

By Representative J. Miller

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 lien or judgment against
5 construction contractors; creating s. 489.5334,
6 F.S.; providing disciplinary procedures
7 involving a lien or judgment against electrical
8 and alarm system contractors; creating s.
9 489.5591, F.S.; providing applicability for
10 disciplinary proceedings involving
11 mismanagement or misconduct that causes
12 financial harm to a customer; providing an
13 effective date.

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

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

19 489.13 Disciplinary proceedings involving a lien or
20 judgment.--

21 (1) Notwithstanding any other provision of this part
22 or chapter 455, this section applies to any disciplinary case
23 that involves a violation of s. 489.129(1)(h)1. or that
24 involves any contractor who has an unsatisfied judgment
25 against him or her in connection with the practice of his or
26 her profession.

27 (2) The department shall initiate disciplinary
28 proceedings involving a construction lien when a lienor files
29 with the department:

30 (a) A complaint on a form prescribed by the board;
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1 (b) A certified copy of the recorded construction
2 lien; and

3 (c) An affidavit signed under oath which states that
4 the construction lien is for labor, services, or materials
5 furnished to the contractor and that, to the best knowledge of
6 the lienor, the contractor has been paid for the lienor's
7 labor, services, or materials.

8 (3) The department shall initiate disciplinary
9 proceedings involving an unsatisfied judgment against a
10 contractor when a judgment creditor files with the department:

11 (a) A complaint on a form prescribed by the board;

12 (b) A certified copy of the recorded judgment; and

13 (c) An affidavit signed under oath which states that
14 the judgment arises from the practice of the judgment debtor's
15 profession licensed under this part.

16 (4) Within 10 days after the date the department
17 receives a completed complaint, certified copies of the lien
18 or judgment, and the required affidavit, the department shall
19 issue and serve on the contractor an order that requires the
20 contractor to show cause why his or her license should not be
21 suspended until the lien or judgment is satisfied. The order
22 to show cause shall require the contractor to respond in
23 writing under oath within 20 days after the date the order is
24 served on the contractor.

25 (5) If the contractor fails to respond under oath to
26 the order to show cause within the 20-day period, the board
27 shall immediately enter a final order suspending the
28 contractor's license until the contractor satisfies the lien
29 or judgment and pays the department the costs incurred in
30 connection with processing the complaint.

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1 (6) If the contractor responds under oath to the order
2 to show cause within the 20-day period, a copy of the response
3 shall be provided to the lienor or judgment creditor. The
4 lienor shall have 20 days within which to file a written reply
5 under oath to the contractor's written statement.

6 (7) The department shall forward the complaint, the
7 contractor's response, and the complainant's reply to the
8 board. The board shall determine whether the contractor is in
9 violation of s. 489.129(1)(h). If the board finds that a
10 violation has occurred, the board shall suspend the
11 contractor's license until the lien or judgment has been
12 satisfied and the contractor reimburses the board for the
13 costs incurred in connection with processing the complaint.
14 The board may impose such other penalties as it considers
15 appropriate, consistent with its penalty guidelines.

16 (8) The contractor may request a hearing on the
17 complaint if genuine issues of material fact exist concerning
18 the elements of the violation. If the board finds that
19 genuine issues of material fact exist, it may conduct the
20 hearing or refer the complaint to the Division of
21 Administrative Hearings.

22 Section 2. Section 489.5334, Florida Statutes, is
23 created to read:

24 489.5334 Disciplinary proceedings involving a lien or
25 judgment.--

26 (1) Notwithstanding any other provision of this part
27 or any provision of chapter 455, this section applies to any
28 disciplinary case that involves a violation of s.
29 489.533(1)(m)1. or that involves any contractor who has an
30 unsatisfied judgment against him or her in connection with the
31 practice of his or her profession.

1 (2) The department shall initiate disciplinary
2 proceedings involving a construction lien when a lienor files
3 with the department:

4 (a) A complaint on a form prescribed by the board;

5 (b) A certified copy of the recorded construction
6 lien; and

7 (c) An affidavit signed under oath which states that
8 the construction lien is for labor, services, or materials
9 furnished to the contractor and that, to the best knowledge of
10 the lienor, the contractor has been paid for the lienor's
11 labor, services, or materials.

12 (3) The department shall initiate disciplinary
13 proceedings involving an unsatisfied judgment against a
14 contractor when the judgment creditor files with the
15 department:

16 (a) A complaint on a form prescribed by the board;

17 (b) A certified copy of the recorded judgment; and

18 (c) An affidavit signed under oath which states that
19 the judgment arises from the practice of the judgment debtor's
20 profession licensed under this part.

21 (4) Within 10 days after the date the department
22 receives a completed complaint, certified copies of the lien
23 or judgment, and the required affidavit, the department shall
24 issue and serve on the contractor an order that requires the
25 contractor to show cause why his or her license should not be
26 suspended until the lien or judgment is satisfied. The order
27 to show cause shall require the contractor to respond in
28 writing under oath within 20 days after the date the order is
29 served on the contractor.

30 (5) If the contractor fails to respond under oath to
31 the order to show cause within the 20-day period, the board

1 shall immediately enter a final order suspending the
2 contractor's license until the contractor satisfies the lien
3 or judgment and pays the department the costs incurred in
4 connection with processing the complaint.

5 (6) If the contractor responds under oath to the order
6 to show cause within the 20-day period, a copy of the response
7 shall be provided to the lienor or judgment creditor. The
8 lienor shall have 20 days within which to file a written reply
9 under oath to the contractor's written statement.

10 (7) The department shall forward the complaint, the
11 contractor's response, and the complainant's reply to the
12 board. The board shall determine whether the contractor is in
13 violation of s. 489.533(1)(m)1. or s. 489.533(1)(m)4. If the
14 board finds that a violation has occurred, the board shall
15 suspend the contractor's license until the lien or judgment
16 has been satisfied and the contractor reimburses the board for
17 the costs incurred in connection with processing the
18 complaint. The board may impose such other penalties as it
19 considers appropriate, consistent with its penalty guidelines.

20 (8) The contractor may request a hearing on the
21 complaint if genuine issues of material fact exist concerning
22 the elements of the violation. If the board finds that
23 genuine issues of material fact exist, it may conduct the
24 hearing or refer the complaint to the Division of
25 Administrative Hearings.

26 (9) As used in this part, the term "contractor" refers
27 to any person licensed under chapter 489, part II, regardless
28 of whether that person is performing as a contractor, a
29 subcontractor, or a sub-subcontractor on a project.

30 Section 3. Section 489.5591, Florida Statutes, is
31 created to read:

1 489.5591 Disciplinary proceedings involving a lien or
2 judgment.--Any person licensed under this part is subject to
3 disciplinary action for any violation of s. 489.129(1)(h) and
4 is subject to the disciplinary proceedings set out in s.
5 489.13.

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

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9 SENATE SUMMARY

10 Establishes certain disciplinary procedures for
11 construction contractors and electrical and alarm system
12 contractors. (See bill for details.)

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