

Assembly Bill No. 190—Assemblymen Parks, Giunchigliani, Gibbons, Anderson, Chowning, Atkinson, Buckley, Claborn, Conklin, Geddes, Goldwater, Grady, Griffin, Knecht, Koivisto, Leslie, Manendo, McClain, Mortenson, Ocegüera, Perkins, Pierce, Sherer and Williams

Joint Sponsor: Senator Wiener

CHAPTER.....

AN ACT relating to contractors; revising the circumstances in which construction fraud occurs; clarifying the circumstances in which the Executive Officer of the State Contractors' Board may seek a cease and desist order; revising the circumstances in which the State Contractors' Board may require a licensed contractor to post a bond for wages; providing that the State Contractors' Board may suspend the license of a licensee who is prohibited from being awarded a contract for a public work; revising and clarifying the circumstances in which the State Contractors' Board may take disciplinary action against a licensee; 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 624 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. *As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 624.010, 624.020 and section 3 of this act have the meanings ascribed to them in those sections.*

Sec. 3. *“Knowingly” imports a knowledge that the facts exist which constitute the act or omission, and does not require knowledge of the prohibition against the act or omission. Knowledge of any particular fact may be inferred from the knowledge of such other facts as should put an ordinarily prudent person upon inquiry.*

Sec. 4. NRS 624.010 is hereby amended to read as follows:

624.010 ~~[As used in this chapter,]~~ “Board” means the State Contractors' Board.

Sec. 5. NRS 624.020 is hereby amended to read as follows:

624.020 ~~[For the purposes of this chapter, unless the context otherwise requires:]~~

1. “Contractor” is synonymous with “builder.”
2. A contractor is any person, except a registered architect or a licensed professional engineer, acting solely in his professional capacity, who in any capacity other than as the employee of another

with wages as the sole compensation, undertakes to, offers to undertake to, purports to have the capacity to undertake to, or submits a bid to, or does himself or by or through others, construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, road, railroad, excavation or other structure, project, development or improvement, or to do any part thereof, including the erection of scaffolding or other structures or works in connection therewith. Evidence of the securing of any permit from a governmental agency or the employment of any person on a construction project must be accepted by the Board or any court of this state as prima facie evidence that the person securing that permit or employing any person on a construction project is acting in the capacity of a contractor pursuant to the provisions of this chapter.

3. A contractor includes a subcontractor or specialty contractor, but does not include anyone who merely furnishes materials or supplies without fabricating them into, or consuming them in the performance of, the work of a contractor.

4. A contractor includes a construction manager who performs management and counseling services on a construction project for a professional fee.

Sec. 6. NRS 624.165 is hereby amended to read as follows:

624.165 1. The Board shall:

(a) Designate one or more of its employees for the investigation of constructional fraud;

(b) Cooperate with other local, state or federal investigative and law enforcement agencies, and the Attorney General;

(c) Assist the Attorney General or any official of an investigative or a law enforcement agency of this state, any other state or the Federal Government who requests assistance in investigating any act of constructional fraud; and

(d) Furnish to those officials any information concerning its investigation or report on any act of constructional fraud.

2. The Board may obtain records of a law enforcement agency or any other agency that maintains records of criminal history, including, without limitation, records of:

(a) Arrests;

(b) Guilty pleas;

(c) Sentencing;

(d) Probation;

(e) Parole;

(f) Bail;

(g) Complaints; and

(h) Final dispositions,

for the investigation of constructional fraud.

3. For the purposes of this section, constructional fraud occurs if a person engaged in construction knowingly:

(a) Misapplies money under the circumstances described in NRS 205.310;

(b) Obtains money, property or labor by false pretense as described in NRS 205.380;

(c) Receives payments and fails to state his own true name, or states a false name, contractor's license number, address or telephone number of the person offering a service;

(d) Commits any act of theft, forgery, fraud or embezzlement, in connection with a construction project, that violates a criminal statute of this state;

(e) Acts as a contractor without:

(1) Possessing a contractor's license issued pursuant to this chapter; or

(2) Possessing any other license required by this state or a political subdivision of this state; ~~or~~

(f) *In any report relating to a contract for a public work, submits false information concerning a payroll to a public officer or agency; or*

(g) Otherwise fails to disclose a material fact.

Sec. 7. NRS 624.212 is hereby amended to read as follows:

624.212 1. The Executive Officer, on behalf of the Board, shall issue an order to cease and desist to any person:

(a) Acting as a contractor ~~or~~, *including, without limitation, commencing work as a contractor;* or

(b) Submitting a bid on a job situated in this state, without ~~a license as a contractor~~ *an active license of the proper classification* issued pursuant to this chapter. The order must be served personally or by certified mail and is effective upon receipt.

2. If it appears that any person has engaged in acts or practices which constitute a violation of this chapter or the violation of an order issued pursuant to subsection 1, the Board may request the Attorney General, the district attorney of the county in which the alleged violation occurred or the district attorney of any other county in which that person maintains a place of business or resides to apply on behalf of the Board to the district court for an injunction restraining him from acting in violation of this chapter. Upon a proper showing, a temporary restraining order, a preliminary injunction or a permanent injunction may be granted. The Board as plaintiff in the action is not required to prove any irreparable injury.

3. In seeking injunctive relief against any person for an alleged violation of NRS 624.700, it is sufficient to allege that the person did, upon a certain day, and in a certain county of this state:

(a) Act as a contractor ~~or~~, *including, without limitation, commence work as a contractor;* or

(b) Submit a bid on a job situated in this state, without having ~~[a license to do so,]~~ *an active license of the proper classification issued pursuant to this chapter*, without alleging any further or more particular facts concerning the matter.

4. The issuance of a restraining order or an injunction does not relieve the person against whom the restraining order or injunction is issued from criminal prosecution for practicing without a license.

5. If the court finds that a person willfully violated an order issued pursuant to subsection 1, it shall impose a fine of not less than \$250 nor more than \$1,000 for each violation of the order.

Sec. 8. 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 \$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 624.2545 or 624.291. 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;

(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 *or otherwise receives notification* 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 this chapter 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~~ *claim* for wages” has the meaning ascribed to it in NRS 607.165.

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

624.300 1. Except as otherwise provided in ~~subsection 3,~~ *subsections 3 and 4*, the Board may:

- (a) Suspend or revoke licenses already issued;
- (b) Refuse renewals of licenses;
- (c) Impose limits on the field, scope and monetary limit of the license;
- (d) Impose an administrative fine of not more than \$10,000;
- (e) Order a licensee to repay to the account established pursuant to NRS 624.470, any amount paid out of the account pursuant to NRS 624.510 as a result of an act or omission of that licensee;
- (f) Order the licensee to take action to correct a condition resulting from an act which constitutes a cause for disciplinary action, at the licensee’s cost, that may consist of requiring the licensee to:
 - (1) Perform the corrective work himself;
 - (2) Hire and pay another licensee to perform the corrective work; or
 - (3) Pay to the owner of the construction project a specified sum to correct the condition; or
- (g) Reprimand or take other less severe disciplinary action, including, without limitation, increasing the amount of the surety bond or cash deposit of the licensee, if the licensee commits any act which constitutes a cause for disciplinary action.

2. If the Board suspends or revokes the license of a contractor for failure to establish financial responsibility, the Board may, in addition to any other conditions for reinstating or renewing the license, require that each contract undertaken by the licensee for a period to be designated by the Board, not to exceed 12 months, be

separately covered by a bond or bonds approved by the Board and conditioned upon the performance of and the payment of labor and materials required by the contract.

3. If a licensee violates the provisions of NRS 624.3014 or subsection 3 of NRS 624.3015, the Board may impose an administrative fine of not more than \$20,000.

4. *If a licensee is prohibited from being awarded a contract for a public work pursuant to NRS 338.017, the Board may suspend the license of the licensee for the period of the prohibition.*

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

~~[5-]~~ 6. If the Board finds that a licensee has engaged in repeated acts that would be cause for disciplinary action, the correction of any resulting conditions does not preclude the Board from taking disciplinary action pursuant to this section.

~~[6-]~~ 7. The expiration of a license by operation of law or by order or decision of the Board or a court, or the voluntary surrender of a license by a licensee, does not deprive the Board of jurisdiction to proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license.

~~[7-]~~ 8. If discipline is imposed pursuant to this section, including any discipline imposed pursuant to a stipulated settlement, the costs of the proceeding, including investigative costs and attorney's fees, may be recovered by the Board.

~~[8-]~~ 9. All fines collected pursuant to this section must be deposited with the State Treasurer for credit to the Construction Education Account created pursuant to NRS 624.580.

Sec. 10. NRS 624.3016 is hereby amended to read as follows:

624.3016 The following acts or omissions, among others, constitute cause for disciplinary action under NRS 624.300:

1. Any fraudulent or deceitful act committed in the capacity of a contractor ~~[1-]~~, *including, without limitation, misrepresentation or the omission of a material fact.*

2. A conviction of a violation of NRS 624.730 or a felony or a crime involving moral turpitude.

3. Knowingly making a false statement in or relating to the recording of a notice of lien pursuant to the provisions of NRS 108.226.

4. Failure to give a notice required by NRS 108.245 or 108.246.

5. Failure to comply with NRS 597.713, 597.716 or 597.719 or any regulations of the Board governing contracts for the construction of residential pools and spas.

6. Failure to comply with NRS 624.600.

7. Misrepresentation or the omission of a material fact, or the commission of any other fraudulent or deceitful act, to obtain a license.

8. Failure to pay an assessment required pursuant to NRS 624.470.

9. Failure to file a certified payroll report that is required for a contract for a public work.

10. Knowingly submitting false information in an application for qualification or a certified payroll report that is required for a contract for a public work.

Sec. 11. NRS 338.017 is hereby amended to read as follows:

338.017 If any administrative penalty is imposed against a person for the commission of an offense ~~[, that]~~ :

1. That person, and the corporate officers, if any, of that person, may not be awarded a contract for a public work:

~~[1-]~~ *(a)* For the first offense, for a period of 3 years after the date of the imposition of the administrative penalty; and

~~[2-]~~ *(b)* For the second or subsequent offense, for a period of 5 years after the date of the imposition of the administrative penalty.

2. The Labor Commissioner shall notify the State Contractors' Board of each contractor who is prohibited from being awarded a contract for a public work pursuant to this section.

Sec. 12. NRS 607.165 is hereby amended to read as follows:

607.165 1. The Labor Commissioner shall notify the State Contractors' Board after three substantiated claims for wages have been filed against a contractor within a 2-year period. The notification must include a copy of the final written decision of the Labor Commissioner with regard to each such claim.

2. The Labor Commissioner may recommend to the State Contractors' Board the amount of the bond or cash deposit that a contractor should be required to file or establish pursuant to subsection 6 of NRS 624.270.

3. As used in this section:

(a) "Contractor" has the meaning ascribed to it in NRS 624.020.

(b) *"Employee" means a natural person who receives wages or other remuneration from a contractor for personal services, including, without limitation, commissions, bonuses and remuneration payable in a medium other than cash.*

(c) "Substantiated ~~[claims]~~ claim for wages" means ~~[claims]~~ *a claim* for wages *by an employee* against a contractor that the Labor Commissioner determines to be valid after providing notice and

~~{conducting}~~ *an opportunity for* a hearing pursuant to the provisions of this chapter.