

House Study Bill 596

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

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

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:
4 TLSB 5305DP 82
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1 1 Section 1. Section 91C.6, Code 2007, is amended to read as
1 2 follows:
1 3 91C.6 RULES.
1 4 The labor commissioner shall adopt rules, pursuant to
1 5 chapter 17A, determined to be reasonably necessary for phasing
1 6 in, administering, and enforcing the system of contractor
1 7 registration and bonding established by this chapter.
1 8 Sec. 2. NEW SECTION. 91C.6A STATE CONTRACTS WITH
1 9 UNREGISTERED CONTRACTORS PROHIBITED.
1 10 A contractor who is not registered with the labor
1 11 commissioner as required by this chapter shall not be awarded
1 12 a contract to perform work for the state or an agency of the
1 13 state.
1 14 Sec. 3. NEW SECTION. 91C.6B HOME IMPROVEMENT CONTRACTOR
1 15 PERFORMANCE BOND == PENALTY.
1 16 1. For purposes of this section, the following definitions
1 17 shall apply:
1 18 a. "Division" means the division of labor services of the
1 19 department of workforce development created under section
1 20 84A.1.
1 21 b. "Home improvement contract" means any contract for the
1 22 improvement or repair of existing residential property,
1 23 including appurtenances to the property, but does not include
1 24 contracts for less than two hundred dollars in the aggregate.
1 25 2. Any contractor, prior to entering into a home
1 26 improvement contract in Iowa, shall file with the division a
1 27 surety bond. The bond shall be in the amount of seventy-five
1 28 thousand dollars and shall be for the benefit of any person
1 29 who, in connection with a home improvement contract with the
1 30 contractor, is damaged by the contractor's breach of the home
1 31 improvement contract or by the contractor's violation of
1 32 section 714.16, regardless of whether the person has a direct
1 33 cause of action pursuant to section 714.16. Any person so
1 34 damaged may bring suit directly on the bond without
1 35 assignment, and may recover from bond proceeds actual damages,
2 1 court costs, and reasonable attorney fees.
2 2 3. A person filing suit pursuant to this section shall
2 3 notify the division at the time the suit is filed, and the
2 4 division shall maintain a record, available for public
2 5 inspection and copying, of all suits commenced. Notification
2 6 is not a precondition to filing of a suit, and failure to
2 7 notify the division shall in no way affect the validity of a
2 8 lawsuit. However, notification pursuant to this section must
2 9 be completed prior to payout of any bond proceeds pursuant to
2 10 this section.
2 11 4. The attorney general may bring an action in equity on
2 12 behalf of the state to recover bond proceeds for persons who
2 13 incur damage due to a contractor's breach of a home
2 14 improvement contract or violation of section 714.16 in
2 15 connection with a person's home improvement contract with a
2 16 contractor.
2 17 5. Priority for payment of the proceeds of a bond filed
2 18 pursuant to this section shall be based upon the time of
2 19 filing a notice of suit with the division, except that any

2 20 action by the attorney general to recover bond proceeds shall
2 21 take precedence over all other claims on the bond, regardless
2 22 of the time of filing.

2 23 6. The surety bond shall be executed by a surety company
2 24 authorized to do business in this state, and the bond shall be
2 25 continuous in nature until canceled by the surety with not
2 26 less than thirty days written notice to the contractor and to
2 27 the division of the surety's decision to cancel bond. The
2 28 surety's obligation under the bond shall continue until the
2 29 surety has fully satisfied the notice requirements of this
2 30 section.

2 31 7. The failure of a contractor to have a valid surety bond
2 32 on file with the division at any time a home improvement
2 33 contract is in effect shall make the contract and any note,
2 34 instrument, or other evidence of indebtedness executed or
2 35 entered into in connection with the contract to the contractor
3 1 voidable, and shall constitute a complete defense in any
3 2 action based on the contract, note, instrument, or other
3 3 evidence of indebtedness brought by the contractor or the
3 4 contractor's successors or assigns.

3 5 8. A contractor who violates any provision of this section
3 6 is guilty of a simple misdemeanor.

3 7 Sec. 4. Section 91C.7, subsection 1, Code 2007, is amended
3 8 by striking the subsection.

3 9 Sec. 5. Section 91C.7, subsection 2, unnumbered paragraph
3 10 1, Code 2007, is amended to read as follows:

3 11 ~~An~~ In addition to any bond required by section 91C.6B, an
3 12 ~~out-of-state contractor before commencing a contract in excess~~
3 13 ~~of five thousand dollars in value in Iowa this state, shall~~
3 14 ~~file a bond with the division of labor services of the~~
3 15 ~~department of workforce development. The surety bond shall be~~
3 16 ~~executed by a surety company authorized to do business in this~~
3 17 ~~state, and the bond shall be continuous in nature until~~
3 18 ~~canceled by the surety with not less than thirty days' written~~
3 19 ~~notice to the contractor and to the division of labor services~~
3 20 ~~of the department of workforce development indicating the~~
3 21 ~~surety's desire to cancel the bond. The surety company shall~~
3 22 ~~not be liable under the bond for any contract commenced after~~
3 23 ~~the cancellation of the bond. The bond shall be in the sum of~~
3 24 ~~the greater of the following:~~

3 25 Sec. 6. NEW SECTION. 91C.8 UNLAWFUL PRACTICE.

3 26 A violation of this chapter is an unlawful practice
3 27 pursuant to section 714.16.

3 28 EXPLANATION

3 29 This bill relates to contractor registration and bonding
3 30 requirements.

3 31 The bill requires in new Code section 91C.6B, that a
3 32 contractor, prior to entering into a home improvement contract
3 33 in this state, obtain a surety bond of \$75,000 before
3 34 accepting work. The new bond is in addition to any other bond
3 35 requirements in Code chapter 91C. The bond benefits a person
4 1 who may be damaged by the contractor's breach of contract or
4 2 by the contractor's violation of Code section 714.16, the
4 3 consumer fraud statute, regardless of whether the person has a
4 4 cause of action directly under that Code section. Any person
4 5 damaged in either way may sue directly on the bond and may
4 6 recover actual damages, court costs, and reasonable attorney
4 7 fees. "Home improvement contract" is defined in the bill as
4 8 any improvement or repair to an existing residential property
4 9 or secondary structure but not contracts that are for a total
4 10 of less than \$200.

4 11 When a suit is filed, the person who sues on the bond shall
4 12 notify the division of labor services of the department of
4 13 workforce development, which shall keep a public record of all
4 14 suits commenced. Notification is not a precondition to filing
4 15 a suit and failure to notify the division does not in any way
4 16 invalidate the lawsuit. However, bond proceeds cannot be paid
4 17 out to anyone who has not filed notification.

4 18 The bill states that the attorney general may also bring an
4 19 action in equity against the bond on behalf of the state to
4 20 recover bond proceeds for persons damaged due to a
4 21 contractor's breach of contract or a contractor's violation of
4 22 the consumer fraud statute in connection with a home
4 23 improvement contract. The attorney general's action shall
4 24 take precedence over all other claims on the bond regardless
4 25 of the time of filing.

4 26 The bill requires a surety company licensed to do business
4 27 in Iowa issue the surety bond to the contractor and that the
4 28 bond be continuous until canceled by the surety, but there
4 29 must be at least 30 days notice to the contractor and the
4 30 division. The bill provides that the failure of a contractor

4 31 to have a valid surety bond on file as of the date of a home
4 32 improvement contract makes the contract and any note or
4 33 instrument of indebtedness executed or entered into in
4 34 connection with the contract to the contractor voidable, and
4 35 shall be a complete defense in any action brought based on the
5 1 contract or evidence of indebtedness by the contractor or the
5 2 contractor's successors or assigns.

5 3 The bill provides that a contractor who violates the
5 4 provisions of new Code section 91C.6B is guilty of a simple
5 5 misdemeanor. A simple misdemeanor is punishable by
5 6 confinement for no more than 30 days or a fine of at least \$65
5 7 but not more than \$625 or by both. The bill further provides
5 8 that a failure to comply with Code chapter 91C is an unlawful
5 9 practice pursuant to Code section 714.16, a civil statute
5 10 enforced by the attorney general, and violations of which
5 11 could result in the imposition of injunctive relief, civil
5 12 penalties, attorney fees, and costs.

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