

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; requiring a
10 notice of nonpayment to be in a prescribed form;
11 amending s. 627.756, F.S.; providing that a provision
12 relating to attorney fees applies to certain suits
13 brought by contractors; deeming contractors to be
14 insureds or beneficiaries in relation to bonds for
15 construction contracts; amending s. 627.428, F.S.;
16 revising terminology; amending s. 713.23, F.S.;
17 requiring a notice of nonpayment to be under oath;
18 requiring the notice to contain certain statements;
19 specifying that a lienor who serves a fraudulent
20 notice of nonpayment forfeits his or her rights under
21 a bond; providing that the service of a fraudulent
22 notice of nonpayment is a complete defense to the
23 lienor's claim against the bond; requiring a notice of
24 nonpayment to be in a prescribed form; providing
25 applicability; providing an effective date.

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

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

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

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

NOTICE OF CONTEST OF CLAIM
AGAINST PAYMENT BOND

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

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

51 DATED on,

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53 Signed: ... (Contractor or Attorney) ...

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55 The claim of a claimant upon whom such notice is served and who
 56 fails to institute a suit to enforce his or her claim against
 57 the payment bond within 60 days after service of such notice is
 58 ~~shall be~~ extinguished automatically. The contractor or the
 59 contractor's attorney shall serve a copy of the notice of
 60 contest to the claimant at the address shown in the notice of
 61 nonpayment or most recent amendment thereto and shall certify to
 62 such service on the face of the notice and record the notice.

63 2. A claimant, except a laborer, who is not in privity
 64 with the contractor shall, before commencing or not later than
 65 45 days after commencing to furnish labor, services, or
 66 materials for the prosecution of the work, serve ~~furnish~~ the
 67 contractor with a written notice that he or she intends to look
 68 to the bond for protection. A claimant who is not in privity
 69 with the contractor and who has not received payment for
 70 furnishing his or her labor, services, or materials shall serve
 71 a written notice of nonpayment on ~~deliver to~~ the contractor and
 72 on to the surety ~~written notice of the performance of the labor~~
 73 ~~or delivery of the materials or supplies and of the nonpayment.~~
 74 The notice of nonpayment shall be under oath and served during
 75 the progress of the work or thereafter but may not be served

76 | earlier than 45 days after the first furnishing of labor,
77 | services, or materials by the claimant or later than 90 days
78 | after the final furnishing of the labor, services, or materials
79 | by the claimant or, with respect to rental equipment, ~~not~~ later
80 | than 90 days after the date that the rental equipment was last
81 | on the job site available for use. The notice of nonpayment must
82 | state the nature of the labor or services performed; the
83 | materials furnished; the materials to be furnished, if known;
84 | the amount paid on account to date; the amount due; and the
85 | amount to become due, if known. All such information given must
86 | be current as of the stated date of the notice. Any notice of
87 | nonpayment served by a claimant who is not in privity with the
88 | contractor which includes sums for retainage must specify the
89 | portion of the amount claimed for retainage. An action for the
90 | labor, services, or materials, ~~or supplies~~ may not be instituted
91 | against the contractor or the surety unless the notice to the
92 | contractor and notice of nonpayment have been served, if
93 | required by this section. Notices required or permitted under
94 | this section must ~~shall~~ be served in accordance with s. 713.18.
95 | A claimant may not waive in advance his or her right to bring an
96 | action under the bond against the surety. In any action brought
97 | to enforce a claim against a payment bond under this section,
98 | the prevailing party is entitled to recover a reasonable fee for
99 | the services of his or her attorney for trial and appeal or for
100 | arbitration, in an amount to be determined by the court, which

101 fee must be taxed as part of the prevailing party's costs, as
102 allowed in equitable actions. The time periods for service of a
103 notice of nonpayment or for bringing an action against a
104 contractor or a surety shall be measured from the last day of
105 furnishing labor, services, or materials by the claimant and may
106 not be measured by other standards, such as the issuance of a
107 certificate of occupancy or the issuance of a certificate of
108 substantial completion. The negligent inclusion or omission of
109 any information in the notice of nonpayment that has not
110 prejudiced the contractor or surety does not constitute a
111 default that operates to defeat an otherwise valid bond claim. A
112 claimant who serves a fraudulent notice of nonpayment forfeits
113 his or her rights under the bond. A notice of nonpayment is
114 fraudulent if the claimant has willfully exaggerated the amount
115 due, willfully included a claim for work not performed or
116 materials not furnished for the subject improvement, or prepared
117 the notice with such willful and gross negligence as to amount
118 to a willful exaggeration. However, a minor mistake or error in
119 a notice of nonpayment, or a good faith dispute as to the amount
120 due, does not constitute a willful exaggeration that operates to
121 defeat an otherwise valid claim against the bond. The service of
122 a fraudulent notice of nonpayment is a complete defense to the
123 claimant's claim against the bond. The notice of nonpayment
124 under this subparagraph must be in substantially the following
125 form:

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NOTICE OF NONPAYMENT

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

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

The undersigned claimant notifies you that:

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

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

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

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

DATED on,

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

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STATE OF FLORIDA
COUNTY OF

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

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

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

Type of Identification Produced.....

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

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

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

176 Section 3. Section 627.428, Florida Statutes, is amended
 177 to read:

178 627.428 Attorney fees ~~Attorney's fee~~.—

179 (1) Upon the rendition of a judgment or decree by any of
 180 the courts of this state against an insurer and in favor of any
 181 named or omnibus insured or the named beneficiary under a policy
 182 or contract executed by the insurer, the trial court or, in the
 183 event of an appeal in which the insured or beneficiary prevails,
 184 the appellate court shall adjudge or decree against the insurer
 185 and in favor of the insured or beneficiary a reasonable sum as
 186 fees or compensation for the insured's or beneficiary's attorney
 187 prosecuting the suit in which the recovery is had.

188 (2) As to suits based on claims arising under life
 189 insurance policies or annuity contracts, no such attorney fees
 190 ~~attorney's fee~~ shall be allowed if such suit was commenced prior
 191 to expiration of 60 days after proof of the claim was duly filed
 192 with the insurer.

193 (3) When so awarded, compensation or fees of the attorney
 194 shall be included in the judgment or decree rendered in the
 195 case.

196 Section 4. Paragraph (d) of subsection (1) of section
 197 713.23, Florida Statutes, is amended to read:

198 713.23 Payment bond.—

199 (1)

200 (d) In addition, a lienor who has not received payment for

201 furnishing his or her labor, services, or materials must ~~is~~
 202 required, as a condition precedent to recovery under the bond,
 203 ~~to~~ serve a written notice of nonpayment to the contractor and
 204 the surety. The notice must be under oath and served during the
 205 progress of the work or thereafter, but may not be served ~~not~~
 206 later than 90 days after the final furnishing of labor,
 207 services, or materials by the lienor, or, with respect to rental
 208 equipment, later than 90 days after the date the rental
 209 equipment was on the job site and available for use. The notice
 210 of nonpayment must state the nature of the labor or services
 211 performed; the nature of the labor or services to be performed,
 212 if known; the materials furnished; the materials to be
 213 furnished, if known; the amount paid on account to date; the
 214 amount due; and the amount to become due, if known. All such
 215 information given must be current as of the stated date of the
 216 notice. A notice of nonpayment that includes sums for retainage
 217 must specify the portion of the amount claimed for retainage.
 218 The required. ~~A written~~ notice satisfies this condition
 219 precedent with respect to the payment described in the notice of
 220 nonpayment, including unpaid finance charges due under the
 221 lienor's contract, and with respect to any other payments which
 222 become due to the lienor after the date of the notice of
 223 nonpayment. The time period for serving a ~~written~~ notice of
 224 nonpayment shall be measured from the last day of furnishing
 225 labor, services, or materials by the lienor and may ~~shall~~ not be

226 measured by other standards, such as the issuance of a
227 certificate of occupancy or the issuance of a certificate of
228 substantial completion. The failure of a lienor to receive
229 retainage sums not in excess of 10 percent of the value of
230 labor, services, or materials furnished by the lienor is not
231 considered a nonpayment requiring the service of the notice
232 provided under this paragraph. If the payment bond is not
233 recorded before commencement of construction, the time period
234 for the lienor to serve a notice of nonpayment may at the option
235 of the lienor be calculated from the date specified in this
236 section or the date the lienor is served a copy of the bond.
237 However, the limitation period for commencement of an action on
238 the payment bond as established in paragraph (e) may not be
239 expanded. The negligent inclusion or omission of any information
240 in the notice of nonpayment that has not prejudiced the
241 contractor or surety does not constitute a default that operates
242 to defeat an otherwise valid bond claim. A lienor who serves a
243 fraudulent notice of nonpayment forfeits his or her rights under
244 the bond. A notice of nonpayment is fraudulent if the lienor has
245 willfully exaggerated the amount due, willfully included a claim
246 for work not performed or materials not furnished for the
247 subject improvement, or prepared the notice with such willful
248 and gross negligence as to amount to a willful exaggeration.
249 However, a minor mistake or error in a notice of nonpayment, or
250 a good faith dispute as to the amount due, does not constitute a

251 willful exaggeration that operates to defeat an otherwise valid
 252 claim against the bond. The service of a fraudulent notice of
 253 nonpayment is a complete defense to the lienor's claim against
 254 the bond. The notice under this paragraph must ~~may~~ be in
 255 substantially the following form:

257 NOTICE OF NONPAYMENT

259 To ...(name of contractor and address)...

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

261 The undersigned notifies you that:

262 1. The lienor ~~he or she~~ has furnished ...(describe labor,
 263 services, or materials)...for the improvement of the real
 264 property identified as ...(property description).... The
 265 corresponding amount now due and unpaid is \$.....

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

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

274 I declare that I have read the foregoing Notice of Nonpayment
 275 and that the facts stated in it are true to the best of my

276 | knowledge and belief.

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278 | DATED on,

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280 | ...(signature and address of lienor)...

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282 | STATE OF FLORIDA

283 | COUNTY OF

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285 | The foregoing instrument was sworn to (or affirmed) and
286 | subscribed before me this.....day of.....(year)...(name of
287 | signatory)....

288 | (Signature of Notary Public-State of Florida)

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

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291 | Personally Known.....OR Produced Identification.....

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293 | Type of Identification Produced.....

294 | Section 5. The amendment made by this act to s. 627.756,
295 | Florida Statutes, applies only to payment or performance bonds
296 | issued on or after October 1, 2019.

297 | Section 6. This act shall take effect October 1, 2019.