

1 A bill to be entitled

2 An act relating to construction bonds; amending s.
3 255.05, F.S.; requiring a notice of nonpayment to be
4 under oath; requiring the notice to contain certain
5 statements; specifying that a claimant who serves a
6 fraudulent notice of nonpayment forfeits his or her
7 rights under a bond; providing that the service of a
8 fraudulent notice of nonpayment is a complete defense
9 to the claimant's claim against the bond and entitles
10 the prevailing party to attorney fees; requiring a
11 notice of nonpayment to be in a prescribed form;
12 amending s. 627.756, F.S.; providing that a provision
13 relating to attorney fees applies to certain suits
14 brought by contractors; deeming contractors to be
15 insureds or beneficiaries in relation to bonds for
16 construction contracts; reenacting s. 627.428, F.S.,
17 relating to attorney fees; amending s. 713.23, F.S.;
18 requiring a lienor to serve a notice of nonpayment
19 under oath to specified entities during a certain
20 period of time; requiring a notice of nonpayment to
21 contain certain statements; specifying that a lienor
22 who serves a fraudulent notice of nonpayment forfeits
23 his or her rights under the bond; providing that the
24 service of a fraudulent notice of nonpayment is a
25 complete defense to the lienor's claim against the

26 | bond and entitles the prevailing party to attorney
27 | fees; requiring a notice of nonpayment to be in a
28 | prescribed form; amending s. 713.245, F.S.; providing
29 | that a contractor may record a notice identifying a
30 | project bond as a conditional payment bond before
31 | project commencement to make the duty of a surety to
32 | pay lienors coextensive with the contractor's duty to
33 | pay; providing that failure to list or record a bond
34 | as a conditional payment bond does not convert such a
35 | bond into a common law bond or a bond furnished under
36 | a specified provision; revising the statement that
37 | must be included on a conditional payment bond;
38 | providing applicability; providing an effective date.
39 |

40 | Be It Enacted by the Legislature of the State of Florida:
41 |

42 | Section 1. Paragraph (a) of subsection (2) of section
43 | 255.05, Florida Statutes, is amended to read:

44 | 255.05 Bond of contractor constructing public buildings;
45 | form; action by claimants.—

46 | (2) (a) 1. If a claimant is no longer furnishing labor,
47 | services, or materials on a project, a contractor or the
48 | contractor's agent or attorney may elect to shorten the time
49 | within which an action to enforce any claim against a payment
50 | bond must be commenced by recording in the clerk's office a

51 | notice in substantially the following form:

52 |

53 | NOTICE OF CONTEST OF CLAIM
54 | AGAINST PAYMENT BOND

55 |

56 | To: ...(Name and address of claimant)...

57 |

58 | You are notified that the undersigned contests your notice
59 | of nonpayment, dated,, and served on the
60 | undersigned on,, and that the time within
61 | which you may file suit to enforce your claim is limited to 60
62 | days after the date of service of this notice.

63 |

64 | DATED on,

65 |

66 | Signed: ...(Contractor or Attorney)...

67 |

68 | The claim of a claimant upon whom such notice is served and who
69 | fails to institute a suit to enforce his or her claim against
70 | the payment bond within 60 days after service of such notice is
71 | ~~shall be~~ extinguished automatically. The contractor or the
72 | contractor's attorney shall serve a copy of the notice of
73 | contest to the claimant at the address shown in the notice of
74 | nonpayment or most recent amendment thereto and shall certify to
75 | such service on the face of the notice and record the notice.

76 | 2. A claimant, except a laborer, who is not in privity
77 | with the contractor shall, before commencing or not later than
78 | 45 days after commencing to furnish labor, services, or
79 | materials for the prosecution of the work, serve ~~furnish~~ the
80 | contractor with a written notice that he or she intends to look
81 | to the bond for protection. A claimant who is not in privity
82 | with the contractor and who has not received payment for
83 | furnishing his or her labor, services, or materials shall serve
84 | a written notice of nonpayment on ~~deliver to~~ the contractor and
85 | on ~~to~~ the surety ~~written notice of the performance of the labor~~
86 | ~~or delivery of the materials or supplies and of the nonpayment.~~
87 | The notice of nonpayment shall be under oath and served during
88 | the progress of the work or thereafter but may not be served
89 | earlier than 45 days after the first furnishing of labor,
90 | services, or materials by the claimant or later than 90 days
91 | after the final furnishing of the labor, services, or materials
92 | by the claimant or, with respect to rental equipment, ~~not~~ later
93 | than 90 days after the date that the rental equipment was last
94 | on the job site available for use. The notice of nonpayment must
95 | state the nature of the labor or services performed; the nature
96 | of the labor or services to be performed, if known; the
97 | materials furnished; the materials to be furnished, if known;
98 | the amount paid on account to date; the amount due; and the
99 | amount to become due, if known. All such information given must
100 | be current as of the stated date of the notice. Any notice of

101 nonpayment served by a claimant who is not in privity with the
102 contractor which includes sums for retainage must specify the
103 portion of the amount claimed for retainage. An action for the
104 labor, materials, or supplies may not be instituted against the
105 contractor or the surety unless the notice to the contractor and
106 notice of nonpayment have been served, if required by this
107 section. Notices required or permitted under this section must
108 ~~shall~~ be served in accordance with s. 713.18. A claimant may not
109 waive in advance his or her right to bring an action under the
110 bond against the surety. In any action brought to enforce a
111 claim against a payment bond under this section, the prevailing
112 party is entitled to recover a reasonable fee for the services
113 of his or her attorney for trial and appeal or for arbitration,
114 in an amount to be determined by the court, which fee must be
115 taxed as part of the prevailing party's costs, as allowed in
116 equitable actions. The time periods for service of a notice of
117 nonpayment or for bringing an action against a contractor or a
118 surety shall be measured from the last day of furnishing labor,
119 services, or materials by the claimant and may not be measured
120 by other standards, such as the issuance of a certificate of
121 occupancy or the issuance of a certificate of substantial
122 completion. A claimant who serves a fraudulent notice of
123 nonpayment forfeits his or her rights under the bond. A notice
124 of nonpayment is fraudulent if the claimant has willfully
125 exaggerated the amount due or prepared the notice with such

126 willful and gross negligence as to amount to a willful
 127 exaggeration. However, a minor mistake or error in a notice of
 128 nonpayment, or a good faith dispute as to the amount due, does
 129 not constitute a willful exaggeration that operates to defeat an
 130 otherwise valid claim against the bond. The service of a
 131 fraudulent notice of nonpayment is a complete defense to the
 132 claimant's claim against the bond, entitling the prevailing
 133 party to attorney fees under this subparagraph. The notice of
 134 nonpayment under this subparagraph must be in substantially the
 135 following form:

136
 137 NOTICE OF NONPAYMENT
 138

139 To: ... (name of contractor and address)...

140 ... (name of surety and address)...

141 The undersigned claimant notifies you that:

142 1. Claimant has furnished ... (describe labor, services, or
 143 materials) ... for the improvement of the real property
 144 identified as ... (property description) ... The corresponding
 145 amount now due and unpaid is \$

146 2. Claimant has been paid on account to date the amount of
 147 \$ for previously furnishing ... (describe labor, service, or
 148 materials) ... for this improvement.

149 3. Claimant expects to furnish ... (describe labor,
 150 service, or materials) ... for this improvement in the future (if

151 known), and the corresponding amount expected to become due is \$
152 (if known).

153
154 Under penalties of perjury, I declare that I have read the
155 foregoing Notice of Nonpayment and that the facts stated in it
156 are true to the best of my knowledge and belief.

157
158 DATED on,

159
160 ...(signature and address of claimant)...

161
162 STATE OF FLORIDA

163 COUNTY OF

164
165 The foregoing instrument was sworn to (or affirmed) and
166 subscribed before me this.....day of.....(year)...(name of
167 signatory)....

168 (Signature of Notary Public-State of Florida)
169 (Print, Type, or Stamp Commissioned Name of Notary Public)

170
171 Personally Known.....OR Produced Identification.....

172
173 Type of Identification Produced.....

174 Section 2. Subsection (1) of section 627.756, Florida
175 Statutes, is amended to read:

176 627.756 Bonds for construction contracts; attorney fees in
177 case of suit.—

178 (1) Section 627.428 applies to suits brought by owners,
179 contractors, subcontractors, laborers, and materialmen against a
180 surety insurer under payment or performance bonds written by the
181 insurer under the laws of this state to indemnify against
182 pecuniary loss by breach of a building or construction contract.
183 Owners, contractors, subcontractors, laborers, and materialmen
184 shall be deemed to be insureds or beneficiaries for the purposes
185 of this section.

186 Section 3. For the purpose of incorporating the amendment
187 made by this act to section 627.756, Florida Statutes, in a
188 reference thereto, section 627.428, Florida Statutes, is
189 reenacted to read:

190 627.428 Attorney's fee.—

191 (1) Upon the rendition of a judgment or decree by any of
192 the courts of this state against an insurer and in favor of any
193 named or omnibus insured or the named beneficiary under a policy
194 or contract executed by the insurer, the trial court or, in the
195 event of an appeal in which the insured or beneficiary prevails,
196 the appellate court shall adjudge or decree against the insurer
197 and in favor of the insured or beneficiary a reasonable sum as
198 fees or compensation for the insured's or beneficiary's attorney
199 prosecuting the suit in which the recovery is had.

200 (2) As to suits based on claims arising under life

201 insurance policies or annuity contracts, no such attorney's fee
 202 shall be allowed if such suit was commenced prior to expiration
 203 of 60 days after proof of the claim was duly filed with the
 204 insurer.

205 (3) When so awarded, compensation or fees of the attorney
 206 shall be included in the judgment or decree rendered in the
 207 case.

208 Section 4. Paragraph (d) of subsection (1) of section
 209 713.23, Florida Statutes, is amended to read:

210 713.23 Payment bond.—

211 (1)

212 (d) In addition, a lienor who has not received payment for
 213 furnishing his or her labor, services, or materials must ~~is~~
 214 ~~required~~, as a condition precedent to recovery under the bond,
 215 ~~to~~ serve a written notice of nonpayment to the contractor and
 216 the surety. The notice must be under oath and served during the
 217 progress of the work or thereafter, but may not be served before
 218 payment of the amount specified in paragraph 1. of the notice is
 219 considered past due under the terms of the lienor's contract or
 220 ~~not~~ later than 90 days after the final furnishing of labor,
 221 services, or materials by the lienor, or, with respect to rental
 222 equipment, later than 90 days after the date the rental
 223 equipment was on the job site and available for use. The notice
 224 of nonpayment must state the nature of the labor or services
 225 performed; the nature of the labor or services to be performed,

226 if known; the materials furnished; the materials to be
227 furnished, if known; the amount paid on account to date; the
228 amount due; and the amount to become due, if known. All such
229 information given must be current as of the stated date of the
230 notice. A notice of nonpayment that includes sums for retainage
231 must specify the portion of the amount claimed for retainage.
232 The required. A ~~written~~ notice satisfies this condition
233 precedent with respect to the payment described in the notice of
234 nonpayment, including unpaid finance charges due under the
235 lienor's contract, and with respect to any other payments which
236 become due to the lienor after the date of the notice of
237 nonpayment. The time period for serving a ~~written~~ notice of
238 nonpayment shall be measured from the last day of furnishing
239 labor, services, or materials by the lienor and may ~~shall~~ not be
240 measured by other standards, such as the issuance of a
241 certificate of occupancy or the issuance of a certificate of
242 substantial completion. The failure of a lienor to receive
243 retainage sums not in excess of 10 percent of the value of
244 labor, services, or materials furnished by the lienor is not
245 considered a nonpayment requiring the service of the notice
246 provided under this paragraph. If the payment bond is not
247 recorded before commencement of construction, the time period
248 for the lienor to serve a notice of nonpayment may at the option
249 of the lienor be calculated from the date specified in this
250 section or the date the lienor is served a copy of the bond.

251 However, the limitation period for commencement of an action on
 252 the payment bond as established in paragraph (e) may not be
 253 expanded. A lienor who serves a fraudulent notice of nonpayment
 254 forfeits his or her rights under the bond. A notice of
 255 nonpayment is fraudulent if the lienor has willfully exaggerated
 256 the amount due or prepared the notice with such willful and
 257 gross negligence as to amount to a willful exaggeration.
 258 However, a minor mistake or error in a notice of nonpayment, or
 259 a good faith dispute as to the amount due, does not constitute a
 260 willful exaggeration that operates to defeat an otherwise valid
 261 claim against the bond. The service of a fraudulent notice of
 262 nonpayment is a complete defense to the lienor's claim against
 263 the bond, entitling the prevailing party to attorney fees under
 264 s. 713.29. The notice under this paragraph must ~~may~~ be in
 265 substantially the following form:

266
 267 NOTICE OF NONPAYMENT

268
 269 To ...(name of contractor and address)...

270 ...(name of surety and address)...

271 The undersigned notifies you that:

- 272 1. The lienor ~~he or she~~ has furnished ...(describe labor,
 273 services, or materials)...for the improvement of the real
 274 property identified as ...(property description).... The
 275 corresponding amount now due and unpaid is \$.....

276 2. The lienor has been paid on account to date the amount
277 of \$.... for previously furnishing ...(describe labor, services,
278 or materials)...for this improvement.

279 3. The lienor expects to furnish ...(describe labor,
280 service, or materials)...for this improvement in the future (if
281 known), and the corresponding amount expected to become due is \$
282 (if known).

283
284 I declare that I have read the foregoing Notice of Nonpayment
285 and that the facts stated in it are true to the best of my
286 knowledge and belief.

287
288 DATED on,

289
290 ...(signature and address of lienor)...

291
292 STATE OF FLORIDA

293 COUNTY OF

294
295 The foregoing instrument was sworn to (or affirmed) and
296 subscribed before me this.....day of.....(year)...(name of
297 signatory)....

298 (Signature of Notary Public-State of Florida)

299 (Print, Type, or Stamp Commissioned Name of Notary Public)

300

301 Personally Known.....OR Produced Identification.....

302

303 Type of Identification Produced.....

304 Section 5. Subsection (1) of section 713.245, Florida
 305 Statutes, is amended to read:

306 713.245 Conditional payment bond.—

307 (1) Notwithstanding any provisions of ss. 713.23 and
 308 713.24 to the contrary, if the contractor's written contractual
 309 obligation to pay lienors is expressly conditioned upon and
 310 limited to the payments made by the owner to the contractor, the
 311 duty of the surety to pay lienors will be coextensive with the
 312 duty of the contractor to pay, if the following provisions are
 313 complied with:

314 (a) The bond is listed in the notice of commencement for
 315 the project as a conditional payment bond and is recorded
 316 together with the notice of commencement for the project before
 317 ~~prior to~~ commencement of the project, or the contractor records
 318 a notice identifying the bond for the project as a conditional
 319 payment bond, with the bond attached, before commencement of the
 320 project. Failure to comply with this paragraph does not convert
 321 a conditional payment bond into a common law bond or into a bond
 322 furnished under s. 713.23.

323 (b) The words "conditional payment bond" are contained in
 324 the title of the bond at the top of the front page.

325 (c) The bond contains on the front page, capitalized and

326 | in at least 10-point type, the statement: "THIS BOND ONLY COVERS
327 | CLAIMS OF SUBCONTRACTORS, SUB-SUBCONTRACTORS, SUPPLIERS, AND
328 | LABORERS TO THE EXTENT THE CONTRACTOR HAS BEEN PAID FOR THE
329 | LABOR, SERVICES, OR MATERIALS PROVIDED BY SUCH PERSONS. THIS
330 | BOND DOES NOT PRECLUDE YOU FROM SERVING A NOTICE TO OWNER OR
331 | FILING A CLAIM OF LIEN ON THIS PROJECT."

332 | Section 6. The amendments made by this act to ss. 627.756
333 | and 713.245, Florida Statutes, apply only to payment or
334 | performance bonds issued on or after October 1, 2019.

335 | Section 7. This act shall take effect October 1, 2019.