

ASSEMBLY BILL NO. 636—COMMITTEE ON COMMERCE AND LABOR

(ON BEHALF OF ASSEMBLYWOMAN BUCKLEY)

MARCH 22, 1999

Referred to Committee on Commerce and Labor

SUMMARY—Establishes account from which certain owners of single-family residences may recover actual damages suffered as result of inadequate service by licensed contractor. (BDR 54-1404)

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

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

AN ACT relating to contractors; establishing an account from which owners of a single-family residence who are damaged by the failure of residential contractors to perform qualified services adequately may recover certain costs; requiring a residential contractor to pay to the state contractors' board an annual assessment; revising the provisions authorizing the board to take disciplinary action against licensees; 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 17, inclusive, of this act.
3 **Sec. 2.** *As used in sections 2 to 17, inclusive, of this act, unless the*
4 *context otherwise requires, the words and terms defined in sections 3 to*
5 *8, inclusive, of this act have the meanings ascribed to them in those*
6 *sections.*
7 **Sec. 3.** *“Account” means the account established pursuant to*
8 *section 9 of this act.*
9 **Sec. 4.** *“Injured person” means an owner who is damaged by the*
10 *failure of a residential contractor to perform qualified services*
11 *adequately.*

1 **Sec. 5.** *“Owner” means a natural person who owns a single-family*
2 *residence and who contracts with a residential contractor for the*
3 *performance of qualified services with respect to the residence. The term*
4 *includes a subsequent owner.*

5 **Sec. 6.** *“Qualified services” means any construction, remodeling,*
6 *repair or improvement performed by a residential contractor on a*
7 *single-family residence occupied by the owner of the residence.*

8 **Sec. 7.** *“Residential contractor” means a contractor who is licensed*
9 *pursuant to this chapter and who contracts with the owner of a*
10 *single-family residence to perform qualified services.*

11 **Sec. 8.** *“Subsequent owner” means a natural person who purchases*
12 *a single-family residence from the owner of the residence within 180*
13 *days after the completion of qualified services on the residence by a*
14 *residential contractor.*

15 **Sec. 9.** 1. *Except as otherwise provided in subsection 3, in addition*
16 *to the annual fee for a license required pursuant to NRS 624.280, a*
17 *residential contractor shall pay to the board an annual assessment in the*
18 *following amount, if the monetary limit on his license is:*

19
20 *Not more than \$1,000,000\$100*
21 *More than \$1,000,000 but limited 250*
22 *Unlimited..... 500*

23
24 2. *The board shall administer and account separately for the money*
25 *received from the annual assessments collected pursuant to subsection 1.*
26 *The board may refer to the money in the account as the “recovery fund.”*

27 3. *The board shall suspend the collection of assessments pursuant to*
28 *subsection 1 when the balance in the account reaches 150 percent of the*
29 *largest balance in the account during the previous fiscal year.*

30 4. *Except as otherwise provided in section 14 of this act, the money*
31 *in the account must be used to pay claims made by owners who are*
32 *damaged by the failure of a residential contractor to perform qualified*
33 *services adequately, as provided in sections 2 to 17, inclusive, of this act.*

34 **Sec. 10.** *Except as otherwise provided in section 11 of this act, an*
35 *injured person who wishes to recover from the account must file a*
36 *complaint with the board or its designee within 2 years after:*

37 1. *The date of the discovery of the act or omission by the residential*
38 *contractor that is the cause of the injury; or*

39 2. *The date of occupancy of the residential property.*

40 **Sec. 11.** *Within 2 years after an injured person has obtained a*
41 *judgment in any court of competent jurisdiction for recovery of damages*
42 *against a residential contractor for an act or omission of the residential*
43 *contractor that is in violation of this chapter or the regulations adopted*

1 pursuant thereto, the injured person may apply to the board for
2 satisfaction of the judgment from the account if:

3 1. The proceedings in connection with the judgment have
4 terminated, including appeals;

5 2. He submits an application on a form established for this purpose
6 by the board;

7 3. He submits proof satisfactory to the board of the judgment; and

8 4. Upon obtaining payment from the account, he assigns his rights to
9 enforce the judgment to the board.

10 Sec. 12. 1. The board or its designee shall hold a hearing if the
11 board receives a complaint pursuant to section 10 of this act. The time
12 and place for the hearing must be fixed by the board or its designee, and
13 the board or its designee shall notify the injured person in writing of the
14 time and place of the hearing at least 30 days before the date fixed for
15 the hearing.

16 2. Any testimony taken pursuant to NRS 624.170 to 624.210,
17 inclusive, must be considered a part of the record of the hearing before
18 the board or its designee.

19 3. The hearing must be public if a request is made for a public
20 hearing.

21 4. The board or its designee shall act upon the complaint within 6
22 months after the complaint is filed with the board.

23 Sec. 13. 1. Except as otherwise provided in section 11 of this act
24 and subsection 2, an injured person is eligible for recovery from the
25 account if the board or its designee finds that the injured person suffered
26 actual damages as a result of an act or omission of a residential
27 contractor that is in violation of this chapter or the regulations adopted
28 pursuant thereto.

29 2. An injured person is not eligible for recovery from the account if:

30 (a) The injured person is the spouse of the licensee, or a personal
31 representative of the spouse of the licensee;

32 (b) The injured person was associated in a business relationship with
33 the licensee other than the contract at issue; or

34 (c) At the time of contracting with the residential contractor, the
35 license of the residential contractor was suspended or revoked pursuant
36 to NRS 624.300.

37 3. If the board or its designee determines that an injured person is
38 eligible for recovery from the account pursuant to this section or section
39 11 of this act, the board or its designee may pay out of the account:

40 (a) The amount of actual damages suffered, but not to exceed
41 \$30,000; or

1 ***(b) If a judgment was obtained as set forth in section 11 of this act, the***
2 ***amount of actual damages included in the judgment and remaining***
3 ***unpaid, but not to exceed \$30,000.***

4 ***4. The decision of the board or its designee regarding eligibility for***
5 ***recovery and all related issues is final and not subject to judicial review.***

6 ***5. If the injured person has recovered a portion of his loss from***
7 ***sources other than the account, the board shall deduct the amount***
8 ***recovered from the other sources from the amount payable upon the***
9 ***claim and direct the difference to be paid from the account.***

10 ***6. To the extent of payments made from the account, the board is***
11 ***subrogated to the rights of the injured person, including, without***
12 ***limitation, the right to collect from a surety bond or a cash bond. The***
13 ***board and the attorney general shall promptly enforce all subrogation***
14 ***claims.***

15 ***7. The amount of recovery from the account based upon claims***
16 ***made against any single contractor must not exceed \$200,000.***

17 ***8. As used in this section, "actual damages" includes attorney's fees***
18 ***or costs in contested cases appealed to the supreme court of this state.***
19 ***The term does not include any other attorney's fees or costs.***

20 **Sec. 14. 1. The board shall:**

21 ***(a) On or before February 1 of each year, prepare and submit to the***
22 ***director of the legislative counsel bureau for transmittal to the***
23 ***appropriate legislative committee if the legislature is in session, or to the***
24 ***interim finance committee if the legislature is not in session, a statement***
25 ***of the condition of the account that is prepared in accordance with***
26 ***generally accepted accounting principles;***

27 ***(b) Employ accountants as necessary for the performance of the***
28 ***duties set forth in this section and pay any related expenses from the***
29 ***money in the account, but not to exceed \$10,000 in any fiscal year; and***

30 ***(c) Employ or contract with persons and procure necessary***
31 ***equipment, supplies and services to be paid from or purchased with the***
32 ***money in the account, but not to exceed 10 percent of the account in any***
33 ***fiscal year, as may be necessary to monitor or process claims filed by***
34 ***injured persons that may result in a recovery from the account.***

35 ***2. Any interest earned on the money in the account must be credited***
36 ***to the account. The board may expend the interest earned on the money***
37 ***in the account to increase public awareness of the account, except that***
38 ***the expenditure for this purpose must not exceed \$50,000 in any fiscal***
39 ***year.***

40 **Sec. 15. 1. Once an initial balance of \$200,000 exists in the**
41 ***account, the board shall maintain a minimum balance of \$200,000 in the***
42 ***account. If necessary to maintain the minimum balance in the account,***
43 ***the board shall collect an additional assessment from each residential***

1 contractor. The board shall determine the amount of the additional
2 assessment based on the amount of money necessary to maintain the
3 minimum balance in the account.

4 2. Each residential contractor shall make the required payment to
5 the board.

6 3. The board shall to deposit the money received pursuant to this
7 section in the account established pursuant to section 9 of this act.

8 **Sec. 15.5.** 1. A residential contractor shall notify an owner with
9 whom he contracts of the rights of the owner pursuant to sections 2 to 17,
10 inclusive, of this act, including, without limitation, providing a written
11 statement explaining those rights in any agreement or contract for
12 qualified services. The written statement must be in substantially the
13 following form:

14
15 **RESIDENTIAL CONSTRUCTION RECOVERY FUND**

16
17 Payment may be available from the recovery fund if you are damaged
18 financially by a project performed on your residence pursuant to a
19 contract, including construction, remodeling, repair or other
20 improvements, and the damage resulted from certain specified violations
21 of Nevada law by a contractor licensed in this state. To obtain
22 information relating to the recovery fund and filing a claim for recovery
23 from the recovery fund, you may contact the State Contractors' Board at
24 the following locations:

25
26 State Contractors' Board State Contractors' Board
27 9670 Gateway Drive, Suite 100 4220 South Maryland Parkway, Suite 800D
28 Reno, Nevada 89509-8953 Las Vegas, Nevada 89119-7533
29 Telephone number: (775) 688-1141 Telephone number: (702) 486-1100
30

31 2. The board may impose upon a contractor an administrative fine:
32 (a) Of not more than \$100 for the first violation of subsection 1; and
33 (b) Of not more than \$250 for a second or subsequent violation of
34 subsection 1.

35 3. The board shall deposit any money received pursuant to this
36 section in the account established pursuant to section 9 of this act.

37 **Sec. 16.** The provisions of sections 2 to 17, inclusive, of this act do
38 not limit the authority of the board to take disciplinary action against a
39 residential contractor.

40 **Sec. 17.** The board shall adopt such regulations as are necessary to
41 carry out the provisions of sections 2 to 17, inclusive, of this act,
42 including, without limitation, regulations governing:

- 1 **1. The disbursement of money from the account; and**
- 2 **2. The manner in which a complaint is filed with the board or its**
- 3 **designee pursuant to section 10 of this act.**

4 **Sec. 18.** NRS 624.283 is hereby amended to read as follows:

5 624.283 1. Each license issued under the provisions of this chapter
6 expires 1 year after the date on which it is issued, except that the board may
7 by regulation prescribe shorter or longer periods and prorated fees to
8 establish a system of staggered renewals. Any license which is not renewed
9 on or before the date for renewal is automatically suspended.

10 2. A license may be renewed by submitting to the board:

11 (a) An application for renewal;

12 (b) The statement required pursuant to NRS 624.268 if the holder of the
13 license is a natural person; ~~and~~

14 (c) The fee for renewal fixed by the board ~~and~~ ; and

15 **(d) All assessments required pursuant to sections 2 to 17, inclusive, of**
16 **this act if the holder of the license is a residential contractor as defined in**
17 **section 7 of this act.**

18 3. The board may require the licensee to submit at any time a financial
19 statement that is prepared by a certified public accountant, if the board
20 believes that:

21 (a) The licensee did not pay an undisputed debt;

22 (b) The licensee has violated or may be violating a provision of chapter
23 624 of NRS or a regulation adopted pursuant thereto; or

24 (c) The licensee's financial responsibility may be impaired.

25 4. If a license is automatically suspended pursuant to subsection 1, the
26 licensee may have his license reinstated upon filing an application for
27 renewal within 6 months after the date of suspension and paying, in
28 addition to the fee for renewal, a fee for reinstatement fixed by the board, if
29 he is otherwise in good standing and there are no complaints pending
30 against him. If he is otherwise not in good standing or there is a complaint
31 pending, the board shall require him to provide a current financial
32 statement prepared by a certified public accountant or establish other
33 conditions for reinstatement. If the licensee is a natural person, his
34 application for renewal must be accompanied by the statement required
35 pursuant to NRS 624.268. A license which is not reinstated within 6 months
36 after it is automatically suspended may be canceled by the board, and a new
37 license may be issued only upon application for an original contractor's
38 license.

39 **Sec. 19.** NRS 624.300 is hereby amended to read as follows:

40 624.300 1. Except as otherwise provided in subsection 6, the board
41 may:

42 (a) Suspend or revoke licenses already issued;

43 (b) Refuse renewals of licenses;

- 1 (c) Impose limits on the field, scope and monetary limit of the license;
- 2 (d) Impose an administrative fine of not more than \$10,000;
- 3 (e) *Order a licensee to repay to the account established pursuant to*
- 4 *section 9 of this act, any amount paid out of the account pursuant to*
- 5 *section 13 of this act as the result of an act or omission of that licensee;*
- 6 (f) Order the licensee to take action to correct a condition resulting from
- 7 an act which constitutes a cause for disciplinary action, at the licensee's
- 8 cost; or
- 9 ~~(f)~~ (g) Reprimand or take other less severe disciplinary action,
- 10 including, without limitation, increasing the amount of the surety bond or
- 11 cash deposit of the licensee,
- 12 if the licensee commits any act which constitutes a cause for disciplinary
- 13 action.
- 14 2. If the board suspends or revokes the license of a contractor for
- 15 failure to establish financial responsibility, the board may, in addition to
- 16 any other conditions for reinstating or renewing the license, require that
- 17 each contract undertaken by the licensee for a period to be designated by
- 18 the board, not to exceed 12 months, be separately covered by a bond or
- 19 bonds approved by the board and conditioned upon the performance of and
- 20 the payment of labor and materials required by the contract.
- 21 3. If a licensee commits a fraudulent act which is a cause for
- 22 disciplinary action under NRS 624.3016, the correction of any condition
- 23 resulting from the act does not preclude the board from taking disciplinary
- 24 action.
- 25 4. If the board finds that a licensee has engaged in repeated acts that
- 26 would be cause for disciplinary action, the correction of any resulting
- 27 conditions does not preclude the board from taking disciplinary action
- 28 pursuant to this section.
- 29 5. The expiration of a license by operation of law or by order or
- 30 decision of the board or a court, or the voluntary surrender of a license by a
- 31 licensee, does not deprive the board of jurisdiction to proceed with any
- 32 investigation of, or action or disciplinary proceeding against, the licensee
- 33 or to render a decision suspending or revoking the license.
- 34 6. The board shall not take any disciplinary action pursuant to this
- 35 section regarding a constructional defect, as that term is defined in NRS
- 36 40.615, during the period in which any claim arising out of that defect is
- 37 being settled, mediated or otherwise resolved pursuant to NRS 40.600 to
- 38 40.695, inclusive, unless the disciplinary action is necessary to protect the
- 39 public health or safety.
- 40 7. If discipline is imposed pursuant to this section, the costs of the
- 41 proceeding, including investigative costs and attorney's fees, may be
- 42 recovered by the board.

1 **Sec. 20.** NRS 624.3016 is hereby amended to read as follows:

2 624.3016 The following acts or omissions, among others, constitute
3 cause for disciplinary action under NRS 624.300:

4 1. Any fraudulent or deceitful act of a contractor whereby substantial
5 injury is sustained by another.

6 2. A conviction of a felony or a crime involving moral turpitude.

7 3. Knowingly making a false statement in or relating to the recording
8 of a notice of lien pursuant to the provisions of NRS 108.226.

9 4. Failure to give a notice required by NRS 108.245 or 108.246.

10 5. Failure to comply with NRS 597.713, 597.716 or 597.719.

11 **6. *Failure to pay an assessment required pursuant to section 9 or 15***
12 ***of this act.***

13 **Sec. 21.** 1. This section and sections 1 and 9 of this act become
14 effective on October 1, 1999.

15 2. Sections 2 to 8, inclusive, and 10 to 20, inclusive, of this act become
16 effective on July 1, 2001.