

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.*

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

17	
18	<i>Not more than \$1,000,000\$100</i>
19	<i>More than \$1,000,000 but limited 250</i>
20	<i>Unlimited..... 500</i>
21	

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

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

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

32 **Sec. 10.** *Except as otherwise provided in section 11 of this act, an*
33 *injured person who wishes to recover from the account must file a*
34 *complaint with the board or its designee within 4 years after the*
35 *completion of qualified services.*

36 **Sec. 11.** *Within 2 years after an injured person has obtained a*
37 *judgment in any court of competent jurisdiction for recovery of damages*
38 *against a residential contractor for an act or omission of the residential*
39 *contractor that is in violation of this chapter or the regulations adopted*
40 *pursuant thereto, the injured person may apply to the board for*
41 *satisfaction of the judgment from the account if:*

1 1. *The proceedings in connection with the judgment have*
2 *terminated, including appeals;*

3 2. *He submits an application on a form established for this purpose*
4 *by the board;*

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

6 4. *Upon obtaining payment from the account, he assigns his rights to*
7 *enforce the judgment to the board.*

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

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

17 3. *The hearing must be public if a request is made for a public*
18 *hearing.*

19 4. *The board or its designee shall act upon the complaint within 6*
20 *months after the complaint is filed with the board.*

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

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

28 (a) *The injured person is the spouse of the licensee, or a personal*
29 *representative of the spouse of the licensee;*

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

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

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

38 (a) *The amount of actual damages suffered, but not to exceed*
39 *\$30,000; or*

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

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

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

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

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

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

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

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

24 (b) Employ accountants as necessary for the performance of the
25 duties set forth in this section and pay any related expenses from the
26 money in the account. Except as otherwise provided in subsection 3, the
27 expenditures made by the board pursuant to this paragraph must not
28 exceed \$10,000 in any fiscal year.

29 (c) Employ or contract with persons and procure necessary
30 equipment, supplies and services to be paid from or purchased with the
31 money in the account as may be necessary to monitor or process claims
32 filed by injured persons that may result in a recovery from the account.

33 2. Any interest earned on the money in the account must be credited
34 to the account. The board may expend the interest earned on the money
35 in the account to increase public awareness of the account. Except as
36 otherwise provided in subsection 3, the expenditures made by the board
37 for this purpose must not exceed \$50,000 in any fiscal year.

38 3. The total expenditures made by the board pursuant to this section
39 must not exceed 10 percent of the account in any fiscal year.

40 **Sec. 15.** Once an initial balance of \$200,000 exists in the account,
41 the board shall maintain a minimum balance of \$200,000 in the account.

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

7
8 **RESIDENTIAL CONSTRUCTION RECOVERY FUND**

9
10 *Payment may be available from the recovery fund if you are damaged*
11 *financially by a project performed on your residence pursuant to a*
12 *contract, including construction, remodeling, repair or other*
13 *improvements, and the damage resulted from certain specified violations*
14 *of Nevada law by a contractor licensed in this state. To obtain*
15 *information relating to the recovery fund and filing a claim for recovery*
16 *from the recovery fund, you may contact the State Contractors' Board at*
17 *the following locations:*

18
19 *State Contractors' Board State Contractors' Board*
20 *9670 Gateway Drive, Suite 100 4220 South Maryland Parkway, Suite 800D*
21 *Reno, Nevada 89509-8953 Las Vegas, Nevada 89119-7533*
22 *Telephone number: (775) 688-1141 Telephone number: (702) 486-1100*
23

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

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

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

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

36 **1.** *The disbursement of money from the account; and*

37 **2.** *The manner in which a complaint is filed with the board or its*
38 *designee pursuant to section 10 of this act.*

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

40 624.283 **1.** Each license issued under the provisions of this chapter
41 expires 1 year after the date on which it is issued, except that the board may
42 by regulation prescribe shorter or longer periods and prorated fees to

1 establish a system of staggered renewals. Any license which is not renewed
2 on or before the date for renewal is automatically suspended.

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

4 (a) An application for renewal;

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

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

8 *(d) Any assessment required pursuant to section 9 of this act if the*
9 *holder of the license is a residential contractor as defined in section 7 of*
10 *this act.*

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

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

15 (b) The licensee has violated or may be violating a provision of chapter
16 624 of NRS or a regulation adopted pursuant thereto; or

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

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

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

33 624.300 1. Except as otherwise provided in subsection 6, the board
34 may:

35 (a) Suspend or revoke licenses already issued;

36 (b) Refuse renewals of licenses;

37 (c) Impose limits on the field, scope and monetary limit of the license;

38 (d) Impose an administrative fine of not more than \$10,000;

39 (e) *Order a licensee to repay to the account established pursuant to*
40 *section 9 of this act, any amount paid out of the account pursuant to*
41 *section 13 of this act as the result of an act or omission of that licensee;*

1 (f) Order the licensee to take action to correct a condition resulting from
2 an act which constitutes a cause for disciplinary action, at the licensee's
3 cost; or

4 ~~(f)(1)~~ (g) Reprimand or take other less severe disciplinary action,
5 including, without limitation, increasing the amount of the surety bond or
6 cash deposit of the licensee,
7 if the licensee commits any act which constitutes a cause for disciplinary
8 action.

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

16 3. If a licensee commits a fraudulent act which is a cause for
17 disciplinary action under NRS 624.3016, the correction of any condition
18 resulting from the act does not preclude the board from taking disciplinary
19 action.

20 4. If the board finds that a licensee has engaged in repeated acts that
21 would be cause for disciplinary action, the correction of any resulting
22 conditions does not preclude the board from taking disciplinary action
23 pursuant to this section.

24 5. The expiration of a license by operation of law or by order or
25 decision of the board or a court, or the voluntary surrender of a license by a
26 licensee, does not deprive the board of jurisdiction to proceed with any
27 investigation of, or action or disciplinary proceeding against, the licensee
28 or to render a decision suspending or revoking the license.

29 6. The board shall not take any disciplinary action pursuant to this
30 section regarding a constructional defect, as that term is defined in NRS
31 40.615, during the period in which any claim arising out of that defect is
32 being settled, mediated or otherwise resolved pursuant to NRS 40.600 to
33 40.695, inclusive, unless the disciplinary action is necessary to protect the
34 public health or safety.

35 7. If discipline is imposed pursuant to this section, the costs of the
36 proceeding, including investigative costs and attorney's fees, may be
37 recovered by the board.

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

39 624.3016 The following acts or omissions, among others, constitute
40 cause for disciplinary action under NRS 624.300:

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

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

- 1 3. Knowingly making a false statement in or relating to the recording
- 2 of a notice of lien pursuant to the provisions of NRS 108.226.
- 3 4. Failure to give a notice required by NRS 108.245 or 108.246.
- 4 5. Failure to comply with NRS 597.713, 597.716 or 597.719.
- 5 6. *Failure to pay an assessment required pursuant to section 9 of this*
- 6 *act.*
- 7 **Sec. 21.** 1. This section and sections 1 and 9 of this act become
- 8 effective on October 1, 1999.
- 9 2. Sections 2 to 8, inclusive, and 10 to 20, inclusive, of this act become
- 10 effective on July 1, 2001.

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