

Senate Bill No. 216—Senators Care and O'Donnell

CHAPTER.....

AN ACT relating to contractors; providing for the adoption of standards for advertisements used by contractors who repair, restore, improve or construct residential pools and spas; enacting and revising various provisions pertaining to such contractors; requiring the state contractors' board to adopt standard contract elements for use by such contractors; providing for the designation of an ombudsman for residential pools and spas; revising the provisions governing eligibility for compensation from the recovery fund; 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:

**Section 1.** Chapter 597 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 6, inclusive, of this act.

**Sec. 2. 1.** *The board shall adopt by regulation standards for advertisements used by contractors in connection with the sale of contracts for the repair, restoration, improvement or construction of residential pools or spas.*

*2. The regulations adopted pursuant to subsection 1 must prohibit a contractor from employing "bait and switch" advertising or otherwise intentionally publishing, displaying or circulating any advertisement which is misleading or inaccurate in any material particular or which misrepresents any of the goods or services sold or furnished by the contractor to members of the public.*

*3. The board shall, in adopting the standards required by subsection 1, give consideration to the provisions of chapter 598 of NRS relating to advertisements that constitute deceptive trade practices and, to the extent practicable, adopt standards that are at least as stringent as those provisions.*

*4. A contractor shall not cause to be published or display or circulate any advertisement that does not comply with the standards adopted by the board pursuant to subsection 1.*

*5. As used in this section, "bait and switch" advertising has the meaning ascribed to it in NRS 482.351.*

**Sec. 3. 1.** *If a contractor who engages in the repair, restoration, improvement or construction of a residential pool or spa is determined by the board to have violated:*

*(a) One or more of the provisions of NRS 597.716, 597.719 or 624.301 to 624.305, inclusive; or*

*(b) Any regulation adopted by the board with respect to contracts for the repair, restoration, improvement or construction of a residential pool or spa,*

*the board may require that the contractor obtain the services of a construction control for each contract that the contractor enters into for the repair, restoration, improvement or construction of a residential pool or spa.*

*2. The contractor may not:*

*(a) Be related to the construction control or to an employee or agent of the construction control; or*

*(b) Hold, directly or indirectly, a financial interest in the business of the construction control.*

*3. As used in this section, "construction control" has the meaning ascribed to it in NRS 627.050.*

*Sec. 4. 1. Any contractor or subcontractor who performs work for the repair, restoration, improvement or construction of a residential pool or spa shall, regardless of whether the work is performed under the direction of a builder who is also the owner of the property being improved:*

- (a) Apply for and obtain all applicable permits for the project; and*
- (b) Meet all applicable requirements imposed pursuant to:*
  - (1) This chapter;*
  - (2) Chapter 624 of NRS; and*
  - (3) Any regulations adopted by the board,*

*with respect to contracts for the repair, restoration, improvement or construction of a residential pool or spa.*

*2. If a contractor or subcontractor performs work for the repair, restoration, improvement or construction of a residential pool or spa and the work is performed under the direction of a builder who is also the owner of the property being improved, the owner shall comply with all state and local laws and ordinances for the submission of names, licenses and information concerning any required bonds and insurance with respect to the contractors and subcontractors working on the project.*

*3. With respect to a contract for the repair, restoration, improvement or construction of a residential pool or spa, regardless of use, the work performed pursuant to such a contract must be supervised and controlled directly by the qualified employee or qualified officer of the contractor.*

*Sec. 4.5. Except as otherwise provided in section 5 of this act, a contractor who engages in the repair, restoration, improvement or construction of a residential pool or spa shall not act as, or carry out the duties of, an officer, director, employee or owner of a bonding company, finance company, or any other corporation or business entity who cosigns, underwrites, obtains a deed of trust for, issues, sells, purchases or acquires a loan to finance the repair, restoration, improvement or construction of a residential pool or spa.*

*Sec. 5. 1. A contract for the repair, restoration, improvement or construction of a residential pool or spa, regardless of use, is not enforceable against the owner if the obtaining of a loan for all or a portion of the contract price is a condition precedent to the contract unless all of the following requirements are satisfied:*

- (a) A third-party agrees to make the loan or give the financing.*
- (b) The owner agrees to accept the loan or financing.*
- (c) The owner does not rescind the loan or financing transaction within the period prescribed for rescission pursuant to the Truth in Lending Act, 15 U.S.C. §§ 1601 et seq., or chapter 598 of NRS, if applicable.*

*2. Unless and until all applicable requirements of subsection 1 are satisfied, a contractor shall not:*

- (a) Perform or deliver any work, labor, material or services; or*

*(b) Represent in any manner that the contract is enforceable or that the owner has any obligation under the contract.*

*3. A contract for the repair, restoration, improvement or construction of a residential pool or spa, regardless of use, is not enforceable against the owner if the contractor provides a loan or gives financing for all or a portion of the contract price unless all of the following requirements are satisfied:*

*(a) The owner agrees to accept the loan or financing.*

*(b) The owner does not rescind the loan or financing transaction within the period prescribed for rescission pursuant to the Truth in Lending Act, 15 U.S.C. §§ 1601 et seq., or chapter 598 of NRS, if applicable.*

*4. Unless and until all applicable requirements of subsection 3 are satisfied, a contractor shall not:*

*(a) Perform or deliver any work, labor, material or services; or*

*(b) Represent in any manner that the contract is enforceable or that the owner has any obligation under the contract.*

*5. A contract for the repair, restoration, improvement or construction of a residential pool or spa, regardless of use, is not enforceable against the owner if the contractor receives from a third-party, either directly or indirectly, remuneration or any other thing of value for a loan to finance the repair, restoration, improvement or construction and that fact is not disclosed in writing in the contract.*

*6. As used in this section, "third-party" means a bonding company, finance company, or any other corporation or business entity who cosigns, underwrites, obtains a deed of trust for, issues, sells, purchases or acquires a loan to finance the repair, restoration, improvement or construction of a residential pool or spa.*

**Sec. 6.** *1. A violation of any provision of NRS 597.716 or 597.719 or sections 2 to 5, inclusive, of this act, or any regulations adopted with respect to contracts for the repair, restoration, improvement or construction of a residential pool or spa by a contractor constitutes cause for disciplinary action pursuant to NRS 624.300.*

*2. It is unlawful for a person to violate any provision of NRS 597.716 or 597.719 or sections 2 to 5, inclusive, of this act.*

*3. Any person who violates any provision of NRS 597.716 or 597.719 or sections 2 to 5, inclusive, of this act:*

*(a) For a first offense, is guilty of a misdemeanor and shall be punished by a fine of not more than \$1,000, and may be further punished by imprisonment in the county jail for not more than 6 months.*

*(b) For the second offense, is guilty of a gross misdemeanor and shall be punished by a fine of not less than \$2,000 nor more than \$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, 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.*

*4. The imposition of a 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. 7.** NRS 597.713 is hereby amended to read as follows:

597.713 As used in this section and NRS 597.716 and 597.719, ~~“contractor”~~ *and sections 2 to 6, inclusive, of this act:*

1. *“Board” means the state contractors’ board.*

2. *“Contractor” means a person licensed pursuant to the provisions of chapter 624 of NRS whose scope of work includes the construction, repair or maintenance of any residential swimming pool or spa, regardless of use, including the repair or replacement of existing equipment or the installation of new equipment, as necessary. The scope of such work includes layout, excavation, operation of construction pumps for removal of water, steelwork, construction of floors, installation of gunite, fiberglass, tile and coping, installation of all perimeter and filter piping, installation of all filter equipment and chemical feeders of any type, plastering of the interior, construction of decks, installation of housing for pool equipment and installation of packaged pool heaters.*

**Sec. 8.** NRS 597.716 is hereby amended to read as follows:

597.716 1. A contractor who receives an initial payment of \$1,000 or 10 percent of the aggregate contract price, whichever is less, for the repair, restoration, improvement or construction of a residential pool or spa shall start the work within 30 days after the date all necessary permits for the work, if any, are issued, unless the person who made the payment agrees in writing to a longer period to apply for the necessary permits or start the work or to longer periods for both.

2. A contractor who receives money for the repair, restoration, addition, improvement or construction of a residential pool or spa ~~must~~ *shall* complete the work diligently and shall not refuse to perform any work for any 30-day period.

3. If satisfactory payment is made for any portion of the work performed, the contractor shall, before any further payment is made, furnish the owner a full and unconditional release from any claim of mechanic’s lien for that portion of the work for which payment has been made.

4. The requirements of subsection 3 do not apply if the contract provides for the contractor to furnish a bond for payment and performance or joint control covering full performance and completion of the contract and the bond or joint control is furnished by the contractor.

5. An agreement or contract for the repair, restoration, improvement or construction of a residential pool or spa must contain a written statement explaining the rights of the customer under this section, NRS 597.713 and 597.719, *and sections 2 to 6, inclusive, of this act* and other relevant statutes.

6. A contractor may require final payment for the final stage or phase of the construction of a residential pool or spa after the completion of the plastering and the final inspection by the local building department, unless any installation of equipment, decking or fencing that is required in the contract is not completed.

~~{7. A violation of the provisions of this section by a contractor constitutes cause for disciplinary action pursuant to NRS 624.300.}~~

**Sec. 9.** NRS 597.719 is hereby amended to read as follows:

597.719 1. ~~1.A~~ *The board shall adopt by regulation mandatory elements to be included in all contracts to be used by contractors for the repair, restoration, improvement or construction of a residential pool or spa. Such mandatory elements must not be waived or limited by contract or in any other manner. On and after October 1, 2001, any contract entered into between a contractor and the owner of a single-family residence for the repair, restoration, improvement or construction of a residential pool or spa must comply with the standard elements adopted by the board. A contract that does not comply with the standard elements adopted by the board is void and unenforceable against the owner.*

2. *Any such* contract in an amount of more than \$1,000 ~~entered into between a contractor and the owner of a single-family residence for the construction or alteration of a residential pool or spa~~ must contain in writing at least the following information:

(a) The name of the contractor and his business address and license number. ~~1.B~~

(b) The name and mailing address of the owner and the address or legal description of the property. ~~1.C~~

(c) The date of execution of the contract. ~~1.D~~

(d) The estimated date of completion of all work to be performed under the contract. ~~1.E~~

(e) A description of the work to be performed under the contract. ~~1.F~~

(f) The total amount to be paid to the contractor by the owner for all work to be performed under the contract, including all applicable taxes. ~~1.G~~

(g) The amount, *not to exceed \$1,000 or 10 percent of the aggregate contract price, whichever is less*, of any ~~advance~~ deposit paid or promised to be paid to the contractor by the owner ~~1.H~~ *before the start of construction.*

(h) A statement that the contractor has provided the owner with the notice and informational form required by 624.600. ~~1.I~~

(i) A statement that any additional work to be performed under the contract, whether or not pursuant to a change order, which will require the owner to pay additional money and any other change in the terms in the original contract must be agreed to in writing by the parties and incorporated into the original contract as a change order. ~~1.J~~ *A change order is not enforceable against the owner contracting for the repair, restoration, improvement or construction of a residential pool or spa unless the change order clearly sets forth the scope of work to be completed and the price to be charged for the changes and is signed by the owner.*

(j) A plan and scale drawing showing the shape, size, dimensions and the specifications for the construction and equipment for the residential pool or spa and for other home improvements, and a description of the work to be done, the materials to be used and the equipment to be installed, and the agreed consideration for the work. ~~1.K and~~

(k) ~~The~~ *Except as otherwise provided in this subsection, the* dollar amount of any progress payment and the stage of construction at which the contractor will be entitled to collect progress payments during the course of construction under the contract. *The schedule of payments must show the*

*amount of each payment as a sum in dollars and cents. The schedule of payments must not provide for the contractor to receive, nor may the contractor actually receive, payments in excess of 100 percent of the value of the work performed on the project at any time, excluding finance charges, except for an initial down payment as authorized by subsection 1 of NRS 597.716 or the regulations adopted by the board. With respect to a contract executed before October 1, 2001, if any schedule of payments set forth in the contract does not comply with the provisions of this chapter or chapter 624 of NRS or any regulations adopted pursuant thereto:*

*(1) The obligation of the owner to make payments in accordance with the payment schedule shall be deemed void and unenforceable; and*

*(2) The lender, if any, may not initiate proceedings to enforce the payment of any applicable loan unless and until the contract is reformed or otherwise amended to comply with those provisions of law.*

*The provisions of this paragraph do not apply if the contractor has furnished a bond for payment and performance covering full performance and completion of the contract and the cost of the bond is included in the price of the project.*

*(l) If the contract provides for payment of a commission to a salesperson out of the contract price, a statement that the payment must be made on a pro rata basis in proportion to the schedule of payments made to the contractor by the disbursing party in accordance with the provisions of paragraph (k).*

Except as otherwise provided in subsection ~~4.1~~ 5, the contract may contain such other conditions, stipulations or provisions as to which the parties may agree.

~~2.1~~ 3. The contract must contain ~~1.1~~ ~~1.1~~:

*(a) A method whereby the owner may initial provisions of the contract, thereby indicating that those provisions have been read and are understood.*

*(b) In close proximity to the signatures of the owner and the contractor, a notice stating that the owner ~~has~~:*

*(1) May contact the board if assistance is needed to clarify any of the provisions of the contract that the owner does not fully understand; and*

*(2) Has the right to request a bond for payment and performance ~~1~~ ~~3.1~~ if such a bond is not otherwise required pursuant to NRS 624.270.*

4. At the time the owner signs the contract, the contractor shall furnish him a legible copy of all documents signed and a written and signed receipt for any money paid to the contractor by the owner. All written information provided in the contract must be printed in at least 10-point bold type.

~~4.1~~ 5. A condition, stipulation or provision in a contract or other agreement that requires a person to waive any right provided by this section and NRS 597.713 and 597.716 *and sections 2 to 6, inclusive, of this act* or relieves a person of an obligation or liability imposed by those sections is void. Failure to comply with the requirements of this section and NRS 597.713 and 597.716 *and sections 2 to 6, inclusive, of this act* renders a contract *void and* unenforceable ~~1~~ *against the owner.*

~~5.1~~ 6. The contractor shall apply for and obtain all necessary permits.

**Sec. 10.** Chapter 624 of NRS is hereby amended by adding thereto the provisions set forth as sections 11 and 12 of this act.

**Sec. 11.** *1. The board shall designate an employee as ombudsman for residential pools and spas.*

*2. The ombudsman for residential pools and spas shall:*

*(a) Assist owners of single-family residences and contractors to understand their rights and responsibilities as set forth in NRS 597.713, 597.716 and 597.719 and sections 2 to 6, inclusive, of this act, and any regulations adopted pursuant thereto.*

*(b) Notify the board if it appears that any person has engaged in any act or practice that constitutes a violation of any of the provisions of this chapter or NRS 597.713, 597.716 or 597.719 or sections 2 to 6, inclusive, of this act, or any regulations adopted pursuant thereto.*

**Sec. 12.** *1. Before granting an original contractor's license to, or renewing the contractor's license of, an applicant who engages or will engage in the repair, restoration, improvement or construction of residential pools or spas, the board may, in addition to any other conditions for the issuance or renewal of a license, require the applicant to file with the board a bond for the protection of consumers in an amount fixed by the board.*

*2. A bond required pursuant to subsection 1 is in addition to, may not be combined with and does not replace any other bond required pursuant to the provisions of this chapter. A contractor required to file a bond pursuant to subsection 1 shall maintain the bond for 2 years or for such longer period as the board may require.*

*3. A bond required pursuant to subsection 1 must be provided by a person whose long-term debt obligations are rated "A" or better by a nationally recognized rating agency.*

**Sec. 13.** NRS 624.270 is hereby amended to read as follows:

624.270 1. Before issuing a contractor's license to any applicant, the board shall require that the applicant:

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

(b) In lieu of such a bond, establish with the board a cash deposit 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 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~~ **\$500,000**. 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. *A bond required by this section must be provided by a person whose long-term debt obligations are rated "A" or better by a nationally recognized rating agency.* 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 624.291 or section 4 of *Assembly Bill No. 620 of this ~~act.~~ session.* 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 consecutive 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 ~~+~~ :

*(a) If evidence is presented to the board supporting this requirement ~~for~~ pursuant;*

*(b) Pursuant to subsection 6, after notification of a final written decision by the labor commissioner ~~+~~; or*

*(c) Pursuant to subsection 7.*

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.

7. *If a contractor who engages in the repair, restoration, improvement or construction of a residential pool or spa:*

*(a) Becomes licensed pursuant to chapter 624 of NRS on or after July 1, 2001;*

*(b) Is determined by the board to have violated one or more of the provisions of NRS 624.301 to 624.305, inclusive;*

*(c) Enters into a contract on or after July 1, 2001, that is later found to be void and unenforceable against the owner pursuant to subsection 5 of NRS 597.719 or pursuant to any regulation adopted by the board with respect to contracts for the repair, restoration, improvement or construction of a residential pool or spa; or*

*(d) Has five valid complaints filed against him with the board within any 15-day period,*  
*the contractor shall comply with the provisions of subsection 8.*

8. *A contractor described in subsection 7 shall, before commencing work for the repair, restoration, improvement or construction of a residential pool or spa, obtain:*



*(a) A performance bond in an amount equal to not less than 50 percent of the amount of the contract, conditioned upon the faithful performance of the contract in accordance with the plans, specifications and conditions set forth in the contract. The performance bond must be solely for the protection of the owner of the property to be improved.*

*(b) A payment bond in an amount equal to not less than 50 percent of the amount of the contract. The payment bond must be solely for the protection of persons supplying labor or materials to the contractor, or to any of his subcontractors, in carrying out the provisions of the contract.*

*A bond required pursuant to this subsection must be provided by a person whose long-term debt obligations are rated "A" or better by a nationally recognized rating agency. The contractor shall maintain the bond for the period required by the board. The contractor shall furnish to the building department of the city or county, as applicable, in which the work will be carried out, a copy of any bond.*

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

**Sec. 14.** NRS 624.750 is hereby amended to read as follows:

624.750 1. It is unlawful for a person to commit any act or omission described in subsection 2 of NRS 624.3013, NRS 624.3014 or subsection 1, 3 or 7 of NRS 624.3016.

2. ~~Any~~ *Unless a greater penalty is otherwise provided by specific statute, any* person who violates subsection 1, NRS 624.305, subsection 1 of NRS 624.700 or NRS 624.720 or 624.740:

(a) For a first offense, is guilty of a misdemeanor and shall be punished by a fine of not more than \$1,000, and may be further punished by imprisonment in the county jail for not more than 6 months.

(b) For the second offense, is guilty of a gross misdemeanor and shall be punished by a fine of not less than \$2,000 nor more than \$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, 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.

3. Imposition of a 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. 15.** NRS 627.175 is hereby amended to read as follows:

627.175 ~~The~~

1. *Except as otherwise provided in subsection 2, the* following shall not be a construction control or subject to the provisions of this chapter:

~~1-~~ (a) A contractor licensed under the laws of the State of Nevada, paying a subcontractor, supplier of material, laborer ~~1-~~ or other person for bills incurred in *the* construction, repair, alteration or improvement of any premises.

~~2-~~ (b) A subcontractor licensed to do business under the laws of the State of Nevada, paying a subcontractor, supplier of material, laborer or

other person for bills incurred in *the* construction, repair, alteration or improvement of any premises.

~~13.1~~ (c) An owner-contractor paying a contractor, subcontractor, supplier of material, laborer or other person for bills incurred in *the* construction, repair, alteration or improvement of any premises.

~~14.1~~ (d) A lender of construction loan ~~fmoneys,1~~ *money*, provided that he disburses the ~~ffunds1~~ *money* directly to a contractor authorized by the borrower to do the work, or disburses the ~~ffunds1-money~~ directly to the owner of the premises.

~~15.1~~ (e) A lender of construction loan ~~fmoneys,1~~ *money*, to an owner of a residential property or to an owner of not more than four units if the loan is made to repair or improve such property and the construction costs are \$10,000 or less, or 35 percent of the appraised value of the improvements and repairs, whichever is greater.

*2. The provisions of this chapter apply to a contractor who is required to obtain the services of a construction control pursuant to the provisions of section 3 of this act.*

**Sec. 16.** Section 20.5 of chapter 423, Statutes of Nevada 1999, at page 1972, is hereby amended by adding thereto a new section to read as follows:

Sec. 20.5. 1. The provisions of section 10 of this act apply to qualified services completed on or after October 1, 1999.

2. The provisions of section 11 of this act apply to judgments entered on or after July 1, 2000.

**Sec. 17.** Section 21 of chapter 423, Statutes of Nevada 1999, at page 1972, is hereby amended to read as follows:

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

2. Sections 2 to 8, inclusive, and 10 to ~~120,1~~ *20.5*, inclusive, of this act become effective on July 1, 2001.

**Sec. 18.** The amendatory provisions of this act do not apply to offenses committed before July 1, 2001.

**Sec. 19.** 1. This section and section 1 of this act become effective upon passage and approval.

2. Sections 2 and 9 of this act become effective upon passage and approval for the purpose of adopting regulations necessary to carry out those sections and on October 1, 2001, for all other purposes.

3. Sections 3 to 8, inclusive, 10, 11, 12, 14, 15 and 18 of this act become effective on July 1, 2001.

4. Sections 13, 16 and 17 of this act become effective at 12:01 a.m. on July 1, 2001.