

Senate Bill No. 2132

An act relating to the Florida Construction Industries Recovery Fund; amending s. 489.140, F.S.; renaming the fund as the Florida Homeowners' Construction Recovery Fund; creating s. 489.1401, F.S.; declaring legislative intent with respect to use of the fund; creating s. 489.1402, F.S.; defining terms; amending s. 489.141, F.S.; revising conditions for recovery from the fund; amending s. 489.142, F.S.; providing for hearings and for service of notice; amending s. 489.1425, F.S.; conforming to changes in terminology; amending s. 489.143, F.S.; providing a limit on disbursements with respect to a single contract; revising guidelines for making payments from the fund; providing criminal penalties for specified fraudulent acts; amending ss. 489.144, 489.13, 489.131, F.S.; conforming terminology to the changes made by the act; amending s. 468.631, F.S.; requiring certain information relating to building permits to be reported to the Department of Business and Professional Regulation; providing an effective date.

WHEREAS, the Florida Construction Industries Recovery Fund was created to reimburse a person who has suffered monetary damages as a result of financial mismanagement by a contractor, and

WHEREAS, the Legislature recognizes that homeowners have been caused most monetary damages as a result of financial mismanagement or abandonment by Division I contractors, and

WHEREAS, the Legislature desires to provide homeowners with recompense for such monetary damages, and

WHEREAS, the Legislature recognizes that the current law places claimants in the position of having to reestablish damages in order to comply with the provisions of the statute, and

WHEREAS, the Legislature desires to make clear the circumstances under which an award from the fund shall be made, and

WHEREAS, the Legislature wishes to make other clarifying changes and improve the disposition of claims filed, and

WHEREAS, the Legislature recognizes that there are claims currently pending from persons who are not homeowners or who have presented claims for monetary damages caused by Division II contractors, and

WHEREAS, the Legislature desires to provide a mechanism for those claims if eligible, to be paid, NOW, THEREFORE,

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

Section 1. Section 489.140, Florida Statutes, is amended to read:

489.140 Florida Homeowners' Construction Industries Recovery Fund.— There is created the Florida Homeowners' Construction Industries Recovery Fund as a separate account in the Professional Regulation Trust Fund.

~~(1) The Florida Construction Industries Recovery Fund shall be disbursed as provided in s. 489.143, on order of the board, as reimbursement to any natural person adjudged by a court of competent jurisdiction to have suffered monetary damages, or to whom the licensee has been ordered to pay restitution by the board, where the judgment or restitution order is based on a violation of s. 489.129(1)(g), (j), or (k), committed by any contractor, financially responsible officer, or business organization licensed under the provisions of this part at the time the violation was committed, and providing that the violation occurs after July 1, 1993.~~

~~(2) The Construction Industries recovery fund shall be funded out of the receipts deposited in the Professional Regulation Trust Fund from the one-half cent per square foot surcharge on building permits collected and disbursed pursuant to s. 468.631.~~

Section 2. Section 489.1401, Florida Statutes, is created to read:

489.1401 Legislative intent.—

(1) It is the intent of the Legislature that actions taken by the Construction Industry Licensing Board with respect to contractor sanctions and pursuant to this chapter are an exercise of the department's regulatory power for the protection of public safety and welfare.

(2) It is the intent of the Legislature that the sole purpose of the Florida Homeowners' Construction Recovery Fund is to compensate any aggrieved claimant who contracted for the construction or improvement of the residence located within this state and who has obtained a final judgment in any court of competent jurisdiction, was awarded restitution by the Construction Industry Licensing Board, or received an award in arbitration against a licensee on grounds of financial mismanagement or misconduct, abandoning a construction project, or making a false statement with respect to a project and arising directly out of any transaction when the judgment debtor was licensed and performed any of the activities enumerated under s. 489.129(1)(g), (j) or (k) on the homeowner's residence.

(3) It is the intent of the Legislature that Division I contractors set apart funds for the specific objective of participating in the fund.

Section 3. Section 489.1402, Florida Statutes, is created to read:

489.1402 Definitions.—

(1) The following definitions apply to ss.489.140-489.144:

(a) "Arbitration" means alternative dispute resolution entered into between a claimant and a contractor either pursuant to a construction contract that contains a mandatory arbitration clause or through any binding arbitration under the Florida Arbitration Code.

(b) “Board” means the Construction Industry Licensing Board.

(c) “Claimant” means a homeowner.

(d) “Contractor” means a Division I contractor performing services described in s. 489.105 (3)(a)-(c).

(e) “Court of competent jurisdiction” means a civil or criminal court in the state of Florida, or a bankruptcy court.

(f) “Homeowner” means the owner of an owner-occupied residence, including a trustee based upon a trust instrument granting a person a beneficial interest for life in the residence.

(g) “Licensee” means a contractor, financially responsible officer, or business organization licensed under this part at the time the violation was committed.

(h) “Notice” means service as described in s. 455.275.

(i) “Residence” means an individual residential condominium or cooperative unit or a residential building containing not more than two residential units in which the owner contracting for the improvement is residing or will reside 6 months or more each calendar year upon completion of the improvement.

(j) “Recovery fund” means the Florida Homeowner’s Construction Recovery Fund.

(k) “Same transaction” means a contract, or any series of contracts, between a claimant and a contractor or qualified business, when such contract or contracts involve the same property or contiguous properties and are entered into either at one time or serially.

(l) “Valid and current license,” for the purpose of s. 489.141(2)(d), means any license issued pursuant to this part to a licensee, including a license in an active, inactive, delinquent, or suspended status.

(2) The following definitions apply to claims made prior to July 1, 2007, when the contract was executed and the violation occurred on or before January 1, 2005.

(a) “Claimant” means a natural person.

(b) “Licensee” means a contractor, financially responsible officer, or business organization licensed under this part at the time the violation was committed.

Section 4. Section 489.141, Florida Statutes, is amended to read:

489.141 Conditions for recovery; eligibility.—

(1) Any ~~claimant person~~ is eligible to seek recovery from the ~~Construction Industries~~ recovery fund after having made a claim and exhausting the

limits of any available bond, cash bond, surety, guarantee, warranty, letter of credit, or policy of insurance, provided that each of the following conditions is satisfied if:

(a) ~~The claimant Such person~~ has received final judgment in a court of competent jurisdiction in this state ~~in any action wherein the cause of action was based on a construction contract or has received an award in arbitration or the Construction Industry Licensing Board has issued a final order directing the licensee to pay restitution to the claimant. The board may waive this requirement if:~~

1. The claimant is unable to secure a final judgment against the licensee due to the death of the licensee; or

2. The claimant has sought to have assets involving the transaction that gave rise to the claim removed from the bankruptcy proceedings so that the matter might be heard in a court of competent jurisdiction in this state and, after due diligence, the claimant is precluded by action of the bankruptcy court from securing a final judgment against the licensee.

(b) The judgment, award, or restitution is based upon a violation of s. 489.129(1)(g), (j), or (k) or s. 713.35, ~~where the~~

(c) The violation was committed by a licensee.

(d) The judgment, award, or restitution order specifies the actual damages suffered as a consequence of such violation.

(e) The contract was executed and the violation occurred on or after July 1, 1993, and provided that:

1.a. The claimant ~~Such person~~ has caused to be issued a writ of execution upon such judgment, and the officer executing the writ has made a return showing that no personal or real property of the judgment debtor or licensee liable to be levied upon in satisfaction of the judgment can be found or that the amount realized on the sale of the judgment debtor's or licensee's property pursuant to such execution was insufficient to satisfy the judgment; ~~or~~

2.b. If the claimant ~~such person~~ is unable to comply with subparagraph 1. sub-subparagraph a. for a valid reason to be determined by the board, the claimant ~~such person~~ has made all reasonable searches and inquiries to ascertain whether the judgment debtor or licensee is possessed of real or personal property or other assets subject to being sold or applied in satisfaction of the judgment and by his or her search has discovered no property or assets or has discovered property and assets and has taken all necessary action and proceedings for the application thereof to the judgment but the amount thereby realized was insufficient to satisfy the judgment; and or

3.2. The claimant has made a diligent attempt, as defined by board rule, to collect the restitution awarded by the board.;

(f)(b) A claim for recovery is made within 2 years from the time of the act giving rise to the claim or within 2 years from the time the act is discovered

~~or should have been discovered with the exercise of due diligence; however, in no event may a claim for recovery be made more than 4 years after the date of the act giving rise to the claim or more than 1 year after the conclusion of any civil, criminal, or administrative action or award in arbitration based on the act. This paragraph applies to any claim filed with the board after October 1, 1998, whichever is later;~~

~~(g)(e) Any amounts recovered by the claimant such person from the judgment debtor or licensee, or from any other source, have been applied to the damages awarded by the court or the amount of restitution ordered by the board; and~~

~~(h)(d) The claimant Such person is not a person who is precluded by this act from making a claim for recovery.~~

~~(2) A claimant person is not qualified to make a claim for recovery from the Construction Industries Recovery Fund, if:~~

~~(a) The claimant is the spouse of the judgment debtor or licensee or a personal representative of such spouse;~~

~~(b) The claimant is a licensee who acted as the contractor in the transaction which is the subject of the claim;~~

~~(c) The Such person's claim is based upon a construction contract in which the licensee was acting with respect to the property owned or controlled by the licensee;~~

~~(d) The Such person's claim is based upon a construction contract in which the contractor did not hold a valid and current license at the time of the construction contract; or~~

~~(e) The claimant Such person was associated in a business relationship with the licensee other than the contract at issue;~~

~~(f) The claimant Such person has suffered damages as the result of making improper payments to a contractor as defined in part I of chapter 713; or~~

~~(g) The claimant has contracted with a licensee to perform a scope of work described in paragraphs 489.105(3)(d)-(q).~~

~~(3) The board may determine by rule documentation that is required to complete a claim.~~

Section 5. Section 489.142, Florida Statutes, is amended to read:

489.142 Board powers relating to recovery; conduct of hearings and service.—

(1) With respect to actions for recovery from the Construction Industries recovery fund, the board may intervene, enter an appearance, file an answer, defend the action, or take any action it deems appropriate and may take recourse through any appropriate method of review on behalf of the

State of Florida. The board may delegate to the department by rule the authority to close any case when a claimant is not qualified to make a claim for recovery from the recovery fund under s. 489.141(2); when after notice the claimant has failed to provide documentation in support of the claim as required by the board; or when the licensee has reached the aggregate limit.

(2) Notwithstanding any other provision of law, the board shall cause a notice of hearing to be served 14 days in advance of the hearing on the claimant and on the licensee whose license is subject to suspension by s. 489.143. Each notice shall inform the recipient of any administrative hearing or judicial review that is available under s. 120.569, s. 120.57, or s. 120.68; shall indicate the procedure that must be followed to obtain the hearing or judicial review; and shall state the time limits that apply. Service of the notice on the licensee shall be made in accordance with s. 455.275. Service of the notice on the claimant shall be by regular United State mail at the address provided on the claim. The service of notice in accordance with this section is complete upon expiration of 14 days after deposit in the United States mail. Proof of service of a notice shall be made by entry in the records of the department that the notice was given. The entry shall be admissible in judicial and administrative proceedings of this state and shall constitute sufficient proof that notice was given.

(3) Notwithstanding any other provision of law, board hearings on claims shall be conducted in accordance with ss. 120.569 and 120.57(2). All claim hearings shall be conducted at the board's regular meeting at the place, date, and time published. Orders of the board denying or awarding funds to a claimant constitute final orders that may be appealed in accordance with s. 120.68. Orders awarding or denying claims shall be served in the same manner as notices of hearing in this section.

Section 6. Section 489.1425, Florida Statutes, is amended to read:

489.1425 Duty of contractor to notify residential property owner of recovery fund.—

(1) Any agreement or contract for repair, restoration, improvement, or construction to residential real property must contain a written statement explaining the consumer's rights under the ~~Construction Industries~~ recovery fund, except where the value of all labor and materials does not exceed \$2,500. The written statement must be substantially in the following form:

**FLORIDA HOMEOWNERS' CONSTRUCTION
INDUSTRIES RECOVERY FUND**

PAYMENT MAY BE AVAILABLE FROM THE FLORIDA HOMEOWNERS' CONSTRUCTION INDUSTRIES RECOVERY FUND IF YOU LOSE MONEY ON A PROJECT PERFORMED UNDER CONTRACT, WHERE THE LOSS RESULTS FROM SPECIFIED VIOLATIONS OF FLORIDA LAW BY A LICENSED STATE-LICENSED CONTRACTOR. FOR INFORMATION ABOUT THE RECOVERY FUND AND FILING A CLAIM, CONTACT THE FLORIDA CONSTRUCTION INDUSTRY LICENSING BOARD AT THE FOLLOWING TELEPHONE NUMBER AND ADDRESS:

The statement shall be immediately followed by the board's address and telephone number as established by board rule.

(2)(a) Upon finding a first violation of subsection (1), the board may fine the contractor up to \$500, and the moneys must be deposited into the ~~Construction Industries~~ recovery fund.

(b) Upon finding a second or subsequent violation of subsection (1), the board shall fine the contractor \$1,000 per violation, and the moneys must be deposited into the ~~Construction Industries~~ recovery fund.

Section 7. Section 489.143, Florida Statutes, is amended to read:

489.143 Payment from the fund.—

(1) The fund shall be disbursed as provided in s. 489.141 on a final order of the board.

(2)(1) Any claimant person who meets all of the conditions prescribed in s. 489.141 s. 489.141(1) may apply to the board to cause payment to be made to a claimant such person from the Construction Industries recovery fund in an amount equal to the judgment, award, or restitution order, exclusive of postjudgment interest, against the licensee or \$25,000, whichever is less, or an amount equal to the unsatisfied portion of such person's judgment, award, or restitution order, exclusive of postjudgment interest, or \$25,000, whichever is less, but only to the extent and amount of actual damages suffered by the claimant reflected in the judgment or restitution order as being actual or compensatory damages. Payment from the fund for other costs related to or pursuant to civil proceedings such as postjudgment interest, attorney's fees, court costs, medical damages, and punitive damages is prohibited. The recovery fund is not obligated to pay any judgment, award, or restitution order, or any portion thereof, which is not expressly based on one of the grounds for recovery set forth in s. 489.141 s. 489.140(1). Beginning January 1, 2005, for each contract entered after July 1, 2004, payment from the recovery fund shall be subject to a \$50,000 maximum payment.

(3)(2) Upon receipt by a claimant under subsection (2) (1) of payment from the Construction Industries recovery fund, the claimant shall assign his or her additional right, title, and interest in the judgment, award, or restitution order, to the extent of such payment, to the board, and thereupon the board shall be subrogated to the right, title, and interest of the claimant; and any amount subsequently recovered on the judgment, award, or restitution order by the board, to the extent of the right, title, and interest of the board therein, shall be for the purpose of reimbursing the Construction Industries recovery fund.

(4)(3) Payments for claims arising out of the same transaction shall be limited, in the aggregate, to the lesser of the judgment, award, or restitution order or the maximum payment allowed \$25,000, regardless of the number of claimants involved in the transaction.

(5)(4) Payments for claims against any one licensee shall not exceed, in the aggregate, \$100,000 annually, up to a total aggregate of \$250,000. Beginning January 1, 1998, For any claim approved by the board which is in

excess of the annual cap, the amount in excess of \$100,000 up to the total aggregate cap of \$250,000 is eligible for payment in the next and succeeding fiscal years, but only after all claims for the then-current calendar year have been paid. Payments may not exceed the aggregate annual or per claimant limits under law. Beginning January 1, 2005, for each contract entered into after July 1, 2004, payment from the recovery fund is subject only to a total aggregate cap of \$500,000.

~~(6)~~(5) Claims shall be paid in the order filed, up to the aggregate limits for each transaction and licensee and to the limits of the amount appropriated to pay claims against the fund for the fiscal year in which the claims were filed.

~~(7)~~(6) If the annual appropriation is exhausted with claims pending, such claims shall be carried forward to the next fiscal year. Any moneys in excess of pending claims remaining in the ~~Construction Industries~~ recovery fund at the end of the fiscal year shall be paid as provided in s. 468.631.

~~(8)~~(7) Upon the payment of any amount from the ~~Construction Industries~~ recovery fund in settlement of a claim in satisfaction of a judgment, award, or restitution order against a licensee as described in ~~s. 489.141 s. 489.141~~(1), the license of such licensee shall be automatically suspended, without further administrative action, upon the date of payment from the fund. The license of such licensee shall not be reinstated until he or she has repaid in full, plus interest, the amount paid from the fund. A discharge of bankruptcy does not relieve a person from the penalties and disabilities provided in this section.

(9) Any firm, corporation, partnership, or association, or any person acting in his or her individual capacity, who aids, abets, solicits, or conspires with any person to knowingly present or cause to be presented any false or fraudulent claim for the payment of a loss under this act is guilty of a third-degree felony, punishable as provided in s. 775.082 or s. 775.084 and by a fine not exceeding \$30,000, unless the value of the fraud exceed \$30,000 in which event the fine may not exceed double the value of the fraud.

(10) All payments and disbursements from the recovery fund shall be made by the Chief Financial Officer upon a voucher signed by the secretary of the department or the secretary's designee.

Section 8. Section 489.144, Florida Statutes, is amended to read:

489.144 Investment of the fund.—The funds in the ~~Construction Industries~~ recovery fund may be invested by the Chief Financial Officer under the same limitations as apply to the investment of other state funds, and the interest earned thereon shall be deposited to the credit of the ~~Construction Industries~~ recovery fund and shall be available for the same purposes as other moneys deposited in the ~~Construction Industries~~ recovery fund.

Section 9. Paragraph (c) of subsection (4) of section 489.13, Florida Statutes, is amended to read:

489.13 Unlicensed contracting; notice of noncompliance; fine; authority to issue or receive a building permit; web page.—

(4)

(c) The balance of any fines collected under this section shall be used to maintain the department's unlicensed contractor website page, as specified in subsection (6), and to fund the Florida Homeowners' Construction Industries Recovery Fund. Nothing in this paragraph shall be construed to permit recovery from the Construction Industries Recovery Fund if the contractor is unlicensed.

Section 10. Paragraph (e) of subsection (3) of section 489.131, Florida Statutes, is amended to read:

489.131 Applicability.—

(3) Nothing in this part limits the power of a municipality or county:

(e) To require one bond for each contractor in an amount not to exceed \$5,000, which bond shall be conditioned only upon compliance with the Florida Building Code adopted pursuant to s. 553.73. Any such bond must be equally available to all contractors without regard to the period of time a contractor has been certified or registered and without regard to any financial responsibility requirements. Any such bonds shall be payable to the Florida Homeowners' Construction Industry Recovery Fund and filed in each county or municipality in which a building permit is requested. Bond reciprocity shall be granted statewide. All such bonds shall be included in meeting any financial responsibility requirements imposed by any statute or rule. Any contractor who provides a third party insured warranty policy in connection with a new building or structure for the benefit of the purchaser or owner shall be exempt from the bond requirements under this subsection with respect to such building or structure.

Section 11. Section 468.631, Florida Statutes, is amended to read:

468.631 Building Code Administrators and Inspectors Fund.—

(1) ~~The provisions of~~ This part shall be funded through a surcharge, to be assessed pursuant to s. 125.56(4) or s. 166.201 at the rate of one-half cent per square foot of under-roof floor space permitted, including new construction, renovations, alterations, and additions. The unit of government responsible for collecting permit fees pursuant to s. 125.56(4) or s. 166.201 shall collect such surcharge and shall remit the funds to the department on a quarterly calendar basis beginning not later than December 31, 1993, for the preceding quarter, and continuing each third month thereafter; and such unit of government may retain an amount up to 10 percent of the surcharge collected to fund projects and activities intended to improve the quality of building code enforcement. There is created within the Professional Regulation Trust Fund a separate account to be known as the Building Code Administrators and Inspectors Fund, which shall deposit and disburse funds as necessary for the implementation of this part. The department shall annually establish the amount needed to fund the certification and regulation of building code administrators, plans examiners, and building code inspectors. Any funds collected in excess of the amount needed to

adequately fund the certification and regulation of building code administrators, plans examiners, and building code inspectors shall be deposited into the Florida Homeowners' Construction Industries Recovery Fund established by s. 489.140. If the Florida Homeowners' Construction Industries Recovery Fund is fully funded as provided by s. 489.140, any remaining funds shall be distributed to the Construction Industry Licensing Board for use in the regulation of certified and registered contractors.

(2) The unit of government responsible for collecting permit fees under this section shall report to the department quarterly the number of permits issued for under-roof floor space during the quarter, the total square footage for the number of permits issued for under-roof floor space during the quarter, and the calculation of the amount of funds being remitted to the department. The report shall be attested to by the officer in charge of collecting permit fees.

Section 12. This act shall take effect July 1, 2004.

Approved by the Governor May 21, 2004.

Filed in Office Secretary of State May 21, 2004.