

By the Committee on Regulated Industries and Senator Dyer

315-1735B-99

1 A bill to be entitled
2 An act relating to contracting; creating s.
3 489.13, F.S.; providing for disciplinary
4 procedures involving a judgment against
5 construction contractors; creating s. 489.5334,
6 F.S.; providing disciplinary procedures
7 involving a judgment against electrical and
8 alarm system contractors; creating s. 489.5591,
9 F.S.; providing applicability for disciplinary
10 proceedings involving mismanagement or
11 misconduct that causes financial harm to a
12 customer; providing an effective date.

14 Be It Enacted by the Legislature of the State of Florida:

16 Section 1. Section 489.13, Florida Statutes, is
17 created to read:

18 489.13 Disciplinary proceedings involving a
19 judgment.--

20 (1) Notwithstanding any other provision of this part
21 or chapter 455, this section applies to any disciplinary case
22 that involves any contractor who has an unsatisfied judgment
23 in violation of s. 489.129(1)(g).

24 (2) The department shall initiate disciplinary
25 proceedings involving an unsatisfied judgment against a
26 contractor when a judgment creditor files with the department:

- 27 (a) A complaint on a form prescribed by the board;
- 28 (b) A certified copy of the recorded judgment; and
- 29 (c) An affidavit signed under oath which states that
30 the judgment arises from the practice of the judgment debtor's
31 profession licensed under this part, that the judgment remains

1 unsatisfied, and that the judgment has been final for more
2 than 30 days.

3 (3) Within 10 days after the date the department
4 receives a completed complaint, a certified copy of the
5 judgment, and the required affidavit, the department shall
6 issue and serve on the contractor an order that requires the
7 contractor to show cause why the contractor's license should
8 not be suspended until the judgment is satisfied. The order to
9 show cause shall require the contractor to respond in writing
10 under oath within 20 days after the date the order is served
11 on the contractor.

12 (4) If the contractor fails to respond under oath to
13 the order to show cause within the 20-day period, the board
14 shall immediately enter a final order suspending the
15 contractor's license until the contractor satisfies the
16 judgment and pays the department the costs incurred in
17 connection with processing the complaint.

18 (5) If the contractor responds under oath to the order
19 to show cause within the 20-day period, a copy of the response
20 shall be provided to the judgment creditor.

21 (6) The department shall forward the complaint and the
22 contractor's response to the board. The board shall determine
23 whether the contractor is in violation of s. 489.129(1)(q). If
24 the board finds that a violation has occurred, the board shall
25 suspend the contractor's license until the judgment has been
26 satisfied and the contractor reimburses the board for the
27 costs incurred in connection with processing the complaint.
28 The board may impose such other penalties as it considers
29 appropriate, consistent with its penalty guidelines.

30 (7) The contractor may request a hearing on the
31 complaint if genuine issues of material fact exist concerning

1 the elements of the violation. If the board finds that genuine
2 issues of material fact exist, it may conduct the hearing or
3 refer the complaint to the Division of Administrative
4 Hearings.

5 (8) The board shall provide the licensee and the
6 judgment creditor with notice of when and where the board will
7 consider taking action on the complaint. The licensee and the
8 judgment creditor may, but are not required to, participate in
9 such a meeting. The board shall provide the licensee and the
10 judgment creditor with copies of all actions taken by the
11 board in connection with the disciplinary proceeding.

12 Section 2. Section 489.5334, Florida Statutes, is
13 created to read:

14 489.5334 Disciplinary proceedings involving a
15 judgment.--

16 (1) Notwithstanding any other provision of this part
17 or chapter 455, this section applies to any disciplinary case
18 that involves any contractor who has an unsatisfied judgment
19 in violation of s. 489.533(1)(m)4.

20 (2) The department shall initiate disciplinary
21 proceedings involving an unsatisfied judgment against a
22 contractor when the judgment creditor files with the
23 department:

- 24 (a) A complaint on a form prescribed by the board;
25 (b) A certified copy of the recorded judgment; and
26 (c) An affidavit signed under oath which states that
27 the judgment arises from the practice of the judgment debtor's
28 profession licensed under this part, that the judgment remains
29 unsatisfied, and that the judgment has been final for more
30 than 30 days.

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1 (3) Within 10 days after the date the department
2 receives a completed complaint, a certified copy of the
3 judgment, and the required affidavit, the department shall
4 issue and serve on the contractor an order that requires the
5 contractor to show cause why the contractor's license should
6 not be suspended until the judgment is satisfied. The order to
7 show cause shall require the contractor to respond in writing
8 under oath within 20 days after the date the order is served
9 on the contractor.

10 (4) If the contractor fails to respond under oath to
11 the order to show cause within the 20-day period, the board
12 shall immediately enter a final order suspending the
13 contractor's license until the contractor satisfies the
14 judgment and pays the department the costs incurred in
15 connection with processing the complaint.

16 (5) If the contractor responds under oath to the order
17 to show cause within the 20-day period, a copy of the response
18 shall be provided to the judgment creditor.

19 (6) The department shall forward the complaint and the
20 contractor's response to the board. The board shall determine
21 whether the contractor is in violation of s. 489.533(1)(m)4.
22 If the board finds that a violation has occurred, the board
23 shall suspend the contractor's license until the judgment has
24 been satisfied and the contractor reimburses the board for the
25 costs incurred in connection with processing the complaint.
26 The board may impose such other penalties as it considers
27 appropriate, consistent with its penalty guidelines.

28 (7) The contractor may request a hearing on the
29 complaint if genuine issues of material fact exist concerning
30 the elements of the violation. If the board finds that genuine
31 issues of material fact exist, it may conduct the hearing or

1 refer the complaint to the Division of Administrative
2 Hearings.

3 (8) As used in this part, the term "contractor" refers
4 to any person licensed under chapter 489, part II, regardless
5 of whether that person is performing as a contractor, a
6 subcontractor, or a sub-subcontractor on a project.

7 (9) The board shall provide the licensee and the
8 judgment creditor with notice of when and where the board will
9 consider action on the complaint. The licensee and the
10 judgment creditor may, but are not required to, participate in
11 such a meeting. The board shall provide the licensee and the
12 judgment creditor with copies of all actions taken by the
13 board in connection with the disciplinary proceeding.

14 Section 3. Section 489.5591, Florida Statutes, is
15 created to read:

16 489.5591 Disciplinary proceedings involving a
17 judgment.--Any person licensed under this part is subject to
18 disciplinary action for any violation of s. 489.129(1)(q) and
19 is subject to the disciplinary proceedings set out in s.
20 489.13.

21 Section 4. This act shall take effect July 1, 1999.

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23 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
24 COMMITTEE SUBSTITUTE FOR
25 SB 1284

26 Requires that the boards regulating contractors and electrical
27 contractors notify the licensee and the judgment creditor of
28 when and where the board intends to take action in the
29 disciplinary proceeding; directs the boards to provide the
30 licensee and the judgment creditor with copies of all actions
31 taken in the proceedings.