

(REPRINTED WITH ADOPTED AMENDMENTS)
SECOND REPRINT S.B. 274

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
2 the provisions set forth as sections 2 to 9, inclusive, of this act.
3 **Sec. 2.** *As used in NRS 624.610, 624.620 and 624.630 and sections 2*
4 *to 9, inclusive, of this act, the words and terms defined in sections 3 and*
5 *4 of this act have the meanings ascribed to them in those sections.*
6 **Sec. 3.** *“Higher-tiered subcontractor” means a subcontractor under*
7 *a contract who has entered into an oral or written subcontract with*
8 *another subcontractor pursuant to which the other subcontractor has*
9 *agreed to perform any of the duties of the subcontractor under the oral*
10 *or written subcontract.*
11 **Sec. 4.** *“Lower-tiered subcontractor” means a subcontractor who*
12 *has agreed in an oral or written contract to perform any of the duties of*
13 *another subcontractor under another oral or written subcontract.*
14 **Sec. 5.** *1. Except as otherwise provided in this section, if a*
15 *contractor or higher-tiered subcontractor enters into:*
16 *(a) A written subcontract with a subcontractor that includes a*
17 *schedule for payments, the contractor or higher-tiered subcontractor*
18 *shall pay the subcontractor:*
19 *(1) On or before the date payment is due; or*



1 (2) Within 10 days after the date the contractor or higher-tiered
2 subcontractor receives payment for all or a portion of the work, labor,
3 materials, equipment or services described in a request for payment
4 submitted by the subcontractor,
5 whichever is earlier.
6 (b) A written subcontract that does not contain a schedule for
7 payments, or a subcontract that is oral, the contractor or higher-tiered
8 subcontractor shall pay the subcontractor:
9 (1) Within 30 days after the date the subcontractor submits a
10 request for payment; or
11 (2) Within 10 days after the date the contractor or higher-tiered
12 subcontractor receives payment for all or a portion of the work, labor,
13 materials, equipment or services described in a request for payment
14 submitted by the subcontractor,
15 whichever is earlier.
16 2. If a contractor or higher-tiered subcontractor has complied with
17 subsection 3, the contractor or higher-tiered subcontractor may:
18 (a) Withhold from any payment owed to the subcontractor:
19 (1) A retention amount that the subcontractor is authorized to
20 withhold pursuant to the contract;
21 (2) An amount equal to the sum of the value of:
22 (I) Any work or labor that has not been performed or materials
23 or equipment that has not been furnished for which payment is being
24 sought; and
25 (II) Costs and expenses reasonably necessary to correct or repair
26 any work which is the subject of the request for payment and which is
27 not materially in compliance with the subcontract to the extent that such
28 costs and expenses exceed 50 percent of the amount withheld pursuant to
29 subparagraph (1); and
30 (3) The amount the owner, contractor or higher-tiered
31 subcontractor has paid or is required to pay pursuant to an official notice
32 from a state agency or employee benefit trust fund, for which the owner,
33 contractor or higher-tiered subcontractor is or may reasonably be liable
34 for the subcontractor or his subcontractors in accordance with chapter
35 608, 612, 616A to 616D, inclusive, or 617 of NRS; and
36 (b) Require as a condition precedent to the payment of any amount
37 due, lien releases furnished by the subcontractor and his lower-tiered
38 subcontractors and suppliers. For purposes of this paragraph:
39 (1) If the amount due is paid with a check or is not paid
40 concurrently with the contractor's or higher-tiered subcontractor's
41 receipt of the lien releases, the lien releases must be conditioned upon the
42 check clearing the bank upon which it is drawn and the receipt of
43 payment and shall be deemed to become unconditional upon the receipt
44 of payment; and
45 (2) The lien releases must be limited to the amount of the payment
46 received.
47 3. If, pursuant to subparagraph (2) or (3) of paragraph (a) of
48 subsection 2 or paragraph (b) of subsection 2, a contractor or higher-
49 tiered subcontractor intends to withhold any amount from a payment to



1 *be made to a subcontractor, the contractor or higher-tiered subcontractor*
2 *must give, on or before the date the payment is due, a written notice to*
3 *the subcontractor of any amount that will be withheld and give a copy of*
4 *such notice to all reputed higher-tiered subcontractors, contractors and*
5 *the owner. The written notice must:*
6 *(a) Identify the amount of the request for payment that will be*
7 *withheld from the subcontractor;*
8 *(b) Give a reasonably detailed explanation of the reason the*
9 *contractor or higher-tiered subcontractor will withhold that amount,*
10 *including, without limitation, a specific reference to the provision or*
11 *section of the subcontract, and any documents relating thereto, and the*
12 *applicable building code, law or regulation with which the subcontractor*
13 *has failed to comply; and*
14 *(c) Be signed by an authorized agent of the contractor or higher-tiered*
15 *subcontractor.*
16 *4. A subcontractor who receives a notice pursuant to subsection 3*
17 *may provide written notice to the contractor or higher-tiered*
18 *subcontractor of the correction of a condition described in the notice*
19 *received pursuant to subsection 3. The notice of correction must be*
20 *sufficient to identify the scope and manner of the correction of the*
21 *condition and be signed by an authorized representative of the*
22 *subcontractor. If a contractor or higher-tiered subcontractor receives a*
23 *written notice from the subcontractor of the correction of a condition*
24 *pursuant to this subsection, the contractor or higher-tiered subcontractor*
25 *must:*
26 *(a) Pay the amount withheld by the contractor or higher-tiered*
27 *subcontractor for that condition on or before the date the next payment is*
28 *due the subcontractor; or*
29 *(b) Object to the scope and manner of the correction of the condition,*
30 *on or before the date the next payment is due to the subcontractor, in a*
31 *written statement which sets forth the reason for the objection and which*
32 *complies with subsection 3. If the contractor or higher-tiered*
33 *subcontractor objects to the scope and manner of the correction of a*
34 *condition, he shall nevertheless pay to the subcontractor, along with*
35 *payment made pursuant to the subcontractor's next payment request, the*
36 *amount withheld for the correction of conditions to which the contractor*
37 *or higher-tiered subcontractor no longer objects.*
38 **Sec. 6. 1. If a contractor or higher-tiered subcontractor fails to:**
39 *(a) Pay the subcontractor within the time provided in subsection 1 or 4*
40 *of section 5 of this act;*
41 *(b) Pay the subcontractor within 45 days after the 25th day of the*
42 *month in which the subcontractor submits a request for payment, even if*
43 *the contractor or higher-tiered subcontractor has not been paid and the*
44 *subcontract contains a provision which requires the contractor or*
45 *higher-tiered subcontractor to pay the subcontractor only if or when the*
46 *contractor or higher-tiered subcontractor is paid; or*
47 *(c) Give the subcontractor written notice of any withholding in the*
48 *time and manner required by subsection 3 or 4 of section 5 of this*
49 *act,*



1 *the subcontractor may stop work under the subcontract until payment is*
2 *received if the subcontractor gives written notice to the contractor or*
3 *higher-tiered subcontractor at least 10 days before stopping work.*
4 *2. If a subcontractor stops work pursuant to paragraph (a) or (c) of*
5 *subsection 1, the subcontractor may terminate the subcontract by giving*
6 *written notice of the termination to the contractor or higher-tiered*
7 *subcontractor after stopping work but at least 15 days before the*
8 *termination of the subcontract. If the subcontractor is paid the amount*
9 *due before the date for termination set forth in the written notice, the*
10 *subcontractor shall not terminate the subcontract and shall resume work.*
11 *3. If an owner, contractor or a higher-tiered subcontractor through*
12 *his own act or neglect, or through an act or neglect of his agent,*
13 *excluding acts of God, floods, fires, labor disputes, strikes or reasonable*
14 *adjustments in work schedules, causes the work to be stopped for a*
15 *period of 15 days or more, the subcontractor may terminate the*
16 *subcontract if:*
17 *(a) The subcontractor gives written notice of his intent to terminate to*
18 *the contractor or higher-tiered subcontractor at least 10 days before*
19 *terminating the subcontract; and*
20 *(b) The contractor or higher-tiered subcontractor fails to allow the*
21 *subcontractor to resume the work within the time set forth in the written*
22 *notice given pursuant to paragraph (a).*
23 *4. If a subcontractor stops work pursuant to paragraph (a) or (c) of*
24 *subsection 1, the contractor or higher-tiered subcontractor may*
25 *terminate the subcontract by giving the subcontractor written notice of*
26 *his intent to terminate at least 15 days before terminating the*
27 *subcontract.*
28 *5. If the subcontract is terminated pursuant to subsection 3, or if the*
29 *subcontractor stops work in accordance with this section and the*
30 *subcontract is terminated pursuant to subsection 2 or 4, the*
31 *subcontractor is entitled to recover from the contractor or higher-tiered*
32 *subcontractor with whom he has contracted the amount found by a trier*
33 *of fact to be due the subcontractor, including, without limitation:*
34 *(a) The cost of all work, labor, materials, equipment and services*
35 *furnished by and through the subcontractor, including any profit and*
36 *overhead the subcontractor incurred or earned through the date of*
37 *termination;*
38 *(b) The profit that the subcontractor and his lower-tiered*
39 *subcontractors would have received if the subcontract had been*
40 *performed in full;*
41 *(c) Interest at a rate equal to the rate agreed upon in the subcontract,*
42 *or, if no interest rate is so provided, interest at a rate equal to the prime*
43 *rate at the largest bank in this state, as determined by the commissioner*
44 *of financial institutions on January 1 or July 1, as the case may be,*
45 *immediately preceding:*
46 *(1) The time the subcontract was signed; or*
47 *(2) If the subcontract was oral, the time the terms of the*
48 *subcontract were agreed upon by the parties,*
49 *plus 2 percent; and*



- 1 (d) *The reasonable costs, including court costs, incurred by the*
2 *subcontractor and his lower-tiered subcontractors in collecting the*
3 *amount due.*
4 *At any action brought to enforce the rights or obligations set forth in this*
5 *subsection, the trier of fact may award reasonable attorney's fees to the*
6 *subcontractor or, if the trier of fact determines that the subcontractor*
7 *stopped work or terminated the contract without reasonable cause, the*
8 *trier of fact may award reasonable attorney's fees to the contractor or*
9 *higher-tiered subcontractor.*
10 6. *If a subcontractor stops work pursuant to this section, each lower-*
11 *tiered subcontractor with whom the subcontractor has contracted who*
12 *has not fully performed under the contract may also stop work on the*
13 *project. If a subcontractor terminates a subcontract pursuant to this*
14 *section, all such lower-tiered subcontractors may terminate their*
15 *contracts with the subcontractor.*
16 7. *The right of a subcontractor to stop work or terminate a*
17 *subcontract pursuant to this section is in addition to all other rights that*
18 *the subcontractor may have at law or in equity and does not impair or*
19 *affect the right of a subcontractor to maintain a civil action or to submit*
20 *any controversy arising under the contract to arbitration.*
21 8. *No subcontractor or his lower-tiered subcontractors, or their*
22 *respective sureties, may be held liable for any delays or damages that an*
23 *owner, contractor or higher-tiered subcontractor may suffer as a result*
24 *of the subcontractor or lower-tiered subcontractor stopping his work or*
25 *terminating a subcontract for reasonable cause and in accordance with*
26 *this section.*
27 **Sec. 7.** 1. *A subcontractor shall provide a copy of any notice given*
28 *to a contractor or higher-tiered subcontractor pursuant to this section or*
29 *section 5 or 6 of this act to each lower-tiered subcontractor with whom*
30 *the subcontractor has contracted who has not fully performed under the*
31 *contract. Upon receipt of payment pursuant to section 5 of this act, the*
32 *subcontractor shall notify all such lower-tiered subcontractors in writing*
33 *of his receipt of payment.*
34 2. *A subcontractor shall provide a copy of any notice given to a*
35 *contractor or higher-tiered subcontractor pursuant to this section or*
36 *section 5 or 6 of this act to each reputed higher-tiered subcontractor,*
37 *contractor and the owner, if known. The failure of a subcontractor to*
38 *comply with this subsection does not invalidate any notice otherwise*
39 *properly given.*
40 3. *A condition, stipulation or provision in a subcontract or other*
41 *agreement which requires a subcontractor to waive any rights provided*
42 *in this section or section 5 or 6 of this act, or which limits those rights, is*
43 *void.*
44 4. *All notices required pursuant to this section or section 5 or 6 of*
45 *this act must be:*
46 (a) *Delivered personally, in which case the subcontractor shall obtain*
47 *a notarized statement from the person who delivered the notice as proof*
48 *of delivery;*



1 (b) Sent by facsimile and delivered by regular mail, in which case the
2 subcontractor shall retain proof of a successful transmission of the
3 facsimile;

4 (c) Delivered by certified mail; or

5 (d) Delivered in the manner provided in the contract.

6 5. Within 5 days after a contractor receives a written request for the
7 information set forth in paragraphs (a), (b) and (c) from a subcontractor
8 with respect to a subcontract that has not been fully performed, the
9 contractor shall notify the subcontractor in writing of the following:

10 (a) The date the contractor made a specified payment to his
11 subcontractor;

12 (b) Whether the contractor has paid his subcontractor the entire
13 amount of a specified payment; and

14 (c) The amount withheld by the contractor of a specified payment to
15 his subcontractor and the reason for the withholding.

16 Sec. 8. 1. Except as otherwise provided in subsections 2 and 4 and
17 subsection 4 of section 9 of this act, if an owner of real property enters
18 into a written or oral contract with a contractor for the performance of
19 work by the contractor, the owner must:

20 (a) Pay that contractor on or before the date a payment is due
21 pursuant to a schedule for payments established in a written contract; or

22 (b) If no such schedule is established or if the contract is oral, pay the
23 contractor within 21 days after the date the contractor submits a request
24 for payment.

25 2. If an owner has complied with subsection 3, the owner may:

26 (a) Withhold from any payment to be made to the contractor:

27 (1) A retention amount that the owner is authorized to withhold
28 pursuant to the contract;

29 (2) An amount equal to the sum of the value of:

30 (I) Any work or labor that has not been performed or materials
31 or equipment that has not been furnished for which payment is being
32 sought; and

33 (II) Costs and expenses reasonably necessary to correct or repair
34 any work which is the subject of the request for payment and which is
35 not materially in compliance with the contract to the extent that such
36 costs and expenses exceed 50 percent of the amount withheld pursuant to
37 subparagraph (1); and

38 (3) The amount the owner has paid or is required to pay pursuant
39 to an official notice from a state agency or employee benefit trust fund,
40 for which the owner is or may reasonably be liable for the contractor or
41 his subcontractors in accordance with chapter 608, 612, 616A to 616D,
42 inclusive, or chapter 617 of NRS; and

43 (b) Require as a condition precedent to the payment of any amount
44 due, lien releases furnished by the contractor and his subcontractors and
45 suppliers. For purposes of this paragraph:

46 (1) If the amount due is paid with a check or is not paid
47 concurrently with the owner's receipt of the lien releases, the lien
48 releases must be conditioned upon the check clearing the bank upon



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1 *which it is drawn and the receipt of payment and shall be deemed to*
2 *become unconditional upon the receipt of payment; and*
3 *(2) The lien releases must be limited to the amount of the payment*
4 *received.*
5 *3. If, pursuant to subparagraph (2) or (3) of paragraph (a) of*
6 *subsection 2 or paragraph (b) of subsection 2, an owner intends to*
7 *withhold any amount from a payment to be made to a contractor, the*
8 *owner must give, on or before the date the payment is due, a written*
9 *notice to the contractor of any amount that will be withheld. The written*
10 *notice must:*
11 *(a) Identify the amount of the request for payment that will be*
12 *withheld from the contractor;*
13 *(b) Give a reasonably detailed explanation of the reason the owner*
14 *will withhold that amount, including, without limitation, a specific*
15 *reference to the provision or section of the contract, and any documents*
16 *relating thereto, and the applicable building code, law or regulation with*
17 *which the contractor has failed to comply; and*
18 *(c) Be signed by an authorized agent of the owner.*
19 *4. A contractor who receives a notice pursuant to subsection 3 may*
20 *provide written notice to the owner of the correction of a condition*
21 *described in the notice received pursuant to subsection 3. The notice of*
22 *correction must be sufficient to identify the scope and manner of the*
23 *correction of the condition and be signed by an authorized representative*
24 *of the contractor. If an owner receives a written notice from the*
25 *contractor of the correction of a condition pursuant to this subsection,*
26 *the owner must:*
27 *(a) Pay the amount withheld by the owner for that condition on or*
28 *before the date the next payment is due the contractor; or*
29 *(b) Object to the scope and manner of the correction of the condition,*
30 *on or before the date the next payment is due to the contractor, in a*
31 *written statement which sets forth the reason for the objection and which*
32 *complies with subsection 3. If the owner objects to the scope and manner*
33 *of the correction of a condition, he shall nevertheless pay to the*
34 *contractor, along with payment made pursuant to the contractor's next*
35 *payment request, the amount withheld for the correction of conditions to*
36 *which the owner no longer objects.*
37 **Sec. 9. 1. A contractor shall provide a copy of any notice given to**
38 **an owner pursuant to subsection 1 or 2 of NRS 624.610 to each**
39 **subcontractor with whom the contractor has contracted who has not fully**
40 **performed under that contract. Upon receipt of payment pursuant to**
41 **section 8 of this act, the contractor shall notify all such subcontractors in**
42 **writing of his receipt of payment.**
43 **2. A condition, stipulation or provision in a contract or other**
44 **agreement which requires a contractor to waive any rights provided in**
45 **this section, NRS 624.610 or section 8 of this act or which limits those**
46 **rights is void.**
47 **3. All notices required pursuant to this section, NRS 624.610 and**
48 **section 8 of this act must be:**



1 (a) Delivered personally, in which case the contractor shall obtain a
2 notarized statement from the person who delivered the notice as proof of
3 delivery;

4 (b) Sent by facsimile and delivered by regular mail, in which case the
5 contractor shall retain proof of a successful transmission of the
6 facsimile;

7 (c) Delivered by certified mail; or

8 (d) Delivered in the manner provided for in the contract.

9 4. This section, NRS 624.610 and section 8 of this act do not apply to
10 a contract between:

11 (a) A residential contractor and a natural person who owns a single-
12 family residence for the performance of qualified services with respect to
13 the residence; and

14 (b) A public body and a contractor for the performance of work and
15 labor on a public work.

16 5. Within 5 days after an owner receives a written request for the
17 information set forth in paragraphs (a), (b) and (c) from a subcontractor
18 with respect to a subcontract that has not been fully performed, the
19 owner shall notify the subcontractor in writing of the following:

20 (a) The date the owner made a specified payment to his contractor;

21 (b) Whether the owner has paid the entire amount of a specified
22 payment to his contractor; and

23 (c) The amount withheld by the owner from a specified payment to the
24 contractor and the reason for the withholding.

25 Sec. 10. NRS 624.020 is hereby amended to read as follows:

26 624.020 ~~{1. For the purpose of this chapter, "contractor"}~~ For the
27 purposes of this chapter, unless the context otherwise requires:

28 1. "Contractor" is synonymous with "builder."

29 2. ~~{Within the meaning of this chapter, a}~~ A contractor is any person,
30 except a registered architect or a licensed professional engineer, acting
31 solely in his professional capacity, who in any capacity other than as the
32 employee of another with wages as the sole compensation, undertakes to,
33 ~~for~~ offers to undertake to, ~~for~~ purports to have the capacity to undertake
34 to, or submits a bid to, or does himself or by or through others, construct,
35 alter, repair, add to, subtract from, improve, move, wreck or demolish any
36 building, highway, road, railroad, excavation or other structure, project,
37 development or improvement, or to do any part thereof, including the
38 erection of scaffolding or other structures or works in connection
39 therewith. Evidence of the securing of any permit from a governmental
40 agency or the employment of any person on a construction project must be
41 accepted by the board or any court of this state as prima facie evidence that
42 the person securing that permit or employing any person on a construction
43 project is acting in the capacity of a contractor pursuant to the provisions of
44 this chapter.

45 3. A contractor ~~{within the meaning of this chapter}~~ includes a
46 subcontractor or specialty contractor, but does not include anyone who
47 merely furnishes materials or supplies without fabricating them into, or
48 consuming them in the performance of, the work of a contractor.



1 4. A contractor ~~[within the meaning of this chapter]~~ includes a
2 construction manager who performs management and counseling services
3 on a construction project for a professional fee.

4 **Sec. 11.** NRS 624.610 is hereby amended to read as follows:

5 624.610 1. If ~~[, through no fault or act of a prime contractor or~~
6 ~~anyone employed by him, the]~~ *an* owner fails to ~~[pay that contractor:~~

7 ~~—(a) Pursuant to their schedule for payments under the contract, or within~~
8 ~~a reasonable time after maturity and presentation of charges if no schedule~~
9 ~~is established;~~

10 ~~—(b) Any sum certified by the architect, engineer or other supervisory~~
11 ~~agent of the owner; or~~

12 ~~—(c) Such sum as is otherwise properly due, or if] :~~

13 *(a) Pay the contractor in the time and manner required by subsection*
14 *1 or 4 of section 8 of this act; or*

15 *(b) Give the contractor written notice of any withholding in the time*
16 *and manner required by subsection 3 or 4 of section 8 of this*
17 *act,*

18 *the contractor may stop work after giving written notice to the owner at*
19 *least 10 days before stopping work. If a contractor stops work pursuant to*
20 *this subsection, the contractor may terminate the contract by giving*
21 *written notice of termination to the owner after stopping work but at least*
22 *15 days before terminating the contract. If the contractor is paid the*
23 *amount due before the date for termination of the contract set forth in*
24 *the written notice, the contractor shall not terminate the contract and*
25 *shall resume his work.*

26 2. If the owner through his own act or neglect, *or through an act or*
27 *neglect of his agent,* excluding acts of God, floods, fires ~~[or strikes,]~~ ,
28 *labor disputes, strikes or reasonable adjustments to work schedules,*
29 causes the work to be stopped for a period of ~~[5 working]~~ 15 days or more,
30 the contractor may ~~[, after 5 working days,]~~ *terminate the contract if:*

31 *(a) The contractor gives* written notice *of his intent to terminate* to the
32 owner ~~[, stop work or terminate the contract and]~~ *at least 10 days before*
33 *terminating the contract; and*

34 *(b) The owner fails to allow work to resume within the time set forth*
35 *in the written notice given pursuant to paragraph (a).*

36 3. *If a contractor stops work pursuant to subsection 1, the owner may*
37 *terminate the contract by giving the contractor written notice of his intent*
38 *to terminate at least 15 days before terminating the contract.*

39 4. *If the contract is terminated pursuant to subsection 2, or if the*
40 *contractor stops work in accordance with this section and the contract is*
41 *terminated pursuant to subsection 1 or 3, the contractor is entitled to*
42 *recover from the owner payment* ~~[for]~~ *in an amount found by a trier of*
43 *fact to be due the contractor, including, without limitation:*

44 *(a) The cost of* all work ~~[executed:~~

45 ~~—2. If, through no fault of a subcontractor or anyone employed by him,~~
46 ~~the contractor fails to pay that subcontractor:~~

47 ~~—(a) Pursuant to the schedule for payments under the subcontract, or~~
48 ~~within a reasonable time after maturity and presentation of charges if no~~
49 ~~schedule is established;~~



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1 ~~— (b) Any sum certified by the architect, engineer or other supervisory~~
2 ~~agent of the owner or contractor; or~~
3 ~~— (c) Such sum as is otherwise properly due;~~
4 ~~or if the contractor through his own acts or neglect, excluding acts of God,~~
5 ~~floods, fires or strikes, causes the work to be stopped for a period of 5~~
6 ~~working days or more, the subcontractor may, after 5 working days,~~
7 ~~written notice to the owner and the contractor, stop work or terminate the~~
8 ~~subcontract and recover from the contractor payment for all work executed.~~
9 ~~The subcontractor may not be held liable for nonperformance of that~~
10 ~~subcontract and for the cost incurred by the contractor to complete the~~
11 ~~work.~~
12 ~~— 3. The provisions of subsection 2 do not apply if the contractor's~~
13 ~~failure to pay is caused by his need to withhold money pursuant to an~~
14 ~~official notice from a state agency that he is liable to make payments or~~
15 ~~contributions for the subcontractor pursuant to chapter 608 or 612 or~~
16 ~~chapters 616A to 616D, inclusive, or chapter 617 of NRS.] , labor,~~
17 ~~materials, equipment and services furnished by and through the~~
18 ~~contractor, including any profit and overhead the contractor incurred or~~
19 ~~earned through the date of termination;~~
20 *(b) The profit that the contractor and his subcontractors would have*
21 *received if the contract had been performed in full;*
22 *(c) Interest at a rate equal to the rate agreed upon in the contract, or if*
23 *no interest rate is so provided, then interest at a rate equal to the prime*
24 *rate at the largest bank in this state, as determined by the commissioner*
25 *of financial institutions on January 1 or July 1, as the case may be,*
26 *immediately preceding:*
27 *(1) The time the contract was signed; or*
28 *(2) If the contract was oral, the time the terms of the contract were*
29 *agreed to by the parties,*
30 *plus 2 percent; and*
31 *(d) The reasonable costs, including court costs, incurred by the*
32 *contractor and his subcontractors in collecting the amount*
33 *due.*
34 *At any action brought to enforce the rights or obligations set forth in this*
35 *subsection, the trier of fact may award reasonable attorney's fees to the*
36 *contractor or, if the trier of fact determines that the contractor stopped*
37 *work or terminated the contract without reasonable cause, the trier of*
38 *fact may award reasonable attorney's fees to the owner.*
39 *5. If a contractor stops work pursuant to subsection 1, each*
40 *subcontractor with whom the contractor has contracted who has not fully*
41 *performed under that contract may also stop work on the project. If a*
42 *contractor terminates a contract pursuant to this section, all such*
43 *subcontractors may terminate their contracts with the contractor.*
44 *6. The right of a contractor to stop work or terminate a contract*
45 *pursuant to this section is in addition to all other rights that the*
46 *contractor may have at law or in equity and does not impair or affect the*
47 *right of a contractor to maintain a civil action or to submit any*
48 *controversy arising under the contract to arbitration.*



1 7. No contractor or his subcontractors, or their respective sureties,
2 may be held liable for any delays or damages that an owner may suffer
3 as a result of the contractor, subcontractor or lower-tiered subcontractor
4 stopping his work or terminating a contract for reasonable cause and in
5 accordance with this section or section 6 of this act.

6 Sec. 12. NRS 624.620 is hereby amended to read as follows:

7 624.620 1. Except as otherwise provided in ~~subsections 2, 3 and 5,~~
8 *this section*, any money remaining unpaid for the construction ~~for~~
9 ~~remodeling of a building~~ *of a work of improvement* is payable to the
10 contractor within 30 days after:

11 (a) Occupancy *or use of the work of improvement* by the owner or by a
12 person acting with the authority of the owner; or

13 (b) The availability of a ~~constructed or remodeled building~~ *work of*
14 *improvement* for its intended use. The contractor must have given a written
15 notice of availability to the owner on or before the day on which he claims
16 that the ~~building became available.~~

17 ~~2. The~~ *work of improvement became available for use or occupancy.*

18 2. *If the owner has complied with subsection 3, the* owner may:

19 (a) Withhold payment for the amount of ~~any disputed or uncompleted~~
20 ~~items if he notifies the contractor in writing at the time of withholding as to~~
21 ~~any disputed items.~~ :

22 (1) *Any work or labor that has not been performed or materials or*
23 *equipment that has not been furnished for which payment is sought;*

24 (2) *The costs and expenses reasonably necessary to correct or*
25 *repair any work that is not materially in compliance with the contract to*
26 *the extent that such costs and expenses exceed 50 percent of the amount*
27 *of retention being withheld pursuant to the terms of the contract; and*

28 (3) *Money the owner has paid or is required to pay pursuant to an*
29 *official notice from a state agency, or employee benefit trust fund, for*
30 *which the owner is liable for the contractor or his subcontractors in*
31 *accordance with chapter 608, 612, 616A to 616D, inclusive, or chapter*
32 *617 of NRS.*

33 (b) Require, as a condition precedent to the payment of any ~~money~~
34 *unpaid amount* under the construction contract, that ~~waivers of~~ lien
35 *releases* be furnished by the contractor's subcontractors, suppliers or
36 employees. *For purposes of this paragraph:*

37 (1) *If the amount due is paid with a check or is not paid*
38 *concurrently with the owner's receipt of the lien releases, the lien*
39 *releases must be conditioned upon the check clearing the bank upon*
40 *which it is drawn and the receipt of payment and shall be deemed to*
41 *become unconditional upon the receipt of payment; and*

42 (2) *The lien releases must be limited to the amount of the payment*
43 *received.*

44 3. *If pursuant to paragraph (a) of subsection 2, an owner intends to*
45 *withhold any amount from a payment to be made to a contractor, the*
46 *owner must, on or before the date the payment is due, give written notice*
47 *to the contractor of any amount that will be withheld. The written notice*
48 *must:*

49 (a) *Identify the amount that will be withheld from the contractor;*



1 (b) Give a reasonably detailed explanation of the reason the owner
2 will withhold that amount, including, without limitation, a specific
3 reference to the provision or section of the contract, and any documents
4 relating thereto, and the applicable building code, law or regulation with
5 which the contractor has failed to comply; and

6 (c) Be signed by an authorized agent of the owner.

7 4. A contractor who receives a notice pursuant to subsection 3 may
8 provide written notice to the owner of the correction of a condition
9 described in the notice received pursuant to subsection 3. The notice of
10 correction must be sufficient to identify the scope and manner of the
11 correction of the condition and be signed by an authorized representative
12 of the contractor. If an owner receives a written notice from the
13 contractor of the correction of a condition described in an owner's notice
14 of withholding pursuant to subsection 3, the owner must, within 10 days
15 after receipt of such notice:

16 (a) Pay the amount withheld by the owner for that condition; or

17 (b) Object to the scope and manner of the correction of the condition
18 in a written statement that sets forth the reason for the objection and
19 complies with subsection 3. If the owner objects to the scope and manner
20 of the correction of a condition, he shall nevertheless pay to the
21 contractor, along with payment made pursuant to the contractor's next
22 payment request, the amount withheld for the correction of conditions to
23 which the owner no longer objects.

24 5. The partial occupancy or availability of a building requires payment
25 in direct proportion to the value of the part of the building which is
26 partially occupied or partially available. For projects which involve more
27 than one building, each building must be considered separately in
28 determining the amount of money which is payable to the contractor.

29 ~~14.1~~ 6. Unless otherwise provided in the construction contract, any
30 money which is payable to a contractor pursuant to this section accrues
31 interest at a rate equal to the lowest daily prime rate at the ~~three largest~~
32 ~~United States banking institutions on the date the contract is executed plus~~
33 ~~largest bank in this state, as determined by the commissioner of financial~~
34 ~~institutions on January 1 or July 1, as the case may be, immediately~~
35 ~~preceding:~~

36 (a) The time the contract was signed; or

37 (b) If the contract was oral, the time the terms of the contract were
38 agreed to by the parties,

39 ~~plus 2 percent . 1. from 30 days after the date on which the money became~~
40 ~~payable until the date of payment.~~

41 ~~5.1~~ 7. This section does not apply to:

42 (a) Any residential building; or

43 (b) Public works.

44 8. As used in this section, unless the context otherwise requires,
45 "work of improvement" has the meaning ascribed to it in NRS 108.221.

46 Sec. 13. NRS 99.040 is hereby amended to read as follows:

47 99.040 1. When there is no express contract in writing fixing a
48 different rate of interest, interest must be allowed at a rate equal to the
49 prime rate at the largest bank in Nevada, as ascertained by the



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- 1 commissioner of financial institutions, on January 1 or July 1, as the case
2 may be, immediately preceding the date of the transaction, plus 2 percent,
3 upon all money from the time it becomes due, in the following cases:
4 (a) Upon contracts, express or implied, other than book accounts.
5 (b) Upon the settlement of book or store accounts from the day on
6 which the balance is ascertained.
7 (c) Upon money received to the use and benefit of another and detained
8 without his consent.
9 (d) Upon wages or salary, if it is unpaid when due, after demand
10 therefor has been made.
11 The rate must be adjusted accordingly on each January 1 and July 1
12 thereafter until the judgment is satisfied.
13 2. The provisions of this section do not apply to money owed:
14 (a) For the construction ~~for remodeling of a building~~ *of a work of*
15 *improvement* pursuant to NRS 624.620; or
16 (b) By a contractor to his subcontractor pursuant to NRS 624.630.

