

SENATE BILL NO. 274—COMMITTEE ON COMMERCE AND LABOR

MARCH 5, 2001

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions governing rights and duties of contractors and subcontractors under contracts or subcontracts. (BDR 54-593)

FISCAL NOTE: Effect on Local Government: No.  
Effect on the State: 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; revising the provisions governing the rights and duties of contractors and subcontractors under contracts and subcontracts; 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 a  
2     new section to read as follows:  
3     ***1. If a contractor or a higher-tiered subcontractor enters into a***  
4     ***written subcontract with a subcontractor that includes a schedule for***  
5     ***payments, the contractor or higher-tiered subcontractor shall pay the***  
6     ***subcontractor on or before the date payment is due pursuant to the***  
7     ***schedule for payments. If a written subcontract does not contain a***  
8     ***schedule for payments or if a subcontract is oral, and if the***  
9     ***subcontractor has performed under the subcontract, the contractor or***  
10    ***higher-tiered subcontractor shall pay the subcontractor:***  
11    ***(a) Within 30 days after the date the subcontractor submits a request***  
12    ***for payment; or***  
13    ***(b) Within 10 days after the date the contractor or higher-tiered***  
14    ***subcontractor receives payment for all or a portion of the work, labor,***  
15    ***materials, equipment or services described in a request for payment***  
16    ***submitted by the subcontractor,***  
17    ***whichever is earlier.***  
18    ***2. If a contractor or a higher-tiered subcontractor fails to pay a***  
19    ***subcontractor within the time provided in subsection 1, the subcontractor***  
20    ***may stop work under the subcontract until payment is received if the***  
21    ***subcontractor gives written notice to the contractor or higher-tiered***  
22    ***subcontractor at least 5 working days before stopping work.***



- 1     3. If a subcontractor stops work pursuant to subsection 2, the  
2 subcontractor may terminate the subcontract by giving written notice of  
3 the termination to the contractor or higher-tiered subcontractor.
- 4     4. If a contractor or a higher-tiered subcontractor through his own  
5 act or neglect, or through the act or neglect of his agent, excluding acts  
6 of God, floods, fires or strikes, causes the work to be stopped for a period  
7 of 5 working days or more, the subcontractor may terminate the  
8 subcontract if:
- 9       (a) The subcontractor gives written notice of his intent to terminate to  
10 the contractor or higher-tiered subcontractor at least 5 working days  
11 before terminating the subcontract; and
- 12       (b) The contractor or higher-tiered subcontractor fails to resume work  
13 within 5 working days after receiving notice pursuant to paragraph (a).
- 14     5. If a subcontractor terminates a subcontract pursuant to subsection  
15 3 or 4, the subcontractor may recover from the contractor or higher-  
16 tiered subcontractor with whom he has contracted the amount found by a  
17 trier of fact to be due the subcontractor, plus 2 percent of that amount,  
18 including, without limitation:
- 19       (a) The cost of all work, labor, materials, equipment and services  
20 furnished by the subcontractor;
- 21       (b) The profit and overhead the subcontractor would have received if  
22 the subcontract had been performed in full;
- 23       (c) Interest at the rate agreed upon in the subcontract, or if no interest  
24 rate is so provided, then interest at a rate equal to the prime rate at the  
25 largest bank in this state, as determined by the commissioner of financial  
26 institutions on January 1 or July 1, as the case may be, immediately  
27 preceding;
- 28       (1) The time the subcontract was signed; or
- 29       (2) If the subcontract was oral, the time the terms of the  
30 subcontract were agreed to by the parties; and
- 31       (d) The attorneys' fees and costs incurred by the subcontractor in  
32 collecting the amount due.
- 33     6. A subcontractor shall provide a copy of any notice given to a  
34 contractor or higher-tiered subcontractor pursuant to this section to each  
35 lower-tiered subcontractor with whom the subcontractor has contracted  
36 who has not fully performed under that contract. Upon receipt of  
37 payment pursuant to this section, the subcontractor shall notify all such  
38 lower-tiered subcontractors in writing of his receipt of payment.
- 39     7. If a subcontractor stops work pursuant to this section, each such  
40 lower-tiered subcontractor may also stop work on the project. If a  
41 subcontractor terminates a subcontract pursuant to this section, all such  
42 lower-tiered subcontractors may terminate their contracts with the  
43 subcontractor.
- 44     8. The right of a subcontractor to stop work or terminate a  
45 subcontract pursuant to this section is in addition to all other rights that  
46 the subcontractor may have at law or in equity.
- 47     9. No subcontractor or his lower-tiered subcontractors, or their  
48 respective sureties, may be held liable for any delays or damages that an  
49 owner, contractor or higher-tiered subcontractor may suffer as a result



1 of the subcontractor stopping his work or terminating a subcontract in  
2 accordance with this section.  
3 10. A condition, stipulation or provision in a subcontract or other  
4 agreement which requires a subcontractor to waive any rights provided  
5 in this section or which limits those rights is void.  
6 11. All notices required pursuant to this section must be:  
7 (a) Delivered personally;  
8 (b) Sent by facsimile and delivered by regular mail; or  
9 (c) Delivered by certified mail.  
10 12. As used in this section:  
11 (a) "Higher-tiered subcontractor" means a subcontractor under a  
12 contract who has entered into a subcontract with another subcontractor  
13 pursuant to which the other subcontractor has agreed to perform any of  
14 the duties of the subcontractor under the contract.  
15 (b) "Lower-tiered subcontractor" means a subcontractor who has  
16 agreed in a contract to perform any of the duties of another  
17 subcontractor under another contract.  
18 Sec. 2. NRS 624.020 is hereby amended to read as follows:  
19 624.020 ~~1. For the purpose of this chapter, "contractor"~~ For the  
20 purposes of this chapter, unless the context otherwise requires:  
21 1. "Contractor" is synonymous with "builder."  
22 2. ~~Within the meaning of this chapter, a~~ A contractor is any person,  
23 except a registered architect or a licensed professional engineer, acting  
24 solely in his professional capacity, who in any capacity other than as the  
25 employee of another with wages as the sole compensation, undertakes to,  
26 ~~or~~ offers to undertake to, ~~or~~ purports to have the capacity to undertake  
27 to, or submits a bid to, or does himself or by or through others, construct,  
28 alter, repair, add to, subtract from, improve, move, wreck or demolish any  
29 building, highway, road, railroad, excavation or other structure, project,  
30 development or improvement, or to do any part thereof, including the  
31 erection of scaffolding or other structures or works in connection  
32 therewith. Evidence of the securing of any permit from a governmental  
33 agency or the employment of any person on a construction project must be  
34 accepted by the board or any court of this state as prima facie evidence that  
35 the person securing that permit or employing any person on a construction  
36 project is acting in the capacity of a contractor pursuant to the provisions of  
37 this chapter.  
38 3. A contractor ~~within the meaning of this chapter~~ includes a  
39 subcontractor or specialty contractor, but does not include anyone who  
40 merely furnishes materials or supplies without fabricating them into, or  
41 consuming them in the performance of, the work of a contractor.  
42 4. A contractor ~~within the meaning of this chapter~~ includes a  
43 construction manager who performs management and counseling services  
44 on a construction project for a professional fee.  
45 Sec. 3. NRS 624.610 is hereby amended to read as follows:  
46 624.610 1. ~~If, through no fault or act of a prime contractor or~~  
47 ~~anyone employed by him,~~ Except as otherwise provided in subsection 9,  
48 if an owner of real property enters into a written or oral contract with a



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1 *contractor for the performance of work by the contractor and* the owner  
2 ~~fails~~ :  
3 (a) *Fails* to pay that contractor ~~;~~  
4 ~~— (a) Pursuant to their~~ *on or before the date a payment is due pursuant*  
5 *to a schedule for payments* ~~under the contract, or within a reasonable time~~  
6 ~~after maturity and presentation of charges if~~ *established in a written*  
7 *contract; or*  
8 (b) *If no such* schedule is established ~~;~~  
9 ~~— (b) Any sum certified by the architect, engineer or other supervisory~~  
10 ~~agent of the owner; or~~  
11 ~~— (c) Such sum as is otherwise properly due,~~  
12 ~~or if the~~ *or if the contract is oral, and if the contractor has performed*  
13 *under the contract, fails to pay the contractor within 15 days after the*  
14 *date the contractor submits a request for payment,*  
15 *the contractor may stop work after giving written notice to the owner at*  
16 *least 5 working days before stopping work. If a contractor stops work*  
17 *pursuant to this subsection, the contractor may terminate the contract by*  
18 *giving written notice of termination to the owner.*  
19 2. *If the owner through his own act or neglect, or through the act or*  
20 *neglect of his agent,* excluding acts of God, floods, fires or strikes, causes  
21 the work to be stopped for a period of 5 working days or more, the  
22 contractor may ~~after 5 working days~~ *terminate the contract if:*  
23 (a) *The contractor gives* written notice *of his intent to terminate* to the  
24 owner ~~stop work or terminate the contract and~~ *at least 5 working days*  
25 *before terminating the contract; and*  
26 (b) *The owner fails to allow work to resume within 5 working days*  
27 *after receiving notice pursuant to paragraph (a).*  
28 3. *If a contractor terminates a contract pursuant to subsection 1 or 2,*  
29 *the contractor may* recover from the owner payment ~~for~~ *in an amount*  
30 *found by a trier of fact to be due the contractor, plus 2 percent of that*  
31 *amount, including, without limitation:*  
32 (a) *The cost of* all work ~~executed:~~  
33 ~~— 2. If, through no fault of a subcontractor or anyone employed by him,~~  
34 ~~the contractor fails to pay that subcontractor:~~  
35 ~~— (a) Pursuant to the schedule for payments under the subcontract, or~~  
36 ~~within a reasonable time after maturity and presentation of charges if no~~  
37 ~~schedule is established;~~  
38 ~~— (b) Any sum certified by the architect, engineer or other supervisory~~  
39 ~~agent of the owner or contractor; or~~  
40 ~~— (c) Such sum as is otherwise properly due,~~  
41 ~~or if the contractor through his own acts or neglect, excluding acts of God,~~  
42 ~~floods, fires or strikes, causes the work to be stopped for a period of 5~~  
43 ~~working days or more, the subcontractor may, after 5 working days,~~  
44 ~~written notice to the owner and the contractor, stop work or terminate the~~  
45 ~~subcontract and recover from the contractor payment for all work executed.~~  
46 ~~The subcontractor may not be held liable for nonperformance of that~~  
47 ~~subcontract and for the cost incurred by the contractor to complete the~~  
48 ~~work.~~



- 1 ~~3. The provisions of subsection 2 do not apply if the contractor's~~  
2 ~~failure to pay is caused by his need to withhold money pursuant to an~~  
3 ~~official notice from a state agency that he is liable to make payments or~~  
4 ~~contributions for the subcontractor pursuant to chapter 608 or 612 or~~  
5 ~~chapters 616A to 616D, inclusive, or chapter 617 of NRS.] , labor,~~  
6 ~~materials, equipment and services furnished by the contractor;~~  
7 *(b) The profit and overhead that the contractor would have received if*  
8 *the contract had been performed in full;*  
9 *(c) Interest at the rate agreed upon in the contract, or if no interest*  
10 *rate is so provided, then interest at a rate equal to the prime rate at the*  
11 *largest bank in this state, as determined by the commissioner of financial*  
12 *institutions on January 1 or July 1, as the case may be, immediately*  
13 *preceding;*  
14 *(1) The time the contract was signed; or*  
15 *(2) If the contract was oral, the time the terms of the contract were*  
16 *agreed to by the parties; and*  
17 *(d) The attorneys' fees and costs incurred by the contractor in*  
18 *collecting the amount due.*  
19 *4. A contractor shall provide a copy of any notice given to an owner*  
20 *pursuant to subsection 1 or 2 to each subcontractor with whom the*  
21 *contractor has contracted who has not fully performed under that*  
22 *contract. Upon receipt of payment pursuant to this section, the contractor*  
23 *shall notify all such subcontractors in writing of his receipt of payment.*  
24 *5. If a contractor stops work pursuant to subsection 1, each such*  
25 *subcontractor may also stop work on the project. If a contractor*  
26 *terminates a contract pursuant to this section, all such subcontractors*  
27 *may terminate their contracts with the contractor.*  
28 *6. The right of a contractor to stop work or terminate a contract*  
29 *pursuant to this section is in addition to all other rights that the*  
30 *contractor may have at law or in equity.*  
31 *7. No contractor or his subcontractors, or their respective sureties,*  
32 *may be held liable for any delays or damages that an owner may suffer*  
33 *as a result of the contractor stopping his work or terminating a contract*  
34 *in accordance with this section.*  
35 *8. A condition, stipulation or provision in a contract or other*  
36 *agreement which requires a contractor to waive any rights provided in*  
37 *this section or which limits those rights is void.*  
38 *9. All notices required pursuant to this section must be:*  
39 *(a) Delivered personally;*  
40 *(b) Sent by facsimile and delivered by regular mail; or*  
41 *(c) Delivered by certified mail.*  
42 *10. This section does not apply to a contract between a residential*  
43 *contractor and a natural person who owns a single family residence for*  
44 *the performance of qualified services with respect to the residence.*  
45 **Sec. 4.** This act becomes effective on July 1, 2001.

