

By Senator Bennett

21-1602-06

1 A bill to be entitled
2 An act relating to contracting; amending s.
3 489.128, F.S.; providing clarification
4 regarding when a business organization is
5 considered licensed; clarifying that a person
6 who unknowingly uses an unlicensed contractor
7 may file a civil action against such
8 contractor; providing guidelines for the legal
9 determination of whether a contractor is
10 licensed; providing for retroactive
11 application; providing an effective date.

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

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15 Section 1. Section 489.128, Florida Statutes, is
16 amended to read:

17 489.128 Contracts entered into by unlicensed
18 contractors unenforceable.--

19 (1) As a matter of public policy, contracts entered
20 into on or after October 1, 1990, by an unlicensed contractor
21 shall be unenforceable in law ~~or in equity by the unlicensed~~
22 ~~contractor.~~

23 (a) For purposes of this section, an individual is
24 unlicensed if the individual does not have a license required
25 by this part concerning the scope of the work to be performed
26 under the contract. A business organization is considered
27 licensed if it has a principal, manager, director, or officer
28 who is licensed under this chapter and qualified to serve as a
29 qualifying agent on the effective date of the original
30 contract for the work if it is so stated in the contract, or
31 on the date the last party to the contract executed it. If the

1 contract does not establish an effective date, the first date
2 upon which the contractor provided labor, services, or
3 materials under the contract is the effective date. A business
4 ~~organization is unlicensed if the business organization does~~
5 ~~not have a primary or secondary qualifying agent in accordance~~
6 ~~with this part concerning the scope of the work to be~~
7 ~~performed under the contract.~~

8 (b) For purposes of this section, an individual or
9 business organization shall not be considered unlicensed for
10 failing to have an occupational license certificate issued
11 under the authority of chapter 205. A business organization
12 shall not be considered unlicensed for failing to have a
13 certificate of authority as required by ss. 489.119 and
14 489.127.

15 (c) For purposes of this section, a contractor shall
16 be considered unlicensed only if the contractor was unlicensed
17 on the effective date of the original contract for the work,
18 if stated therein, or, if not stated, the date the last party
19 to the contract executed it, if stated therein. If the
20 contract does not establish such a date, the contractor shall
21 be considered unlicensed only if the contractor was unlicensed
22 on the first date upon which the contractor provided labor,
23 services, or materials under the contract.

24 (2) Notwithstanding any other provision of law to the
25 contrary, if a contract is rendered unenforceable under this
26 section, no lien or bond claim shall exist in favor of the
27 unlicensed contractor for any labor, services, or materials
28 provided under the contract or any amendment thereto.

29 (3) This section shall not affect the rights of
30 parties other than the unlicensed contractor to enforce
31 contract, lien, or bond remedies. This section shall not

1 affect the obligations of a surety that has provided a bond on
2 behalf of an unlicensed contractor. It shall not be a defense
3 to any claim on a bond or indemnity agreement that the
4 principal or indemnitor is unlicensed for purposes of this
5 section. A person who uses the services of an unlicensed
6 contractor may file a civil action against the contractor
7 unless the person knew that the contractor was not properly
8 licensed when he or she allowed the contractor to perform the
9 services.

10 (4) In litigation regarding this section, a court
11 shall rule that a contractor was licensed for the purposes of
12 this section if:

13 (a) The contractor was licensed as a contractor in
14 this state before first providing labor, services, or
15 materials under the contract, and the license lapsed before
16 commencement of construction or execution of the contract;

17 (b) The contractor acted reasonably and in good faith
18 to maintain a license; and

19 (c) The contractor acted promptly and in good faith to
20 obtain or reinstate the license upon learning it was invalid,
21 and the license was reinstated or issued. A contractor who
22 submits an application for licensure prior to or
23 simultaneously with performing any contracting activities
24 substantially complies with the licensure requirements of this
25 chapter if the application was not acted upon by the board but
26 was approved by operation of s. 120.60.

27 Section 2. This act applies retroactively to contracts
28 entered into on or after October 1, 2000. It also applies to
29 all actions that are pending on or are filed on or after
30 October 1, 2006.

31 Section 3. This act shall take effect October 1, 2006.

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SENATE SUMMARY

Revises provisions related to the use of unlicensed contractors. Clarifies when a business organization is considered licensed. Clarifies that certain persons may sue unlicensed contractors whom they unknowingly employ. Provides guidelines for determining whether a contractor is licensed. Provides for retroactive application.