

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 89 Actions Against Contractors Without Required Insurance Coverage

**SPONSOR(S):** Spano

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 604

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee	14 Y, 0 N	MacNamara	Bond
2) Careers & Competition Subcommittee			
3) Judiciary Committee			

### SUMMARY ANALYSIS

Current law establishes licensing procedures and regulatory duties for the construction industry. A construction contractor is allowed to operate and perform work in the construction industry as a business organization. A characteristic of a business organization is that the owners, members, or agents are generally not personally liable for damages related to work performed by the organization.

The license law requires a contractor, whether operating personally or as a business organization, to carry public liability insurance and property damage insurance. Where an organization fails to carry the required insurance policy, a claim for damages related to work that would have been covered under such policy must be pursued against the business organization. In some circumstances, that business organization may lack sufficient assets to pay damages.

The bill provides that when a construction contractor operating as a business entity is required to carry public liability insurance and property damage insurance but fails to do so, the individual contractor is personally liable for any damage that would have otherwise been covered under the required policy, up to the limits of what the insurance would have covered.

The bill does not appear to have a fiscal impact on state or local government.

The bill provides an effective date of July 1, 2018.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### Contractors, Insurance, and Liability

Part I of ch. 489, F.S., regulates the construction industry. Notably, it establishes licensing procedures and regulatory duties for the construction industry and prohibits contractors from engaging in business without being certified or registered as provided for in current law. Ch. 489, F.S., allows contractors to operate and perform work under a business organization, such as a partnership, a corporation, or a limited liability company (LLC).<sup>1</sup>

If the contractor proposes to engage in contracting as a business organization, the business organization must apply for certification or registration through a qualifying agent.<sup>2</sup> Any business organization engaging in contracting under this provision must provide the Construction Industry Licensing Board with the name and license number of each registered or certified contractor employed by the business organization to supervise its contracting activities.

Under s. 489.115(5), F.S., a licensed contractor is required to carry public liability insurance and property damage insurance as a prerequisite to the initial issuance of, or the renewal of, a certificate or registration. Public liability insurance covers a contractor or business if someone other than an employee is injured in the course of performing work or if damage is caused to third party property. Conversely, property damage insurance covers damage to tangible property that may result in the course of performing work. Insurance, however, does not cover ordinary contract disputes regarding the quality of the work.

General and building contractors are required to carry \$300,000 of liability coverage and \$50,000 of property damage coverage. All other specialty contractors are required to carry \$100,000 of liability coverage and \$25,000 of property damage coverage.<sup>3</sup>

In addition to evidence of insurance, as a prerequisite to the initial issuance of a certificate, the applicant must furnish evidence of financial responsibility, credit, and business reputation of either himself or herself personally or the business organization he or she desires to qualify.<sup>4</sup> The Construction Licensing Board must refuse to qualify an applicant or business organization if they fail to provide a current consumer credit report that discloses any unsatisfied judgment or liens against the applicant.<sup>5</sup>

Current law provides for criminal penalties where a contractor or business organization:

- Enters into an agreement whereby a certification number or registration number is used by a person who is not certified or registered, or used by a business organization that is not duly qualified to engage in the business.
- Knowingly allows their certification number or registration number to be used by a person who is not certified or registered, or used by a business organization that is not qualified to engage in the business.

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<sup>1</sup> Fla. Admin. Code 61G4-15.0021(1); See also s. 489.105(13), F.S.

<sup>2</sup> S. 489.119(2), F.S.

<sup>3</sup> Fla. Admin. Code 69B-221.055. These amounts are set by the Construction Industry Licensing Board. s. 489.115(5)(a). F.S.

<sup>4</sup> S. 489.115(5)(b), F.S.

<sup>5</sup> Fla. Admin. Code 61G4-15.006.

- Applies for or obtains a building permit for construction prior to entering into a contract to perform the work specified in the permit.<sup>6</sup>

In addition to criminal penalties, current law provides for civil remedies, administrative remedies and fines<sup>7</sup> and disciplinary action by the Construction Industry Licensing Board under various circumstances.<sup>8</sup> Under s. 768.0425, F.S., a consumer is entitled to three times the actual compensatory damages that result from a contractor's negligence, malfeasance, or misfeasance when the contractor is neither certified nor licensed as required by law.

Qualifying agents and contractors may not be held individually liable for a breach of the duty created by the statutes pertaining to the certification or registration of business organizations and qualifying agents' responsibilities.<sup>9</sup>

### Business Organizations and Liability

A business organization such as a corporation or LLC is a separate legal entity. One feature of a business organization is that the employees, agents, or owners of the organization are generally shielded from liability for actions that occurred in the course of operating the organization.<sup>10</sup> Disregarding the separate legal status of a corporation or LLC and imposing individual liability is referred to as "piercing the corporate veil."

Before the general rule of limited shareholder liability can be disregarded under Florida law, the party seeking to pierce the corporate veil must establish by a preponderance of the evidence that:

- The shareholder dominated and controlled the corporation to such an extent that the corporation had no independent existence;
- The corporate form was used fraudulently or for an improper purpose; and
- The fraudulent or improper use of the corporate form caused injury to the claimant.<sup>11</sup>

When the corporate veil is pierced, any acts committed by either the business organization or a member of the organization are treated as the acts of both and either may be subject to liability.<sup>12</sup> However, courts will only disregard this general rule and allow personal liability to be imposed on an employee, agent or owner of a business organization in exceptional circumstances.<sup>13</sup>

Members of a corporation or LLC are also protected from individual liability following the dissolution of the business organization. While contracts entered into at the time of dissolution are not terminated as a result of dissolution<sup>14</sup>, actions based on these contracts would still be brought against the business organization itself. Because dissolution of a corporation or LLC requires the distribution of remaining assets, any damages against a business organization that has dissolved may be uncollectable as the organization may lack sufficient assets to pay.

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<sup>6</sup> S. 489.127, F.S. A person who violates any of these prohibitions commits a misdemeanor of the first degree and if the violation occurs after the person has previously been found guilty of such a violation, the person commits a felony of the third degree.

<sup>7</sup> S. 489.132(1), F.S.

<sup>8</sup> S. 489.129(1)(a)-(q), F.S.

<sup>9</sup> *Murthy v. N. Sinha Corp.*, 644 So. 2d 983 (Fla. 1994).

<sup>10</sup> See e.g. s. 607.0831, F.S. (Directors of corporations may not be held personally liable for monetary damages); s. 605.0304(1), F.S. (A debt, obligation, or other liability of a LLC is solely the debt, obligation, or other liability of the company).

<sup>11</sup> *Dania Jai-Alai Palace, Inc., v. Sykes*, 450 So.2d 1114 (Fla. 1984).

<sup>12</sup> *Id.*

<sup>13</sup> See *Molinos Valle Del Cibao, C por A. v. Lama*, 633 F.3d 1330, 1349 (11th Cir. 2011) (applying Florida law).

<sup>14</sup> *In re Southern Cinemas, Inc.*, 256 B.R. 520 (Bankr. M.D. Fla. 2000).

## Effect of Bill

The bill provides that when a contractor who is required to carry public liability insurance and property damage insurance fails to do so, the contractor is personally liable for any damage that would have otherwise been covered under the required insurance policy.

The ability to hold the contractor personally liable extends to any contractor, regardless of the organizational form of the contractor's business. As such, if the business organization has dissolved or has insufficient assets left to pay the damages, a party may nonetheless seek redress against the contractor in their individual capacity.

### B. SECTION DIRECTORY:

**Section 1:** Creates s. 768.0426, F.S., related to damages in actions against contractors without the required insurance coverage.

**Section 2:** Provides an effective date of July 1, 2018.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

#### 2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.