not registered with the labor  
20 commissioner as required by this chapter shall not be awarded  
21 a contract to perform work for the state or an agency of the  
22 state.

23 Sec. 4. NEW SECTION. **91C.6B Home improvement contractor**  
24 **performance bond — penalty.**

25 1. For purposes of this section:

26 *a. "Division"* means the division of labor services of the  
27 department of workforce development.

28 *b. "Home improvement contract"* means any contract for the  
29 improvement or repair of existing residential property and the  
30 appurtenances of such property, including but not limited to  
31 landscaping, garages, storage sheds, sidewalks, driveways, and  
32 retaining walls, but does not include contracts for less than  
33 two hundred dollars in the aggregate.

34 2. Any contractor, prior to entering into a home improvement  
35 contract in Iowa, shall file with the division a surety bond.

1 The bond shall be in the amount of seventy-five thousand  
2 dollars and shall be for the benefit of any person who, in  
3 connection with a home improvement contract with a contractor,  
4 is damaged by the contractor's breach of the home improvement  
5 contract or by the contractor's violation of section 714.16,  
6 regardless of whether the person has a direct cause of action  
7 pursuant to section 714.16. Any person so damaged may bring  
8 suit directly on the bond without assignment, and may recover  
9 from bond proceeds actual damages, court costs, and reasonable  
10 attorney fees.

11 3. A person filing suit pursuant to this section shall  
12 notify the division at the time the suit is filed, and the  
13 division shall maintain a record, available for public  
14 inspection and copying, of all suits commenced. Notification  
15 is not a precondition to the filing of a suit, and failure to  
16 notify the division shall in no way affect the validity of a  
17 lawsuit. However, notification pursuant to this section must  
18 be completed prior to payout of any bond proceeds pursuant to  
19 this section.

20 4. The attorney general may make a direct claim on a  
21 bond or bring an action in equity on behalf of the state  
22 to recover bond proceeds for persons who incur damage due  
23 to a contractor's breach of a home improvement contract or  
24 violation of section 714.16 in connection with a person's home  
25 improvement contract with a contractor.

26 5. Priority for payment of the proceeds of a bond filed  
27 pursuant to this section shall be based upon the time of filing  
28 a notice of suit with the division, except that any claim or  
29 action by the attorney general to recover bond proceeds shall  
30 take precedence over all other claims on the bond, regardless  
31 of the time of filing.

32 6. The issuer of a surety bond filed pursuant to this  
33 section shall notify the labor commissioner upon the  
34 cancellation of such bond. If a surety bond filed pursuant to  
35 this section is canceled or otherwise ceases to be in effect,

1 the contractor's registration pursuant to this chapter shall be  
2 void. The failure of a contractor to have a valid surety bond  
3 on file with the division as of the date of a home improvement  
4 contract shall make the contract and any note, instrument, or  
5 other evidence of indebtedness executed or entered into in  
6 connection with the contract voidable, and shall constitute a  
7 complete defense in any action based on the contract, note,  
8 instrument, or other evidence of indebtedness brought by the  
9 contractor or the contractor's successors or assigns.

10 7. a. A contractor who violates any provision of this  
11 section is guilty of a simple misdemeanor.

12 b. A violation of this section is an unlawful practice  
13 pursuant to section 714.16.

14 Sec. 5. Section 91C.7, subsection 1, Code 2019, is amended  
15 by striking the subsection.

16 EXPLANATION

17 The inclusion of this explanation does not constitute agreement with  
18 the explanation's substance by the members of the general assembly.

19 This bill relates to contractor registration and bonding  
20 requirements.

21 The bill requires in new Code section 91C.6B that a  
22 contractor, prior to entering into a home improvement contract  
23 in Iowa, obtain a surety bond of \$75,000. The new bond is in  
24 addition to any other bond requirements in Code chapter 91C.  
25 The bond benefits a person who is damaged by the contractor's  
26 breach of contract or by the contractor's breach of Code  
27 section 714.16, the consumer fraud statute, regardless of  
28 whether the person has a direct cause of action under that Code  
29 section. Any person damaged in either way may sue directly  
30 on the bond and may recover actual damages, court costs, and  
31 reasonable attorney fees. The bill defines "home improvement  
32 contract" to mean any contract for the improvement or repair  
33 of existing residential property and the appurtenances of such  
34 property, as specified in the bill, but not including contracts  
35 of less than \$200 in total.

1 The bill provides that when a suit is filed, the person who  
2 sues on the bond shall notify the division of labor services of  
3 the department of workforce development, which shall maintain  
4 a public record of all suits commenced. Notification is not  
5 a precondition to filing a suit and failure to notify the  
6 division does not in any way invalidate a lawsuit. However,  
7 bond proceeds cannot be paid out to anyone who has not filed  
8 notification.

9 The bill provides that the attorney general may also make  
10 a direct claim on a bond or bring an action in equity against  
11 the bond on behalf of the state to recover bond proceeds for  
12 persons damaged due to a contractor's breach of contract or  
13 violation of the consumer fraud statute in connection with a  
14 home improvement contract. The attorney general's action shall  
15 take precedence over all other claims on the bond regardless  
16 of the time of filing.

17 The bill requires the issuer of a bond to notify the labor  
18 commissioner upon the cancellation of the bond. If a bond is  
19 canceled or otherwise ceases to be in effect, the contractor's  
20 registration pursuant to Code chapter 91C shall be void. The  
21 failure of a contractor to have a valid bond on file as of the  
22 date of a home improvement contract makes the contract and any  
23 note or instrument of indebtedness executed or entered into  
24 in connection with the contract to the contractor voidable,  
25 and shall be a complete defense in any action based on the  
26 contract or evidence of indebtedness by the contractor of the  
27 contractor's successors or assigns.

28 The bill provides that a contractor who violates any  
29 provision of new Code section 91C.6B is guilty of a simple  
30 misdemeanor. A simple misdemeanor is punishable by confinement  
31 for no more than 30 days or a fine of at least \$65 but  
32 not more than \$625 or by both. The bill further provides  
33 that a violation of new Code section 91C.6B is an unlawful  
34 practice pursuant to Code section 714.16, which allows the  
35 attorney general to investigate, issue subpoenas, and commence

1 civil proceedings seeking restraining orders or injunctions  
2 prohibiting persons from engaging in unlawful practices  
3 or seeking termination of the business affairs of a person  
4 engaging in unlawful practices. A court may also impose a  
5 civil penalty of up to \$40,000 per violation against a person  
6 found to have committed an unlawful practice.