

Senate File 456 - Introduced

SENATE FILE 456

BY CELSI

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. NEW SECTION. **91C.5A Registered contractors —**
11 **unpaid court orders.**

12 1. The labor commissioner shall make available on the
13 division of labor services of the department of workforce
14 development's internet site a searchable database of all
15 contractors registered under this chapter with unpaid court
16 orders.

17 2. The labor commissioner shall adopt rules to implement
18 this section.

19 Sec. 3. Section 91C.6, Code 2019, is amended to read as
20 follows:

21 **91C.6 Rules.**

22 The labor commissioner shall adopt rules, pursuant to
23 chapter 17A, determined to be reasonably necessary for phasing
24 in, administering, and enforcing the system of contractor
25 registration and bonding established by [this chapter](#).

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

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

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

34 1. For purposes of this section:

35 a. "Division" means the division of labor services of the

1 department of workforce development.

2 *b. "Home improvement contract"* means any contract for the
3 improvement or repair of existing residential property and the
4 appurtenances of such property, including but not limited to
5 landscaping, garages, storage sheds, sidewalks, driveways, and
6 retaining walls, but does not include contracts for less than
7 two hundred dollars in the aggregate.

8 2. Any contractor, prior to entering into a home improvement
9 contract in Iowa, shall file with the division a surety bond.
10 The bond shall be in the amount of seventy-five thousand
11 dollars and shall be for the benefit of any person who, in
12 connection with a home improvement contract with a contractor,
13 is damaged by the contractor's breach of the home improvement
14 contract or by the contractor's violation of section 714.16,
15 regardless of whether the person has a direct cause of action
16 pursuant to section 714.16. Any person so damaged may bring
17 suit directly on the bond without assignment, and may recover
18 from bond proceeds actual damages, court costs, and reasonable
19 attorney fees.

20 3. A person filing suit pursuant to this section shall
21 notify the division at the time the suit is filed, and the
22 division shall maintain a record, available for public
23 inspection and copying, of all suits commenced. Notification
24 is not a precondition to the filing of a suit, and failure to
25 notify the division shall in no way affect the validity of a
26 lawsuit. However, notification pursuant to this section must
27 be completed prior to payout of any bond proceeds pursuant to
28 this section.

29 4. The attorney general may make a direct claim on a
30 bond or bring an action in equity on behalf of the state
31 to recover bond proceeds for persons who incur damage due
32 to a contractor's breach of a home improvement contract or
33 violation of section 714.16 in connection with a person's home
34 improvement contract with a contractor.

35 5. Priority for payment of the proceeds of a bond filed

1 pursuant to this section shall be based upon the time of filing
2 a notice of suit with the division, except that any claim or
3 action by the attorney general to recover bond proceeds shall
4 take precedence over all other claims on the bond, regardless
5 of the time of filing.

6 6. The issuer of a surety bond filed pursuant to this
7 section shall notify the labor commissioner upon the
8 cancellation of such bond. If a surety bond filed pursuant to
9 this section is canceled or otherwise ceases to be in effect,
10 the contractor's registration pursuant to this chapter shall be
11 void. The failure of a contractor to have a valid surety bond
12 on file with the division as of the date of a home improvement
13 contract shall make the contract and any note, instrument, or
14 other evidence of indebtedness executed or entered into in
15 connection with the contract voidable, and shall constitute a
16 complete defense in any action based on the contract, note,
17 instrument, or other evidence of indebtedness brought by the
18 contractor or the contractor's successors or assigns.

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

21 b. A violation of this section is an unlawful practice
22 pursuant to section 714.16.

23 Sec. 6. Section 91C.7, subsection 1, Code 2019, is amended
24 by striking the subsection.

25

EXPLANATION

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

28 This bill relates to contractor registration and bonding
29 requirements.

30 The bill requires the labor commissioner of the division of
31 labor services of the department of workforce development to
32 make available on the division's internet site a searchable
33 database of all contractors registered under Code chapter
34 91C with unpaid court orders. The bill requires the labor
35 commissioner to adopt rules to implement this requirement.

1 The bill requires in new Code section 91C.6B that a
2 contractor, prior to entering into a home improvement contract
3 in Iowa, obtain a surety bond of \$75,000. The new bond is in
4 addition to any other bond requirements in Code chapter 91C.
5 The bond benefits a person who is damaged by the contractor's
6 breach of contract or by the contractor's breach of Code
7 section 714.16, the consumer fraud statute, regardless of
8 whether the person has a direct cause of action under that Code
9 section. Any person damaged in either way may sue directly
10 on the bond and may recover actual damages, court costs, and
11 reasonable attorney fees. The bill defines "home improvement
12 contract" to mean any contract for the improvement or repair
13 of existing residential property and the appurtenances of such
14 property, as specified in the bill, but not including contracts
15 of less than \$200 in total.

16 The bill provides that when a suit is filed, the person who
17 sues on the bond shall notify the division of labor services,
18 which shall maintain a public record of all suits commenced.
19 Notification is not a precondition to filing a suit and
20 failure to notify the division does not in any way invalidate a
21 lawsuit. However, bond proceeds cannot be paid out to anyone
22 who has not filed notification.

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

31 The bill requires the issuer of a bond to notify the labor
32 commissioner upon the cancellation of the bond. If a bond is
33 canceled or otherwise ceases to be in effect, the contractor's
34 registration pursuant to Code chapter 91C shall be void. The
35 failure of a contractor to have a valid bond on file as of the

1 date of a home improvement contract makes the contract and any
2 note or instrument of indebtedness executed or entered into
3 in connection with the contract to the contractor voidable,
4 and shall be a complete defense in any action based on the
5 contract or evidence of indebtedness by the contractor of the
6 contractor's successors or assigns.

7 The bill provides that a contractor who violates any
8 provision of new Code section 91C.6B is guilty of a simple
9 misdemeanor. A simple misdemeanor is punishable by confinement
10 for no more than 30 days or a fine of at least \$65 but
11 not more than \$625 or by both. The bill further provides
12 that a violation of new Code section 91C.6B is an unlawful
13 practice pursuant to Code section 714.16, which allows the
14 attorney general to investigate, issue subpoenas, and commence
15 civil proceedings seeking restraining orders or injunctions
16 prohibiting persons from engaging in unlawful practices
17 or seeking termination of the business affairs of a person
18 engaging in unlawful practices. A court may also impose a
19 civil penalty of up to \$40,000 per violation against a person
20 found to have committed an unlawful practice.