

SENATE/HOUSE FILE _____
BY (PROPOSED ATTORNEY GENERAL
BILL)

A BILL FOR

1 An Act relating to registration and bonding requirements for
2 home improvement contractors, providing penalties, and
3 including applicability provisions.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 91C.1, Code 2022, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 4. The Iowa department of public health,
4 in consultation with the office of the attorney general and
5 the division of labor services of the department of workforce
6 development, shall implement the home improvement contractor
7 bond requirements of this chapter.

8 Sec. 2. Section 91C.2, subsection 3, Code 2022, is amended
9 to read as follows:

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

17 Sec. 3. Section 91C.6, Code 2022, is amended to read as
18 follows:

19 **91C.6 Rules.**

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

24 Sec. 4. NEW SECTION. **91C.6A State contracts with**
25 **unregistered contractors prohibited.**

26 A contractor who is not registered with the labor
27 commissioner as required by this chapter shall not be awarded
28 a contract to perform work for the state or an agency of the
29 state.

30 Sec. 5. NEW SECTION. **91C.6B Home improvement contractor**
31 **performance bond — penalty.**

32 1. For purposes of this section:

33 a. "Aggregate" means the whole of all verbal or written
34 contracts entered into within thirty days between the same
35 parties, or any agents or associates of the parties, involving

1 the same real property or the same home improvement or repair
2 project.

3 *b. "Division"* means the division of labor services of the
4 department of workforce development.

5 *c. "Home improvement contract"* means any contract for the
6 improvement or repair of existing single-family or two-family
7 dwellings occupied or used, or intended to be occupied or
8 used, primarily for residential purposes including real
9 property pursuant to chapter 499B and the appurtenances of such
10 property, including but not limited to landscaping, garages,
11 storage sheds, sidewalks, driveways, and retaining walls, but
12 does not include contracts for less than two hundred dollars
13 in the aggregate.

14 2. A contractor, prior to entering into a home improvement
15 contract in Iowa, shall file with the division a home
16 improvement contractor's bond. The bond shall be in the
17 amount of seventy-five thousand dollars and shall be for the
18 benefit of any person who is a customer of the contractor or
19 is a construction materials supplier of the contractor and is
20 damaged by the contractor's breach of the home improvement
21 contract or by the contractor's violation of section 714.16.

22 *a.* A person suffering damages as provided in this subsection
23 may bring suit directly on the bond without assignment, and may
24 recover from bond proceeds actual damages, court costs, and
25 reasonable attorney fees.

26 *b.* The filing of a home improvement contractor bond with
27 the division may satisfy any bonding requirements imposed by
28 a county, city, or other local governmental entity so long as
29 those bonding requirements are used solely for the benefit of
30 a customer of a home improvement contractor or a construction
31 materials supplier under a home improvement contract. A
32 county, city, or other local governmental entity may still
33 require an additional or higher bond to cover the difference
34 between the value of the bond filed with the division and local
35 bond requirements.

1 3. A person filing suit pursuant to this section shall
2 notify the division at the time the suit is filed, and the
3 division shall maintain a record, available for public
4 inspection and copying, of all suits commenced. Notification
5 is not a precondition to the filing of a suit, and failure to
6 notify the division shall in no way affect the validity of a
7 lawsuit.

8 a. Notification pursuant to this section must be completed
9 prior to payout of any bond proceeds pursuant to this section.
10 In the alternative to bringing suit directly on the bond, any
11 person who is a customer of the contractor or is a construction
12 materials supplier of the contractor and who is damaged by a
13 contractor's breach of the home improvement contract or by a
14 contractor's violation of section 714.16 may present proof of a
15 final court judgment on said claims to the division and collect
16 on the bond pursuant to section 91C.2 with no further proof
17 being required.

18 b. Notification shall be submitted to the department through
19 procedures determined by the department.

20 c. Notification shall serve as a method for determining
21 priority among homeowner claims.

22 4. The attorney general may make a direct claim on a
23 bond or bring an action in equity on behalf of the state to
24 recover bond proceeds for persons who incur damage due to
25 a contractor's breach of a home improvement contract or a
26 violation of section 714.16 in connection with a person's home
27 improvement contract with a contractor. The labor commissioner
28 or the unemployment insurance tax bureau of the department
29 of workforce development may make a direct claim on the
30 home improvement contractor bond for contributions due under
31 the unemployment compensation insurance system, penalties,
32 interest, and related fees which may accrue to the state of
33 Iowa.

34 5. Any claim or action by the attorney general to recover
35 home improvement contractor bond proceeds shall take precedence

1 over all other claims on the bond regardless of the time of
2 filing. Any claim or action by the labor commissioner or
3 the unemployment insurance tax bureau of the department of
4 workforce development shall take precedence over any claim not
5 filed by the attorney general regardless of time of filing.
6 Priority among homeowners or construction materials suppliers
7 for payment of the proceeds of a bond filed pursuant to this
8 section shall be based upon the time of filing a notice of suit
9 with the division.

10 6. The issuer of a home improvement contractor's bond filed
11 pursuant to this section shall notify the labor commissioner
12 pursuant to section 91C.7, subsection 1, upon the cancellation
13 of such bond. The failure of a contractor to have a valid
14 home improvement contractor's bond on file with the division
15 as of the date of a home improvement contract commencing shall
16 make the contract and any note, instrument, or other evidence
17 of indebtedness executed or entered into in connection with
18 the contract voidable by the customer of the contractor, and
19 shall constitute a complete defense in any action based on the
20 contract, note, instrument, or other evidence of indebtedness
21 brought by the contractor or the contractor's successors or
22 assigns against the customer of the contractor.

23 7. a. A contractor who violates this section is guilty of a
24 simple misdemeanor.

25 b. A violation of this section is an unlawful practice
26 pursuant to section 714.16.

27 Sec. 6. Section 91C.7, Code 2022, is amended to read as
28 follows:

29 **91C.7 Contracts — contractor's bond.**

30 ~~1. A contractor who is not registered with the labor~~
31 ~~commissioner as required by this chapter shall not be awarded~~
32 ~~a contract to perform work for the state or an agency of the~~
33 ~~state.~~

34 ~~2. 1. A surety home improvement contractor bond or an~~
35 ~~out-of-state contractor bond filed pursuant to section 91C.2~~

1 this chapter shall be executed by a surety company authorized
2 to do business in this state, and the bond shall be continuous
3 in nature until canceled by the surety with not less than
4 thirty days' written notice to the contractor and to the
5 division of labor services of the department of workforce
6 development indicating the surety's desire to cancel the bond.
7 The surety company shall not be liable under the bond for any
8 contract commenced after the cancellation of the bond. The
9 division of labor services of the department of workforce
10 development may increase the bond amount after a hearing.

11 ~~3.~~ 2. Release of ~~the~~ an out-of-state contractor bond
12 shall be conditioned upon the payment of all taxes, including
13 contributions due under the unemployment compensation insurance
14 system, penalties, interest, and related fees, which may accrue
15 to the state of Iowa. If at any time during the term of the
16 bond, the department of revenue or the department of workforce
17 development determines that the amount of the bond is not
18 sufficient to cover the tax liabilities accruing to the state
19 of Iowa, the labor commissioner shall require the bond to be
20 increased by an amount the labor commissioner deems sufficient
21 to cover the tax liabilities accrued and accruing.

22 ~~4.~~ 3. The department of revenue and the department of
23 workforce development shall adopt rules for the collection
24 of the forfeiture on an out-of-state contractor bond. In
25 cooperation with the attorney general, the labor services
26 division shall adopt rules for the collection of the forfeiture
27 on a home improvement contractor's bond. Notice shall be
28 provided to the surety and to the contractor. Notice to the
29 contractor shall be mailed to the contractor's last known
30 address and to the contractor's registered agent for service of
31 process, if any, within the state. The contractor or surety
32 shall have the opportunity to apply to the director of revenue
33 for a hearing within thirty days after the giving of such
34 notice. Upon the failure to timely request a hearing, the bond
35 shall be forfeited. If, after the hearing upon timely request

1 on an out-of-state contractor bond, the department of revenue
2 or the department of workforce development finds that the
3 contractor has failed to pay the total of all taxes payable,
4 the department of revenue or the department of workforce
5 development shall order the bond forfeited. The amount of the
6 forfeiture on an out-of-state contractor bond shall be the
7 amount of taxes payable or the amount of the bond, whichever
8 is less. For purposes of this section "*taxes payable*" means
9 all tax, penalties, interest, and fees that the department
10 of revenue has previously determined to be due to the state
11 by assessment or in an appeal of an assessment, including
12 contributions to the unemployment compensation insurance
13 system.

14 ~~5.~~ 4. If it is determined that this section may cause
15 denial of federal funds which would otherwise be available,
16 or is otherwise inconsistent with requirements of federal
17 law, this section shall be suspended, but only to the extent
18 necessary to prevent denial of the funds or to eliminate the
19 inconsistency with federal requirements.

20 ~~6.~~ 5. The ~~bond~~ bonds required by this section may be
21 attached by the commissioner for collection of fees and
22 penalties due to the division.

23 Sec. 7. Section 714.16, subsection 2, Code 2022, is amended
24 by adding the following new paragraph:

25 NEW PARAGRAPH. *g.* It is an unlawful practice for an
26 out-of-state home contractor to commence a home improvement
27 project without entering into a bond pursuant to chapter 91C.

28 Sec. 8. APPLICABILITY. This Act applies to contracts
29 entered into on or after the effective date of the Act.

30 EXPLANATION

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

33 This bill relates to home improvement contractor bonding
34 requirements.

35 The bill requires that a contractor, prior to entering

1 into a home improvement contract in Iowa, obtain a home
2 improvement contractor's bond in the amount of \$75,000. The
3 bond benefits a person or materials supplier who is damaged
4 by the contractor's breach of contract or by the contractor's
5 breach of the consumer fraud statute. Any client of a home
6 improvement contractor or any materials supplier for a home
7 improvement contractor damaged may sue directly on the bond
8 and may recover actual damages, court costs, and reasonable
9 attorney fees. The bill defines "home improvement contract"
10 to mean any contract in the amount of \$200 or more for the
11 improvement or repair of existing residential property and the
12 appurtenances of such property.

13 The bill provides that the filing of the bond with the
14 division may satisfy bonding requirements for local governments
15 so long as the local bond is used solely for the benefit of the
16 homeowner or materials supplier.

17 The bill provides that when a lawsuit is filed, the
18 person who sues on the bond shall notify the division of
19 labor services of the department of workforce development,
20 which shall maintain a public record of all suits commenced.
21 Notification is not a precondition to filing a suit and failure
22 to notify the division does not invalidate a lawsuit. However,
23 bond proceeds cannot be distributed to anyone who has not filed
24 notification and claimants who file notice first have priority
25 over other claimants in the same lawsuit.

26 The bill provides that the attorney general may also make
27 a direct claim on a bond or bring an action in equity against
28 the bond on behalf of the state to recover bond proceeds for
29 persons damaged due to a contractor's breach of contract or
30 violation of the consumer fraud statute in connection with a
31 home improvement contract. The attorney general's action shall
32 take precedence over all other claims on the bond regardless
33 of the time of filing.

34 The bill requires the issuer of a bond to notify the labor
35 commissioner upon the cancellation of the bond. If a bond is

1 canceled or otherwise ceases to be in effect, the contractor's
2 registration shall be void. The failure of a contractor to
3 have a valid bond on file as of the date the home improvement
4 contract is entered into renders the contract and related
5 documents voidable.

6 The bill provides that a home improvement contractor
7 who violates the bill's provisions is guilty of a simple
8 misdemeanor. A simple misdemeanor is punishable by confinement
9 for no more than 30 days or a fine of at least \$65 but not
10 more than \$625 or by both. The bill further provides that a
11 violation under this Act is an unlawful practice pursuant to
12 the consumer fraud statute, which allows the attorney general
13 to investigate, issue subpoenas, and commence civil proceedings
14 seeking restraining orders or injunctions prohibiting persons
15 from engaging in unlawful practices or seeking termination
16 of the business affairs of a person engaging in unlawful
17 practices. A court may also impose a civil penalty of up to
18 \$40,000 per violation against a person found to have committed
19 an unlawful practice.

20 The bill is applicable to home improvement contracts entered
21 into on or after the bill's effective date.