

SENATE BILL NO. 216—SENATORS CARE AND O'DONNELL

FEBRUARY 20, 2001

Referred to Committee on Commerce and Labor

SUMMARY—Makes various changes to provisions governing contracts for repair, restoration, improvement or construction of residential pools and spas. (BDR 52-1037)

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

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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 contracts; enacting provisions governing the financing of the repair, restoration, improvement or construction of residential pools and spas; providing for the adoption of standards for advertisements used by contractors who repair, restore, improve or construct such pools and spas; requiring the commissioner of financial institutions to adopt a standard contract for use by such contractors; providing for the designation of an ombudsman for residential pools and spas; providing a penalty; and providing other matters properly relating thereto.

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

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

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

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

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



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1 4. A contractor shall not cause to be published or display or circulate
2 any advertisement that does not comply with the standards adopted by the
3 board pursuant to subsection 1.
4 5. As used in this section, "bait and switch" advertising has the
5 meaning ascribed to it in NRS 482.351.
6 **Sec. 3.** 1. No person may be employed by a contractor to carry out
7 a contract for the repair, restoration, improvement or construction of a
8 residential pool or spa unless he holds a work card issued pursuant to
9 subsection 2 by the sheriff of the county in which the work is to be
10 performed.
11 2. The sheriff of a county shall issue a work card to each person who
12 is required by this section to obtain a work card and who complies with
13 the requirements established by the sheriff for the issuance of such a
14 card. A work card issued pursuant to this section must be renewed each
15 year.
16 3. If the sheriff of a county requires an applicant for a work card to
17 submit a set of his fingerprints with his application, the sheriff may
18 submit the fingerprints to the central repository for Nevada records of
19 criminal history and to the Federal Bureau of Investigation to determine
20 the criminal history of the applicant.
21 **Sec. 4.** 1. A contractor shall obtain the services of a construction
22 control for each contract he enters into on or after July 1, 2001, for the
23 repair, restoration, improvement or construction of a residential pool or
24 spa.
25 2. The contractor may not:
26 (a) Be related to the construction control or to an employee or agent
27 of the construction control; or
28 (b) Hold, directly or indirectly, a financial interest in the business of
29 the construction control.
30 3. As used in this section, "construction control" has the meaning
31 ascribed to it in NRS 627.050.
32 **Sec. 5.** 1. If a contract for the repair, restoration, improvement or
33 construction of a residential pool or spa entered into on or after July 1,
34 2001, is later found to be void and unenforceable against the owner
35 pursuant to subsection 5 of NRS 597.719, the obligation of the owner to
36 repay a loan to finance that repair, restoration, improvement or
37 construction is discharged.
38 2. Before issuing, purchasing or acquiring a loan to finance the
39 repair, restoration, improvement or construction of a residential pool or
40 spa, regardless of use, a financial institution shall provide to the owner:
41 (a) Written confirmation of financing for the maximum estimated
42 construction cost of the residential pool or spa; and
43 (b) Written notice of the terms and conditions of the loan for the
44 maximum estimated construction cost of the residential pool or spa,
45 including, without limitation, the annual percentage rate, the finance
46 charge, the amount financed, the total number of payments, the payment
47 schedule and a description of the security interest to be taken by the
48 financial institution.



- 1 3. *An affiliate or associate of a contractor may not issue, purchase or*
2 *acquire a loan to finance the repair, restoration, improvement or*
3 *construction of a residential pool or spa, regardless of use.*
4 4. *A contract for the repair, restoration, improvement or construction*
5 *of a residential pool or spa is not enforceable against the owner if:*
6 (a) *Obtaining a loan for all or a portion of the contract price is a*
7 *condition precedent to the contract.*
8 (b) *The contractor provides financing or any other assistance to the*
9 *owner in obtaining a loan.*
10 (c) *The contractor refers the owner to any person who may loan or*
11 *arrange a loan for all or a portion of the contract price.*
12 5. *As used in this section:*
13 (a) *"Affiliate" means a person that directly, or indirectly through one*
14 *or more intermediaries, is controlled by, or is under common control*
15 *with, a specified person.*
16 (b) *"Associate," when used to indicate a relationship with any person,*
17 *means:*
18 (1) *Any corporation or organization of which that person is an*
19 *officer or partner or is, directly or indirectly, the beneficial owner of 10*
20 *percent or more of any class of voting shares;*
21 (2) *Any trust or other estate in which that person has a substantial*
22 *beneficial interest or as to which he serves as trustee or in a similar*
23 *fiduciary capacity; or*
24 (3) *Any relative or spouse of that person, or any relative of the*
25 *spouse.*
26 (c) *"Financial institution" means a bank, mortgage company, credit*
27 *union, thrift company, or savings and loan association, or any subsidiary*
28 *or affiliate of a bank, mortgage company, credit union, thrift company,*
29 *or savings and loan association that is authorized to do business in this*
30 *state.*
31 **Sec. 6.** *1. A violation of any provision of NRS 597.716 or 597.719*
32 *or sections 2 to 5, inclusive, of this act by a contractor constitutes cause*
33 *for disciplinary action pursuant to NRS 624.300.*
34 2. *Any contractor who violates any provision of NRS 597.716 or*
35 *519.719 or sections 2 to 5, inclusive, of this act is guilty of a category D*
36 *felony and shall be punished as provided in NRS 193.130.*
37 3. *The imposition of a penalty provided for in subsection 2 is not*
38 *precluded by any disciplinary action taken by the board against a*
39 *contractor pursuant to the provisions of NRS 624.300 to 624.305,*
40 *inclusive.*
41 **Sec. 7.** *NRS 597.713 is hereby amended to read as follows:*
42 597.713 *As used in this section and NRS 597.716 and 597.719,*
43 *~~"contractor"~~ and sections 2 to 6, inclusive, of this act:*
44 1. *"Board" means the state contractors' board.*
45 2. *"Contractor" means a person licensed pursuant to the provisions of*
46 *chapter 624 of NRS whose scope of work includes the construction, repair*
47 *or maintenance of any residential swimming pool or spa, regardless of use,*
48 *including the repair or replacement of existing equipment or the installation*
49 *of new equipment, as necessary. The scope of such work includes layout,*



1 excavation, operation of construction pumps for removal of water,
2 steelwork, construction of floors, installation of gunite, fiberglass, tile and
3 coping, installation of all perimeter and filter piping, installation of all filter
4 equipment and chemical feeders of any type, plastering of the interior,
5 construction of decks, installation of housing for pool equipment and
6 installation of packaged pool heaters.

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

8 597.716 1. A contractor who receives an initial payment of \$1,000 or
9 10 percent of the aggregate contract price, whichever is less, for the repair,
10 restoration, improvement or construction of a residential pool or spa shall
11 start the work within 30 days after the date all necessary permits for the
12 work, if any, are issued, unless the person who made the payment agrees in
13 writing to a longer period to apply for the necessary permits or start the
14 work or to longer periods for both.

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

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

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

28 5. An agreement or contract for the repair, restoration, improvement or
29 construction of a residential pool or spa must contain a written statement
30 explaining the rights of the customer under this section, NRS 597.713 and
31 597.719, *and sections 2 to 6, inclusive, of this act* and other relevant
32 statutes.

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

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

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

41 597.719 1. ~~{A}~~ *The commissioner of financial institutions, in*
42 *consultation with the board, shall adopt by regulation a standard*
43 *contract to be used by contractors for the repair, restoration,*
44 *improvement or construction of a residential pool or spa and for*
45 *acquiring a loan to finance that repair, restoration, improvement or*
46 *construction. On and after October 1, 2001, any contract entered into*
47 *between a contractor and the owner of a single-family residence for the*
48 *repair, restoration, improvement or construction of a residential pool or*



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1 *spa must comply with the standard contract adopted by the*
2 *commissioner.*

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

7 (a) The name of the contractor and his business address and license
8 number;

9 (b) The name and mailing address of the owner and the address or legal
10 description of the property;

11 (c) The date of execution of the contract;

12 (d) The estimated date of completion of all work to be performed under
13 the contract;

14 (e) A description of the work to be performed under the contract;

15 (f) The total amount to be paid to the contractor by the owner for all
16 work to be performed under the contract, including all applicable taxes;

17 (g) The amount of any advance deposit paid or promised to be paid to
18 the contractor by the owner;

19 (h) A statement that the contractor has provided the owner with the
20 notice and informational form required by NRS 624.600;

21 (i) A statement that any additional work to be performed under the
22 contract, whether or not pursuant to a change order, which will require the
23 owner to pay additional money and any other change in the terms in the
24 original contract must be agreed to in writing by the parties and
25 incorporated into the original contract as a change order;

26 (j) A plan and scale drawing showing the shape, size, dimensions and
27 the specifications for the construction and equipment for the residential
28 pool or spa and for other home improvements, and a description of the
29 work to be done, the materials to be used and the equipment to be installed,
30 and the agreed consideration for the work; and

31 (k) The dollar amount of any progress payment and the stage of
32 construction at which the contractor will be entitled to collect progress
33 payments during the course of construction under the contract.

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

37 ~~2.1~~ 3. The contract must contain ~~1.1~~ ~~1.1~~:

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

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

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

46 (2) *Has* the right to request a bond for payment and performance ~~1~~
47 ~~3.1~~ *if such a bond is not otherwise required pursuant to NRS 624.270.*

48 4. At the time the owner signs the contract, the contractor shall furnish
49 him a legible copy of all documents signed and a written and signed receipt



1 for any money paid to the contractor by the owner. All written information
2 provided in the contract must be printed in at least 10-point bold type.

3 ~~14-1~~ 5. A condition, stipulation or provision in a contract or other
4 agreement that requires a person to waive any right provided by this
5 section and NRS 597.713 and 597.716 *and sections 2 to 6, inclusive, of*
6 *this act* or relieves a person of an obligation or liability imposed by those
7 sections is void. Failure to comply with the requirements of this section
8 and NRS 597.713 and 597.716 *and sections 2 to 6, inclusive, of this act*
9 renders a contract *void and* unenforceable ~~11~~ *against the owner.*

10 ~~15-1~~ 6. The contractor shall apply for and obtain all necessary permits.

11 **Sec. 10.** Chapter 624 of NRS is hereby amended by adding thereto a
12 new section to read as follows:

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

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

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

20 *(b) Notify the board if it appears that any person has engaged in any*
21 *act or practice that constitutes a violation of any of the provisions of NRS*
22 *597.713, 597.716 and 597.719 or sections 2 to 6, inclusive, of this act, or*
23 *any regulations adopted pursuant thereto.*

24 **Sec. 11.** NRS 624.262 is hereby amended to read as follows:

25 624.262 *1.* A licensee or an applicant for a contractor's license must
26 prove his financial responsibility by demonstrating that his past and current
27 financial solvency and expectations for financial solvency in the future are
28 such as to provide the board with a reasonable expectation that the licensee
29 or applicant can successfully do business as a contractor without jeopardy
30 to the public health, safety and welfare.

31 *2. The board shall require a licensee or applicant who engages in the*
32 *repair, restoration, improvement or construction of residential pools or*
33 *spas to provide a surety bond or other form of security to guarantee that*
34 *a comprehensive investigation of his financial responsibility is*
35 *conducted.*

36 **Sec. 12.** NRS 624.265 is hereby amended to read as follows:

37 624.265 *1.* An applicant for a contractor's license or a licensed
38 contractor and each officer, director, partner and associate thereof must
39 possess good character. Lack of character may be established by showing
40 that the applicant or licensed contractor, or any officer, director, partner or
41 associate thereof, has:

42 (a) Committed any act which would be grounds for the denial,
43 suspension or revocation of a contractor's license;

44 (b) A bad reputation for honesty and integrity;

45 (c) Entered a plea of novo contendere, guilty or guilty but mentally ill
46 to, been found guilty of or been convicted of a crime arising out of, in
47 connection with or related to the activities of such person in such a manner
48 as to demonstrate his unfitness to act as a contractor, and the time for



1 appeal has elapsed or the judgment of conviction has been affirmed on
2 appeal; or

3 (d) Had a license revoked or suspended for reasons that would preclude
4 the granting or renewal of a license for which the application has been
5 made.

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

15 3. *Before granting an original contractor's license to, or renewing
16 the contractor's license of, an applicant who engages or will engage in
17 the repair, restoration, improvement or construction of residential pools
18 or spas, the board shall require the applicant, and any officer, director,
19 partner or associate of the applicant, to submit to the board completed
20 fingerprint cards and a form authorizing an investigation of their
21 background and the submission of their fingerprints to the central
22 repository for Nevada records of criminal history and the Federal
23 Bureau of Investigation pursuant to subsection 2.*

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

26 ~~14.1~~ 5. The board shall establish by regulation the fee for processing
27 the fingerprints to be paid by the applicant. The fee must not exceed the
28 sum of the amounts charged by the central repository for Nevada records of
29 criminal history and the Federal Bureau of Investigation for processing the
30 fingerprints.

31 ~~15.1~~ 6. The board may obtain records of a law enforcement agency or
32 any other agency that maintains records of criminal history, including,
33 without limitation, records of:

- 34 (a) Arrests;
35 (b) Guilty pleas;
36 (c) Sentencing;
37 (d) Probation;
38 (e) Parole;
39 (f) Bail;
40 (g) Complaints; and
41 (h) Final dispositions,

42 for the investigation of a licensee or an applicant for a contractor's license.

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

44 624.270 1. Before issuing a contractor's license to any applicant, the
45 board shall require that the applicant:

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



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1 (b) In lieu of such a bond, establish with the board a cash deposit as
2 provided in this section.

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

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

10 4. Except as otherwise provided in subsection 6, the amount of each
11 bond or cash deposit required by this section must be fixed by the board
12 with reference to the contractor's financial and professional responsibility
13 and the magnitude of his operations, but must be not less than \$1,000 or
14 more than \$100,000. The bond must be continuous in form and must be
15 conditioned that the total aggregate liability of the surety for all claims is
16 limited to the face amount of the bond irrespective of the number of years
17 the bond is in force. The board may increase or reduce the amount of any
18 bond or cash deposit if evidence supporting such a change in the amount is
19 presented to the board at the time application is made for renewal of a
20 license or at any hearing conducted pursuant to NRS 624.291. Unless
21 released earlier pursuant to subsection 5, any cash deposit may be
22 withdrawn 2 years after termination of the license in connection with
23 which it was established, or 2 years after completion of all work authorized
24 by the board after termination of the license, whichever occurs later, if
25 there is no outstanding claim against it.

26 5. After a licensee has acted in the capacity of a licensed contractor in
27 the State of Nevada for not less than 5 consecutive years, the board may
28 relieve the licensee of the requirement of filing a bond or establishing a
29 cash deposit if evidence supporting such relief is presented to the board.
30 The board may at any time thereafter require the licensee to file a new
31 bond or establish a new cash deposit as provided in subsection 4 ~~++~~ :

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

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

36 *(c) Pursuant to subsection 7.*

37 If a licensee is relieved of the requirement of establishing a cash deposit,
38 the deposit may be withdrawn 2 years after such relief is granted, if there is
39 no outstanding claim against it.

40 6. If the board is notified by the labor commissioner pursuant to NRS
41 607.165 that three substantiated claims for wages have been filed against a
42 contractor within a 2-year period, the board shall require the contractor to
43 file a bond or establish a cash deposit in an amount fixed by the board. The
44 contractor shall maintain the bond or cash deposit for the period required
45 by the board.

46 7. *The board may require a contractor who engages in the repair,*
47 *restoration, improvement or construction of residential pools or spas to*
48 *file a bond or establish a cash deposit in an amount fixed by the board if*
49 *the board:*



1 (a) Has received a complaint against the contractor regarding the
2 repair, restoration, improvement or construction of a residential pool or
3 spa and determines that the contractor has committed an act which
4 constitutes a cause for disciplinary action; or

5 (b) Determines that the contractor has entered into a contract which
6 did not comply with the provisions of NRS 597.716 or
7 597.719.

8 The contractor shall maintain the bond or cash deposit for the period
9 required by the board.

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

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

13 624.750 1. It is unlawful for a person to commit any act or omission
14 described in subsection 2 of NRS 624.3013, NRS 624.3014 or subsection
15 1, 3 or 7 of NRS 624.3016.

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

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

22 (b) For the second offense, is guilty of a gross misdemeanor and shall
23 be punished by a fine of not less than \$2,000 nor more than \$4,000, and
24 may be further punished by imprisonment in the county jail for not more
25 than 1 year.

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

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

33 Sec. 15. NRS 627.175 is hereby amended to read as follows:

34 627.175 ~~The~~

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

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

41 ~~I2-~~ (b) A subcontractor licensed to do business under the laws of the
42 State of Nevada, paying a subcontractor, supplier of material, laborer or
43 other person for bills incurred in the construction, repair, alteration or
44 improvement of any premises.

45 ~~I3-~~ (c) An owner-contractor paying a contractor, subcontractor,
46 supplier of material, laborer or other person for bills incurred in the
47 construction, repair, alteration or improvement of any premises.

48 ~~I4-~~ (d) A lender of construction loan ~~fmoneys-~~ money, provided that
49 he disburses the ~~ffunds-~~ money directly to a contractor authorized by the



1 borrower to do the work, or disburses the ~~{funds}~~ *money* directly to the
2 owner of the premises.

3 ~~{5-}~~ *(e)* A lender of construction loan ~~{moneys}~~ *money*, to an owner of
4 a residential property or to an owner of not more than four units if the loan
5 is made to repair or improve such property and the construction costs are
6 \$10,000 or less, or 35 percent of the appraised value of the improvements
7 and repairs, whichever is greater.

8 *2. The provisions of this chapter apply to a contractor who is*
9 *required to obtain the services of a construction control pursuant to the*
10 *provisions of section 4 of this act.*

11 **Sec. 16.** The amendatory provisions of this act do not apply to
12 offenses committed before July 1, 2001.

13 **Sec. 17.** 1. This section and section 1 of this act become effective
14 upon passage and approval.

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

18 3. Section 3 of this act becomes effective 60 days after passage and
19 approval of this act.

20 4. Sections 4 to 8, inclusive, and 10 to 16, inclusive, of this act become
21 effective on July 1, 2001.

