

SENATE BILL NO. 423—SENATOR SCHNEIDER

MARCH 15, 1999

Referred to Committee on Commerce and Labor

SUMMARY—Makes various changes to provisions concerning contractors. (BDR 54-1479)

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 construction; requiring the governing body of a city or county to notify the state contractors' board if a contractor has violated a provision of any building code adopted by the governing body under certain circumstances; requiring the state contractors' board to establish a program to provide continuing education for licensed contractors; requiring an applicant for a contractor's license or a contractor who applies for renewal of his license to establish financial responsibility under certain circumstances; lengthening the time that a contractor must be licensed in this state before he may be relieved by the state contractors' board from filing a bond or establishing a cash deposit under certain circumstances; shortening the period during which certain licenses may be reinstated; authorizing the state contractors' board to require a licensee to file an additional bond under certain circumstances; requiring a contractor to give notice to an owner of a single-family residence of certain information including the availability of any warranty; increasing the penalty for a violation of certain provisions governing contractors; authorizing certain contractors to provide homeowners' warranties; requiring certain certificates of occupancy in certain circumstances; 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, 3 and 4 of this act.
- 3 **Sec. 2. 1. *If the governing body of a city or county or an agent***
- 4 ***thereof determines that a contractor has violated a provision of any***
- 5 ***building code adopted by that governing body and has failed to comply***
- 6 ***with any order issued by the governing body requiring the contractor to***
- 7 ***correct the violation, the governing body shall, not later than 10 days***

1 *after making that determination, notify the board in writing of its*
2 *determination.*

3 *2. Upon receipt of a notice required pursuant to subsection 1, the*
4 *board shall conduct an investigation to determine whether any action*
5 *may be taken against the contractor.*

6 *3. A member of the board or a person authorized by the board may*
7 *enter the site of a construction project or any other private property*
8 *during regular business hours to conduct an investigation or to carry out*
9 *its duties pursuant to the provisions of this chapter.*

10 **Sec. 3. 1. The board shall, by regulation, establish a program to**
11 **provide continuing education for licensed contractors.**

12 *2. The regulations adopted pursuant to the provisions of subsection 1*
13 *must require each licensed contractor to comply with the requirements*
14 *for continuing education as a prerequisite for the renewal of his license*
15 *by the board.*

16 **Sec. 4. 1. Before issuing a license to an applicant who will engage**
17 **in residential construction or renewing the license of a contractor who**
18 **engages in residential construction, the board shall require the applicant**
19 **or contractor to establish his financial responsibility by submitting to the**
20 **board:**

21 *(a) A financial statement prepared by a certified public accountant*
22 *who is licensed pursuant to the provisions of chapter 628 of NRS; and*

23 *(b) A statement setting forth:*

24 *(1) The number of building permits issued to and construction*
25 *projects completed by the contractor for the immediately preceding year;*
26 *and*

27 *(2) Any other information required by the board.*
28 *The statement submitted pursuant to this paragraph must be provided on*
29 *a form approved by the board.*

30 *2. In addition to the requirements set forth in subsection 1, the board*
31 *may require a contractor who engages in residential construction to*
32 *establish his financial responsibility at any time.*

33 **Sec. 5. NRS 624.260 is hereby amended to read as follows:**

34 **624.260 1. The board shall require an applicant *or a licensee* to show**
35 **such a degree of experience, financial responsibility and such general**
36 **knowledge of the building, safety, health and lien laws of the State of**
37 **Nevada and the rudimentary principles of the contracting business as the**
38 **board deems necessary for the safety and protection of the public.**

39 **2. An applicant *or a licensee* may qualify in regard to his experience**
40 **and knowledge in the following ways:**

41 **(a) If a natural person, he may qualify by personal appearance or by the**
42 **appearance of his responsible managing employee.**

(b) If a copartnership, a corporation or any other combination or organization, it may qualify by the appearance of the responsible managing officer or member of the personnel of the applicant firm.

3. The natural person qualifying on behalf of another natural person or firm under paragraphs (a) and (b) of subsection 2 must prove that he is a bona fide member or employee of that person or firm and when his principal or employer is actively engaged as a contractor shall exercise authority in connection with his principal or employer's contracting business in the following manner:

(a) To make technical and administrative decisions;

(b) To hire, superintend, promote, transfer, lay off, discipline or discharge other employees and to direct them, either by himself or through others, or effectively to recommend such action on behalf of his principal or employer; and

(c) To devote himself solely to his principal or employer's business and not to take any other employment which would conflict with his duties under this subsection.

4. A natural person may not qualify on behalf of another for more than one active license unless:

(a) One person owns at least 25 percent of each licensee for which he qualifies; or

(b) One licensee owns at least 25 percent of the other licensee.

Sec. 6. NRS 624.263 is hereby amended to read as follows:

624.263 1. For the purposes of this chapter, financial responsibility means a ~~past and present business record of solvency. If the applicant or contractor is a corporation, its financial responsibility must be established independently of and without reliance on the assets of its officers, directors or stockholders, but the financial responsibility of its officers and directors may be inquired into and considered as a criterion in determining the corporation's financial responsibility.~~ *present and future condition of financial solvency that, as determined by the board, establishes a reasonable expectation that the applicant or licensee will conduct business as a contractor without injuring the health, safety and welfare of the members of the general public.*

2. *An applicant for a contractor's license who will engage in residential construction or a licensee who engages in residential construction applying for renewal of a contractor's license has the burden of demonstrating his financial responsibility to the board.*

3. The financial responsibility of an applicant for a contractor's license or of a licensed contractor must be determined by using the following standards and criteria in connection with each applicant or contractor and each associate or partner thereof:

(a) Net

worth.

- 1 (b) Amount of liquid assets.
- 2 (c) Prior payment and credit records.
- 3 (d) Previous business experience.
- 4 (e) Prior and pending lawsuits.
- 5 (f) Prior and pending liens.
- 6 (g) Adverse judgments.
- 7 (h) Conviction of a felony or crime involving moral turpitude.
- 8 (i) Prior suspension or revocation of a contractor's license in Nevada or
- 9 elsewhere.
- 10 (j) An adjudication of bankruptcy or any other proceeding under the
- 11 federal bankruptcy laws, including:
 - 12 (1) A composition, arrangement or reorganization proceeding;
 - 13 (2) The appointment of a receiver of the property of the applicant or
 - 14 contractor or any officer, director, associate or partner thereof under the
 - 15 laws of this state or the United States; or
 - 16 (3) The making of an assignment for the benefit of creditors.
- 17 (k) Form of business organization (corporate or otherwise).
- 18 (l) Information obtained from confidential financial references and
- 19 credit reports.

20 (m) Reputation for honesty and integrity of the applicant or contractor

21 or any officer, director, associate or partner thereof.

22 ~~13-1~~ 4. A licensed contractor shall, as soon as it is reasonably

23 practicable, notify the board in writing upon the filing of a petition or

24 application relating to the contractor that initiates any proceeding,

25 appointment or assignment set forth in paragraph (j) of subsection ~~12-1~~ 3.

26 The written notice must be accompanied by:

- 27 (a) A copy of the petition or application filed with the court; and
- 28 (b) A copy of any order of the court which is relevant to the financial
- 29 responsibility of the contractor, including any order appointing a trustee,
- 30 receiver or assignee.

31 ***5. The applicant or licensee may establish his financial responsibility***

32 ***independently of and without reliance upon the assets or guarantees of***

33 ***his officers, directors or stockholders. The board may inquire into and***

34 ***consider the financial responsibility of the officers and directors as a***

35 ***criterion in determining financial responsibility.***

36 **Sec. 7.** NRS 624.270 is hereby amended to read as follows:

37 624.270 1. Before issuing a contractor's license to any applicant, the

38 board shall require that the applicant:

- 39 (a) File with the board a surety bond in a form acceptable to the board
- 40 executed by the contractor as principal with a corporation authorized to
- 41 transact surety business in the State of Nevada as surety; or

42 (b) In lieu of ~~such a~~ **the** bond, establish with the board a cash deposit

43 as provided in this section.

2. Before granting renewal of a contractor's license to any applicant, the board shall require that the applicant file with the board satisfactory evidence that his surety bond or cash deposit is in full force . ~~[-, unless the applicant has been relieved of the requirement as provided in this section.~~

~~3. Failure~~

3. *The failure* of an applicant or licensee to file or maintain in full force the required bond or to establish the required cash deposit constitutes cause for the board to deny, revoke, suspend or refuse to renew a license.

4. Except as otherwise provided in subsection 6, the amount of each bond or cash deposit required by this section must be fixed by the board with reference to the contractor's financial and professional responsibility and the magnitude of his operations, but must be not less than \$1,000 or more than \$100,000. The bond must be continuous in form and must be conditioned that the total aggregate liability of the surety for all claims is limited to the face amount of the bond irrespective of the number of years the bond is in force. The board may increase or reduce the amount of any bond or cash deposit if evidence supporting such a change in the amount is presented to the board at the time application is made for renewal of a license or at any hearing conducted pursuant to NRS 624.310. Unless released earlier pursuant to subsection 5, any cash deposit may be withdrawn 2 years after termination of the license in connection with which it was established, or 2 years after completion of all work authorized by the board after termination of the license, whichever occurs later, if there is no outstanding claim against it.

5. After a licensee has acted in the capacity of a licensed contractor in the State of Nevada for not less than ~~5~~ 10 consecutive years, *and if no substantiated complaints have been filed with the board in the immediately preceding 5 years*, the board may relieve the licensee of the requirement of filing a bond or establishing a cash deposit if evidence supporting such relief is presented to the board. The board may at any time thereafter require the licensee to file a new bond or establish a new cash deposit as provided in subsection 4 if evidence is presented to the board supporting this requirement or, pursuant to subsection 6, after notification of a final written decision by the labor commissioner. If a licensee is relieved of the requirement of establishing a cash deposit, the deposit may be withdrawn 2 years after such relief is granted, if there is no outstanding claim against it.

6. If the board is notified by the labor commissioner pursuant to NRS 607.165 that three substantiated claims for wages have been filed against a contractor within a 2-year period, the board shall require the contractor to file a bond or establish a cash deposit in an amount fixed by the board. The contractor shall maintain the bond or cash deposit for the period required by the board.

1 7. As used in this section, "substantiated claims for wages" has the
2 meaning ascribed to it in NRS 607.165.

3 **Sec. 8.** NRS 624.283 is hereby amended to read as follows:

4 624.283 1. Each license issued under the provisions of this chapter
5 expires 1 year after the date on which it is issued, except that the board may
6 by regulation prescribe shorter or longer periods and prorated fees to
7 establish a system of staggered renewals. Any license which is not renewed
8 on or before the date for renewal is automatically suspended.

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

10 (a) An application for renewal;

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

13 (c) The fee for renewal fixed by the board.

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

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

18 (b) The licensee has violated or may be violating a provision of chapter
19 624 of NRS or a regulation adopted pursuant thereto; or

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

21 4. If a license is automatically suspended pursuant to subsection 1, the
22 licensee may have his license reinstated upon filing an application for
23 renewal within ~~{6 months}~~ 90 days after the date of suspension and paying,
24 in addition to the fee for renewal, a fee for reinstatement fixed by the board,
25 if he is otherwise in good standing and there are no complaints pending
26 against him. If he is otherwise not in good standing or there is a complaint
27 pending, the board shall require him to provide a current financial
28 statement prepared by a certified public accountant or establish other
29 conditions for reinstatement. If the licensee is a natural person, his
30 application for renewal must be accompanied by the statement required
31 pursuant to NRS 624.268. A license which is not reinstated within ~~{6~~
32 ~~months}~~ 90 days after it is automatically suspended may be canceled by the
33 board, and a new license may be issued only upon application for an
34 original contractor's license.

35 **Sec. 9.** NRS 624.300 is hereby amended to read as follows:

36 624.300 1. Except as otherwise provided in subsection 6, the board
37 may:

38 (a) Suspend or revoke licenses already issued;

39 (b) Refuse renewals of licenses;

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

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

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

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

2. *The board may, in addition to any other conditions for reinstating or renewing the license, require the licensee to file with the board a bond in an amount fixed by the board based on the nature of the violation. The bond is in addition to, may not be combined with, and does not replace any other bond required pursuant to the provisions of this chapter. The contractor shall maintain the bond for at least 2 years, or for a longer period, as determined by the board.*

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

~~3.4~~ 4. If a licensee commits a fraudulent act which is a cause for disciplinary action under NRS 624.3016, the correction of any condition resulting from the act does not preclude the board from taking disciplinary action.

~~4.4~~ 5. If the board finds that a licensee has engaged in repeated acts that would be cause for disciplinary action, the correction of any resulting conditions does not preclude the board from taking disciplinary action pursuant to this section.

~~5.4~~ 6. The expiration of a license by operation of law or by order or decision of the board or a court, or the voluntary surrender of a license by a licensee, does not deprive the board of jurisdiction to proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license.

~~6.4~~ 7. The board shall not take any disciplinary action pursuant to this section regarding a constructional defect, as that term is defined in NRS 40.615, during the period in which any claim arising out of that defect is being settled, mediated or otherwise resolved pursuant to NRS 40.600 to 40.695, inclusive, unless the disciplinary action is necessary to protect the public health or safety.

1 ~~[7.]~~ 8. If discipline is imposed pursuant to this section, the costs of the
2 proceeding, including investigative costs and attorney's fees, may be
3 recovered by the board.

4 **Sec. 10.** NRS 624.3013 is hereby amended to read as follows:

5 624.3013 The following acts, among others, constitute cause for
6 disciplinary action pursuant to NRS 624.300:

7 1. Failure to keep records showing all contracts, documents, receipts
8 and disbursements by a licensee of all of his transactions as a contractor
9 and to keep them open for inspection by the board or executive officer for a
10 period of not less than 3 years after the completion of any construction
11 project or operation to which the records refer.

12 2. Misrepresentation of a material fact by an applicant or licensee in
13 obtaining a license, or in connection with any information or evidence
14 furnished the board in connection with official matters of the board.

15 3. Failure to establish financial responsibility pursuant to NRS
16 624.220, 624.260, 624.263 and 624.265 *and section 4 of this act* at the
17 time of renewal of the license or at any other time when required by the
18 board.

19 4. Failure to keep in force the bond or cash deposit pursuant to NRS
20 624.270 for the full period required by the board.

21 5. Failure in any material respect to comply with the provisions of this
22 chapter or the regulations of the board.

23 **Sec. 11.** NRS 624.321 is hereby amended to read as follows:

24 624.321 A ~~{general building}~~ contractor shall provide in writing to the
25 owner of a single-family residence *for whom he performs a service or* with
26 whom he has contracted:

27 1. The name, license number, business address and telephone number
28 of:

29 (a) All subcontractors with whom he has contracted on the project; and

30 (b) All persons who furnish material of the value of \$500 or more to be
31 used in the project.

32 2. A notice that a person described in subsection 1 may record a notice
33 of lien upon the residence of the owner and any building, structure and
34 improvement thereon pursuant to the provisions of NRS 108.226.

35 3. An informational form, whose contents must be prescribed by the
36 board, regarding:

37 (a) Contractors pursuant to chapter 624 of NRS; ~~{and}~~

38 (b) Mechanics' and materialmen's liens pursuant to chapter 108 of NRS
39 ~~{and}~~ *; and*

40 *(c) The availability of any warranty and any information related to*
41 *such a warranty.*

1 **Sec. 12.** NRS 624.330 is hereby amended to read as follows:
2 624.330 ~~{This chapter does}~~ *The provisions of this chapter do* not
3 apply to:
4 1. Work ~~{done}~~ *performed* exclusively by an authorized representative
5 of the United States Government, the State of Nevada, or an incorporated
6 city, county, irrigation district, reclamation district, or other municipal or
7 political corporation or subdivision of this state.
8 2. An officer of a court when acting within the scope of his office.
9 3. Work ~~{done}~~ *performed* exclusively by a public utility operating
10 pursuant to the regulations of the public utilities commission of Nevada on
11 construction, maintenance and development work incidental to its ~~{own}~~
12 business.
13 4. An owner of property who is building or improving a residential
14 structure on the property for his own occupancy and not intended for sale
15 ~~{or lease}~~ *or lease*. The sale or *lease or* offering for sale *or lease* of the newly built
16 structure within 1 year after its completion creates a rebuttable presumption
17 for the purposes of this section that the building of the structure was
18 performed with *the* intent to sell ~~{or lease}~~ *that structure. An owner of*
19 *property who requests an exemption pursuant to this subsection must*
20 *apply to the board for the exemption. The board shall adopt regulations*
21 *setting forth the requirements for granting the exemption.*
22 5. An owner of a complex containing not more than four
23 condominiums, townhouses, apartments or cooperative units, the managing
24 officer of the owner or an employee of the managing officer, who performs
25 work to repair or maintain that property the value of which is less than
26 \$500, including labor and materials, unless:
27 (a) A building permit is required to perform the work;
28 (b) The work is of a type performed by a plumbing, electrical,
29 refrigeration, heating or air-conditioning contractor;
30 (c) The work is of a type performed by a contractor licensed in a
31 classification prescribed by the board that significantly affects the health,
32 safety and welfare of members of the general public;
33 (d) The work is performed as a part of a larger project:
34 (1) The value of which is \$500 or more; or
35 (2) For which contracts of less than \$500 have been awarded to evade
36 the provisions of this chapter; or
37 (e) The work is performed by a person who is licensed pursuant to this
38 chapter or by an employee of ~~{such a}~~ *that* person.
39 6. The sale or installation of any finished product, material or article of
40 merchandise which is not ~~{actually}~~ fabricated into and does not become a
41 permanent fixed part of the structure.
42 7. The construction, alteration, improvement or repair of personal
43 property.

8. The construction, alteration, improvement or repair financed in whole or in part by the Federal Government and ~~carried on~~ **conducted** within the limits and boundaries of a site or reservation, the title of which rests in the Federal Government.

9. An owner of property, the primary use of which is as an agricultural or farming enterprise, building or improving a structure on the property for his ~~own~~ use or occupancy and not intended for sale or lease.

10. An owner of property who builds or improves a structure upon his property and who contracts solely with a managing contractor licensed pursuant to the provisions of this chapter for the building or improvement, if the owner is and remains financially responsible for the building or improving of all buildings and structures built by the owner upon his property pursuant to the exemption ~~of~~ **specified in** this subsection.

Sec. 13. NRS 624.360 is hereby amended to read as follows:

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

~~(a) For~~ **NRS 624.355:**

(a) Except as otherwise provided in paragraph (c), for the first offense, is guilty of a misdemeanor and shall be punished by a fine of not less than ~~\$500~~ **\$1,000** nor more than ~~\$1,000,~~ **\$2,000**, and may be further punished by imprisonment in the county jail for not more than 6 months . ~~;~~

~~or~~
~~(b) For~~

(b) Except as otherwise provided in paragraph (c), for the second ~~or subsequent~~ offense, is guilty of a gross misdemeanor and shall be punished by a fine of not less than ~~\$1,000~~ **\$2,000** nor more than ~~\$2,000,~~ **\$4,000**, and may be further punished by imprisonment in the county jail for not more than 1 year.

(c) For the third or subsequent offense, or if the bid or contract is in excess of \$100,000, and the contractor is not properly licensed pursuant to this chapter, is guilty of a class E felony and shall be punished by a fine of not less than \$5,000 nor more than \$10,000 and may be further punished by imprisonment in the state prison for not less than 1 year and not more than 4 years.

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

Sec. 14. Chapter 40 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided in NRS 116.4113 and 116.4114, each contractor who develops or constructs a new residence may, if the residence is sold to a person other than the contractor, provide a written homeowner's warranty for that residence. The warranty must state that

the contractor will repair or replace, without cost to the person to whom the residence is sold:

(a) Any constructional defect in the residence, other than a defect specified in paragraph (b), occurring within 1 year after a certificate of occupancy is issued for the residence; and

(b) Any defect in a structural component of the residence occurring within 10 years after a certificate of occupancy is issued for the residence. As used in this paragraph, "structural component" means the foundation, floors, walls, roof trusses or rafters of a residence.

2. A sale or other conveyance of a residence for which a homeowner's warranty is provided pursuant to the provisions of this section does not extinguish, modify or limit that warranty.

Sec. 15. NRS 40.600 is hereby amended to read as follows:

40.600 As used in NRS 40.600 to 40.695, inclusive, *and section 14 of this act*, unless the context otherwise requires, the words and terms defined in NRS 40.605 to 40.630, inclusive, have the meanings ascribed to them in those sections.

Sec. 16. Chapter 278 of NRS is hereby amended by adding thereto a new section to read as follows:

1. In a county whose population is 100,000 or more, each certificate of occupancy issued for a single-family residence must be issued in substantially the following form:

CERTIFICATE OF RESIDENTIAL OCCUPANCY

This certificate of occupancy does not create an express or implied warranty or guarantee.

Address: Permit Number:

Name of Builder: Date of Final Inspection:

Owner-Builder: ☐ Yes ☐ No

Name of Building:

Inspector:

This building is deemed to be in substantial compliance with fire, safety and structural provisions of the adopted building codes. Records concerning the construction of this building are on file with the building department for 12 years after the date that the records are filed with the building department.

1 2. *A certificate of occupancy issued pursuant to the provisions of*
2 *subsection 1 must be issued to the person to whom the building permit*
3 *for the single-family residence was issued.*

4 3. *If the single-family residence for which the certificate of*
5 *occupancy is issued pursuant to subsection 1 is sold, the owner of the*
6 *single-family residence shall provide a copy of the certificate of*
7 *occupancy to the purchaser of the residence. The copy must be provided*
8 *before the close of escrow for the residence.*

9 4. *The building department of a county whose population is 100,000*
10 *or more shall maintain on file the records concerning a building for*
11 *which a certificate of occupancy is issued pursuant to subsection 1 for at*
12 *least 12 years after the date those records are filed with the building*
13 *department.*

14 **Sec. 17.** The amendatory provisions of this act do not apply to
15 offenses that are committed before October 1, 1999.

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