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A.B. 634

ASSEMBLY BILL NO. 634—COMMITTEE ON COMMERCE AND LABOR

(ON BEHALF OF CONTRACTORS' BOARD)

MARCH 22, 1999

Referred to Committee on Commerce and Labor

SUMMARY—Makes various changes to provisions governing contractors. (BDR 54-762)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: Yes.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~for omitted material~~ is material to be omitted.

AN ACT relating to contractors; providing in skeleton form for the establishment of a special investigations unit; expanding the grounds for disciplinary action against a contractor; authorizing a special investigator or the executive officer to issue written citations under certain circumstances; authorizing the state contractors' board to impose administrative fines for violations of various provisions; providing a process for contesting the issuance of a written citation; amending various provisions concerning constructional fraud; requiring certain persons to submit fingerprints to the board; amending provisions governing advertising; providing a penalty; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE
AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 **Section 1.** Chapter 624 of NRS is hereby amended by adding thereto
- 2 the provisions set forth as sections 2 to 8, inclusive, of this act.
- 3 **Sec. 2. 1. *The board shall establish a special investigations unit to***
- 4 ***enforce the provisions of this chapter.***
- 5 **2. *The board shall establish by regulation the qualifications required***
- 6 ***for a special investigator employed in the special investigations unit.***
- 7 **3. *A special investigator has the powers of a peace officer to issue a***
- 8 ***written citation pursuant to section 3 of this act.***
- 9 **4. *A special investigator may request any constable, sheriff or other***
- 10 ***peace officer to assist him in the issuance of a written citation.***
- 11 **Sec. 3. 1. *If the executive director has probable cause to believe***
- 12 ***that a licensee or applicant for a license has committed an act which***
- 13 ***constitutes a cause for disciplinary action, he may issue, or authorize a***

1 *special investigator to issue, a written citation to the licensee or applicant*
2 *for a contractor's license. The written citation may include, without*
3 *limitation, an order to take action to correct a condition resulting from*
4 *an act which constitutes a cause for disciplinary action, at the licensee's*
5 *or applicant's cost, and an order to pay an administrative fine. If a*
6 *special investigator makes such a request, the constable, sheriff or other*
7 *peace officer shall provide such assistance as requested.*

8 *2. If a written citation issued pursuant to subsection 1 includes an*
9 *order to take action to correct a condition resulting from an act which*
10 *constitutes a cause for disciplinary action, the citation must state the time*
11 *permitted for compliance that must be not less than 15 days after the date*
12 *of issuance of the written citation and specifically describe the action*
13 *required to be taken.*

14 **Sec. 4. The board shall adopt regulations concerning the:**

15 *1. Form of a written citation issued pursuant to NRS 624.115 or*
16 *section 3 of this act;*

17 *2. Time required for a licensee or applicant for a license to correct a*
18 *condition resulting from an act that constitutes a cause for disciplinary*
19 *action if he is so ordered pursuant to section 3 of this act; and*

20 *3. Imposition of an administrative fine pursuant to the provisions of*
21 *this chapter. The board must consider:*

22 *(a) The gravity of the violation;*

23 *(b) The good faith of the licensee; and*

24 *(c) Any history of previous violations of the provisions of this chapter*
25 *by the licensee.*

26 **Sec. 5. 1. A licensee or applicant for a contractor's license who is**
27 **issued a written citation pursuant to section 3 of this act may contest the**
28 **citation within 15 days after the date that he receives the citation.**

29 *2. A licensee or applicant for a contractor's license may contest,*
30 *without limitation:*

31 *(a) The facts forming the basis for the determination of the violation*
32 *of the provisions of this chapter;*

33 *(b) The time allowed to correct a violation of the provisions of this*
34 *chapter;*

35 *(c) The amount of any administrative fine imposed; or*

36 *(d) Whether the action required that is described in the written*
37 *citation to correct the condition is reasonable.*

38 *3. If the licensee or applicant for a contractor's license does not*
39 *contest the written citation within 15 days after the date that he receives*
40 *the citation, the citation shall be deemed a final order of the board and*
41 *not subject to review by any court or agency.*

42 *4. The board may, for good cause shown, extend the time to contest a*
43 *written citation.*

1 **Sec. 6.** *If a licensee or applicant for a contractor's license contests a*
2 *citation or order to correct a violation of the provisions of this chapter*
3 *within 15 days after he receives the citation or order, the board shall hold*
4 *a hearing pursuant to NRS 624.310.*

5 **Sec. 7.** *The following acts or omissions, among others, constitute*
6 *cause for disciplinary action pursuant to NRS 624.300:*

7 1. *Contracting, offering to contract or submitting a bid as a*
8 *contractor if the license has been suspended or revoked pursuant to NRS*
9 *624.300.*

10 2. *Failure to comply with a written citation issued pursuant to*
11 *section 3 of this act within 15 days after the issuance of the citation, or, if*
12 *a hearing is held pursuant to NRS 624.310, within 15 days after the*
13 *hearing.*

14 3. *The suspension, revocation or other disciplinary action taken by*
15 *another state against a contractor based on a license issued by that state*
16 *if the contractor is licensed in this state or applies for a license in this*
17 *state. A certified copy of the suspension, revocation or other disciplinary*
18 *action taken by another state against a contractor based on a license*
19 *issued by that state is conclusive evidence of that action.*

20 **Sec. 8.** *A complaint against a licensee for the commission of any act*
21 *or omission that constitutes cause for disciplinary action pursuant to*
22 *NRS 624.300 must be filed in writing with the board within 4 years after*
23 *the act or omission.*

24 **Sec. 9.** NRS 624.115 is hereby amended to read as follows:

25 624.115 1. The board may employ attorneys, investigators and other
26 professional consultants and clerical personnel necessary to the discharge
27 of its duties.

28 2. The board may require investigators who are employed by the board
29 to ~~locate persons who:~~

30 ~~—(a)—~~ :

31 (a) *Conduct a background investigation of an applicant for a*
32 *contractor's license;*

33 (b) *Locate and identify persons who:*

34 (1) *Engage in the business or act in the capacity of a contractor*
35 *within this state* ~~;~~ ~~or~~

36 ~~—(b)—~~ *in violation of NRS 624.230;*

37 (2) *Submit bids on jobs situated within this state* ~~H~~ *in violation of*
38 ~~[NRS 624.230.]~~ *the provisions of this chapter; or*

39 (3) *Violate the provisions of this chapter or the regulations adopted*
40 *pursuant to this chapter; and*

41 (c) *Issue a written citation in the manner set forth in section 3 of this*
42 *act to a person who violates the provisions of this chapter.*

Sec. 10. NRS 624.165 is hereby amended to read as follows:

624.165 1. The board ~~{may:}~~ **shall:**

(a) Designate one or more of its employees for the investigation of constructional fraud;

(b) Cooperate with other local, state or federal investigative and law enforcement agencies, and the attorney general;

(c) Assist the attorney general or any official of an investigative or a law enforcement agency of this state, any other state or the Federal Government who requests assistance in investigating any act of constructional fraud; and

(d) Furnish to those officials any information ~~{, not otherwise confidential,}~~ concerning its investigation or report on any act of constructional fraud.

2. *The board may obtain records of a law enforcement agency or any other agency that maintains records of criminal history, including, without limitation, records of:*

(a) Investigations;

(b) Arrests;

(c) Guilty pleas;

(d) Sentencing;

(e) Probation;

(f) Parole;

(g) Bail;

(h) Complaints;

(i) Final dispositions; and

(j) Data base searches,

for the investigation of constructional fraud.

3. For the purposes of this section, constructional fraud occurs if a person engaged in construction : ~~{knowingly:}~~

(a) Misapplies money under the circumstances described in NRS 205.310;

(b) Obtains money, property or labor by false pretense as described in NRS 205.380;

(c) Receives payments and fails to state his own true name, or states a false name, address or telephone number of the person offering a service; ~~{or}~~

(d) *Commits theft, fraud or embezzlement in connection with a construction project;*

(e) Acts as a contractor without:

(1) Obtaining a contractor's license pursuant to this chapter; or

(2) Obtaining any other license required by this state or a political subdivision of this state; or

(f) Otherwise fails to disclose a material fact.

Sec. 11. NRS 624.265 is hereby amended to read as follows:

624.265 **1.** An applicant for a contractor's license and each officer, director, partner and associate thereof shall possess good character. Lack of character may be established by showing that the applicant or any officer, director, partner or associate thereof has:

~~(1.)~~ **(a)** Committed any act which, if committed by any licensed contractor, would be grounds for the suspension or revocation of a contractor's license;

~~(2.)~~ **(b)** A bad reputation for honesty and integrity;

~~(3.)~~ **(c)** Entered a plea of guilty or guilty but mentally ill to, been found guilty of or been convicted of a felony or crime involving moral turpitude arising out of, in connection with or related to the activities of such person in such a manner as to demonstrate his unfitness to act as a contractor, and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal; or

~~(4.)~~ **(d)** Had a license revoked for reasons that would preclude the granting of a license for which the application has been made.

2. An applicant for a contractor's license, and any officer, director, partner or associate of the applicant, must submit to the board completed fingerprint cards and a form authorizing an investigation of the applicant's background and the submission of his fingerprints to the central repository for Nevada records of criminal history and the Federal Bureau of Investigation. The fingerprint cards and authorization form submitted must be those that are provided to the applicant by the board. The applicant's fingerprints must be taken by an agency of law enforcement.

3. The board shall keep the results of the investigation confidential and not subject to inspection by the general public.

4. The board shall establish by regulation the fee for processing the fingerprints to be paid by the applicant. The fee must not exceed the sum of the amounts charged by the central repository for Nevada records of criminal history and the Federal Bureau of Investigation for processing the fingerprints.

5. The board may obtain records of a law enforcement agency or any other agency that maintains records of criminal history, including, without limitation, records of:

(a) Investigations;

(b) Arrests;

(c) Guilty pleas;

(d) Sentencing;

(e) Probation;

(f) Parole;

(g) Bail;

1 **(h) Complaints;**
2 **(i) Final dispositions; and**
3 **(j) Data base searches,**
4 **for the investigation of an applicant for a contractor's license.**

5 **Sec. 12.** NRS 624.273 is hereby amended to read as follows:

6 624.273 1. Each bond or deposit required by NRS 624.270 must be
7 in favor of the State of Nevada for the benefit of any person who:

8 (a) As owner of the property to be improved entered into a construction
9 contract with the contractor and is damaged by failure of the contractor to
10 perform the contract or to remove liens filed against the property;

11 (b) As an employee of the contractor performed labor on or about the
12 site of the construction covered by the contract;

13 (c) As a supplier or materialman furnished materials or equipment for
14 the construction covered by the contract; or

15 (d) Is injured by any unlawful act or omission of the contractor in the
16 performance of a contract.

17 2. Any person claiming against the bond or deposit may bring an
18 action in a court of competent jurisdiction on the bond or against the board
19 on the deposit for the amount of damage he has suffered to the extent
20 covered by the bond or deposit. A person who brings action on a bond
21 shall notify the board in writing upon filing the action. No action may be
22 commenced on the bond or deposit 2 years after the commission of the act
23 on which the action is based.

24 3. Upon receiving a request from a person for whose benefit a bond or
25 deposit is required, the board shall notify him that:

26 (a) A bond is in effect or that a deposit has been made, and the amount
27 of either;

28 (b) There is an action against a bond, if that is the case, and the court,
29 the title and number of the action and the amount sought by the plaintiff;
30 and

31 (c) There is an action against the board, if that is the case, and the
32 amount sought by the plaintiff.

33 4. If a surety, or in the case of a deposit, the board, desires to make
34 payment without awaiting court action, the amount of the bond or deposit
35 must be reduced to the extent of any payment made by the surety or the
36 board in good faith under the bond or deposit. Any payment must be based
37 on written claims received by the surety or board before the court action.

38 5. The surety or the board may bring an action for interpleader against
39 all claimants upon the bond or deposit. If it does so, it must publish notice
40 of the action at least once each week for 2 weeks in a newspaper of general
41 circulation in the county where the contractor has his principal place of

1 business. The surety or the board is entitled to deduct its costs of the
2 action, including attorney's fees and publication, from its liability under
3 the bond or from the deposit.

4 6. A claim of any employee of the contractor for labor is a preferred
5 claim against a bond or deposit. If any bond or deposit is insufficient to
6 pay all claims for labor in full, the sum recovered must be distributed
7 among all claimants for labor in proportion to the amounts of their
8 respective claims. Partial payment of claims is not full payment, and the
9 claimants may bring actions against the contractor for the unpaid balances.

10 7. Claims, other than claims for labor, against a bond or deposit have
11 equal priority, except where otherwise provided by law, and if the bond or
12 deposit is insufficient to pay all of those claims in full, they must be paid
13 pro rata. Partial payment of claims is not full payment, and the claimants
14 may bring actions against the contractor for the unpaid balances.

15 ***8. The board may not claim against the bond or deposit required***
16 ***pursuant to NRS 624.270 for the payment of an administrative fine***
17 ***imposed for a violation of the provisions of this chapter.***

18 **Sec. 13.** NRS 624.300 is hereby amended to read as follows:

19 624.300 1. Except as otherwise provided in ~~{subsection 6,}~~
20 ***subsections 3 and 7,*** the board may:

- 21 (a) Suspend or revoke licenses already issued;
- 22 (b) Refuse renewals of licenses;
- 23 (c) Impose limits on the field, scope and monetary limit of the license;
- 24 (d) Impose an administrative fine of not more than \$10,000;
- 25 (e) Order the licensee to take action to correct a condition resulting
26 from an act which constitutes a cause for disciplinary action, at the
27 licensee's cost; or
- 28 (f) Reprimand or take other less severe disciplinary action, including,
29 without limitation, increasing the amount of the surety bond or cash
30 deposit of the licensee,
31 if the licensee commits any act which constitutes a cause for disciplinary
32 action.

33 2. If the board suspends or revokes the license of a contractor for
34 failure to establish financial responsibility, the board may, in addition to
35 any other conditions for reinstating or renewing the license, require that
36 each contract undertaken by the licensee for a period to be designated by
37 the board, not to exceed 12 months, be separately covered by a bond or
38 bonds approved by the board and conditioned upon the performance of and
39 the payment of labor and materials required by the contract.

40 3. ***If a licensee violates the provisions of NRS 624.3014 or subsection***
41 ***3 of NRS 624.3015, the board may impose an administrative fine of not***
42 ***more than*** ***\$20,000.***

1 **4.** If a licensee commits a fraudulent act which is a cause for
2 disciplinary action under NRS 624.3016, the correction of any condition
3 resulting from the act does not preclude the board from taking disciplinary
4 action.

5 ~~{4.}~~ **5.** If the board finds that a licensee has engaged in repeated acts
6 that would be cause for disciplinary action, the correction of any resulting
7 conditions does not preclude the board from taking disciplinary action
8 pursuant to this section.

9 ~~{5.}~~ **6.** The expiration of a license by operation of law or by order or
10 decision of the board or a court, or the voluntary surrender of a license by
11 a licensee, does not deprive the board of jurisdiction to proceed with any
12 investigation of, or action or disciplinary proceeding against, the licensee
13 or to render a decision suspending or revoking the license.

14 ~~{6.}~~ **7.** The board shall not take any disciplinary action pursuant to this
15 section regarding a constructional defect, as that term is defined in NRS
16 40.615, during the period in which any claim arising out of that defect is
17 being settled, mediated or otherwise resolved pursuant to NRS 40.600 to
18 40.695, inclusive, unless the disciplinary action is necessary to protect the
19 public health or safety.

20 ~~{7.}~~ **8.** If discipline is imposed pursuant to this section, the costs of the
21 proceeding, including investigative costs and attorney's fees, may be
22 recovered by the board.

23 **Sec. 14.** NRS 624.307 is hereby amended to read as follows:

24 624.307 1. It is unlawful for any person, including a person exempt
25 under NRS 624.330, to advertise as a contractor unless he has a valid
26 license in the appropriate classification established by NRS 624.215 and
27 624.220.

28 2. As used in this section, "advertising" includes , but is not limited to
29 , the issuance of any sign, card or device or by the permitting or allowing
30 of any sign or marking on a motor vehicle, in any building, structure,
31 newspaper, magazine or airway transmission or in any directory under the
32 listing of contractor with or without any limiting qualifications.

33 3. All advertising by a licensed contractor must include *the name of*
34 *his company and* the number of his license.

35 **Sec. 15.** NRS 624.360 is hereby amended to read as follows:

36 624.360 1. Any person violating any of the provisions of this
37 chapter:

38 (a) For the first offense, is guilty of a misdemeanor and shall be
39 punished by a fine of not less than ~~[\$500]~~ *\$1,000* nor more than ~~[\$1,000,]~~
40 *\$2,000*, and may be further punished by imprisonment in the county jail
41 for not more than 6 months . ~~{;-or}~~

42 (b) For the second ~~{or subsequent}~~ offense, is guilty of a gross
43 misdemeanor and shall be punished by a fine of not less than ~~[\$1,000]~~

1 ~~\$2,000~~ nor more than ~~[\$2,000,] \$4,000~~, and may be further punished by
2 imprisonment in the county jail for not more than 1 year.

3 *(c) For the third or subsequent offense, is guilty of a class E felony*
4 *and shall be punished by a fine of not less than \$5,000 nor more than*
5 *\$10,000 and may be further punished by imprisonment in the state prison*
6 *for not less than 1 year and not more than 4 years.*

7 2. Imposition of the penalty provided for in this section is not
8 precluded by any disciplinary action taken by the board against a
9 contractor pursuant to the provisions of NRS 624.300 to 624.305,
10 inclusive.

11 **Sec. 16.** The amendatory provisions of this act do not apply to
12 offenses that were committed before the effective date of this act.

13 **Sec. 17.** This act becomes effective upon passage and approval.

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