

ASSEMBLY BILL NO. 190—ASSEMBLYMEN PARKS, GIUNCHIGLIANI,
GIBBONS, ANDERSON, CHOWNING, ATKINSON, BUCKLEY,
CLABORN, CONKLIN, GEDDES, GOLDWATER, GRADY,
GRIFFIN, KNECHT, KOIVISTO, LESLIE, MANENDO,
MCCLAIN, MORTENSON, OCEGUERA, PERKINS, PIERCE,
SHERER AND WILLIAMS

FEBRUARY 24, 2003

JOINT SPONSOR: SENATOR WIENER

Referred to Committee on Commerce and Labor

SUMMARY—Makes various changes related to contractors.
(BDR 54-406)

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 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:



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1 **Section 1.** Chapter 624 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 and 3 of this act.

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

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

13 **Sec. 4.** NRS 624.010 is hereby amended to read as follows:
14 624.010 ~~[As used in this chapter,]~~ “Board” means the State
15 Contractors’ Board.

16 **Sec. 5.** NRS 624.020 is hereby amended to read as follows:
17 624.020 ~~[For the purposes of this chapter, unless the context~~
18 ~~otherwise requires:]~~

19 1. “Contractor” is synonymous with “builder.”

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

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

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

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

45 624.165 1. The Board shall:



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- 1 (a) Designate one or more of its employees for the investigation
2 of constructional fraud;
- 3 (b) Cooperate with other local, state or federal investigative and
4 law enforcement agencies, and the Attorney General;
- 5 (c) Assist the Attorney General or any official of an
6 investigative or a law enforcement agency of this state, any other
7 state or the Federal Government who requests assistance in
8 investigating any act of constructional fraud; and
- 9 (d) Furnish to those officials any information concerning its
10 investigation or report on any act of constructional fraud.
- 11 2. The Board may obtain records of a law enforcement agency
12 or any other agency that maintains records of criminal history,
13 including, without limitation, records of:
- 14 (a) Arrests;
15 (b) Guilty pleas;
16 (c) Sentencing;
17 (d) Probation;
18 (e) Parole;
19 (f) Bail;
20 (g) Complaints; and
21 (h) Final dispositions,
22 for the investigation of constructional fraud.
- 23 3. For the purposes of this section, constructional fraud occurs
24 if a person engaged in construction knowingly:
- 25 (a) Misapplies money under the circumstances described in
26 NRS 205.310;
- 27 (b) Obtains money, property or labor by false pretense as
28 described in NRS 205.380;
- 29 (c) Receives payments and fails to state his own true name, or
30 states a false name, contractor's license number, address or
31 telephone number of the person offering a service;
- 32 (d) Commits any act of theft, forgery, fraud or embezzlement, in
33 connection with a construction project, that violates a criminal
34 statute of this state;
- 35 (e) Acts as a contractor without:
- 36 (1) Possessing a contractor's license issued pursuant to this
37 chapter; or
- 38 (2) Possessing any other license required by this state or a
39 political subdivision of this state; ~~or~~
- 40 (f) *In any report relating to a contract for a public work,*
41 *submits false information concerning a payroll to a public officer*
42 *or agency; or*
- 43 (g) Otherwise fails to disclose a material fact.



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1 **Sec. 7.** NRS 624.212 is hereby amended to read as follows:
2 624.212 1. The Executive Officer, on behalf of the Board,
3 shall issue an order to cease and desist to any person:
4 (a) Acting as a contractor ~~{ }~~ , *including, without limitation,*
5 *commencing work as a contractor;* or
6 (b) Submitting a bid on a job situated in this state,
7 without ~~{a license as a contractor}~~ *an active license of the proper*
8 *classification* issued pursuant to this chapter. The order must be
9 served personally or by certified mail and is effective upon receipt.
10 2. If it appears that any person has engaged in acts or practices
11 which constitute a violation of this chapter or the violation of an
12 order issued pursuant to subsection 1, the Board may request the
13 Attorney General, the district attorney of the county in which the
14 alleged violation occurred or the district attorney of any other
15 county in which that person maintains a place of business or resides
16 to apply on behalf of the Board to the district court for an injunction
17 restraining him from acting in violation of this chapter. Upon a
18 proper showing, a temporary restraining order, a preliminary
19 injunction or a permanent injunction may be granted. The Board as
20 plaintiff in the action is not required to prove any irreparable injury.
21 3. In seeking injunctive relief against any person for an alleged
22 violation of NRS 624.700, it is sufficient to allege that the person
23 did, upon a certain day, and in a certain county of this state:
24 (a) Act as a contractor ~~{ }~~ , *including, without limitation,*
25 *commence work as a contractor;* or
26 (b) Submit a bid on a job situated in this state,
27 without having ~~{a license to do so,}~~ *an active license of the proper*
28 *classification issued pursuant to this chapter,* without alleging any
29 further or more particular facts concerning the matter.
30 4. The issuance of a restraining order or an injunction does not
31 relieve the person against whom the restraining order or injunction
32 is issued from criminal prosecution for practicing without a license.
33 5. If the court finds that a person willfully violated an order
34 issued pursuant to subsection 1, it shall impose a fine of not less
35 than \$250 nor more than \$1,000 for each violation of the order.
36 **Sec. 8.** NRS 624.270 is hereby amended to read as follows:
37 624.270 1. Before issuing a contractor's license to any
38 applicant, the Board shall require that the applicant:
39 (a) File with the Board a surety bond in a form acceptable to the
40 Board executed by the contractor as principal with a corporation
41 authorized to transact surety business in the State of Nevada as
42 surety; or
43 (b) In lieu of such a bond, establish with the Board a cash
44 deposit as provided in this section.



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

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

10 4. Except as otherwise provided in subsection 6, the amount of
11 each bond or cash deposit required by this section must be fixed by
12 the Board with reference to the contractor's financial and
13 professional responsibility and the magnitude of his operations, but
14 must be not less than \$1,000 or more than \$500,000. The bond must
15 be continuous in form and must be conditioned that the total
16 aggregate liability of the surety for all claims is limited to the face
17 amount of the bond irrespective of the number of years the bond is
18 in force. A bond required by this section must be provided by a
19 person whose long-term debt obligations are rated "A" or better by a
20 nationally recognized rating agency. The Board may increase or
21 reduce the amount of any bond or cash deposit if evidence
22 supporting such a change in the amount is presented to the Board at
23 the time application is made for renewal of a license or at any
24 hearing conducted pursuant to NRS 624.2545 or 624.291. Unless
25 released earlier pursuant to subsection 5, any cash deposit may be
26 withdrawn 2 years after termination of the license in connection
27 with which it was established, or 2 years after completion of all
28 work authorized by the Board after termination of the license,
29 whichever occurs later, if there is no outstanding claim against it.

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

37 (a) If evidence is presented to the Board supporting this
38 requirement;

39 (b) Pursuant to subsection 6, after notification of a final written
40 decision by the Labor Commissioner; or

41 (c) Pursuant to subsection 7.

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



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1 6. If the Board is notified by the Labor Commissioner pursuant
2 to NRS 607.165 *or otherwise receives notification* that three
3 substantiated claims for wages have been filed against a contractor
4 within a 2-year period, the Board shall require the contractor to file
5 a bond or establish a cash deposit in an amount fixed by the Board.
6 The contractor shall maintain the bond or cash deposit for the period
7 required by the Board.

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

10 (a) Becomes licensed pursuant to this chapter on or after July 1,
11 2001;

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

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

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

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

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

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

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

43 9. As used in this section, “substantiated ~~claims~~ *claim* for
44 wages” has the meaning ascribed to it in NRS 607.165.



- 1 **Sec. 9.** NRS 624.300 is hereby amended to read as follows:
2 624.300 1. Except as otherwise provided in ~~subsection 3,~~
3 **subsections 3 and 4,** the Board may:
4 (a) Suspend or revoke licenses already issued;
5 (b) Refuse renewals of licenses;
6 (c) Impose limits on the field, scope and monetary limit of the
7 license;
8 (d) Impose an administrative fine of not more than \$10,000;
9 (e) Order a licensee to repay to the account established pursuant
10 to NRS 624.470, any amount paid out of the account pursuant to
11 NRS 624.510 as a result of an act or omission of that licensee;
12 (f) Order the licensee to take action to correct a condition
13 resulting from an act which constitutes a cause for disciplinary
14 action, at the licensee's cost, that may consist of requiring the
15 licensee to:
16 (1) Perform the corrective work himself;
17 (2) Hire and pay another licensee to perform the corrective
18 work; or
19 (3) Pay to the owner of the construction project a specified
20 sum to correct the condition; or
21 (g) Reprimand or take other less severe disciplinary action,
22 including, without limitation, increasing the amount of the surety
23 bond or cash deposit of the licensee,
24 if the licensee commits any act which constitutes a cause for
25 disciplinary action.
26 2. If the Board suspends or revokes the license of a contractor
27 for failure to establish financial responsibility, the Board may, in
28 addition to any other conditions for reinstating or renewing the
29 license, require that each contract undertaken by the licensee for a
30 period to be designated by the Board, not to exceed 12 months, be
31 separately covered by a bond or bonds approved by the Board and
32 conditioned upon the performance of and the payment of labor and
33 materials required by the contract.
34 3. If a licensee violates the provisions of NRS 624.3014 or
35 subsection 3 of NRS 624.3015, the Board may impose an
36 administrative fine of not more than \$20,000.
37 4. *If a licensee is prohibited from being awarded a contract*
38 *for a public work pursuant to NRS 338.017, the Board may*
39 *suspend the license of the licensee for the period of the*
40 *prohibition.*
41 5. If a licensee commits a fraudulent act which is a cause for
42 disciplinary action under NRS 624.3016, the correction of any
43 condition resulting from the act does not preclude the Board from
44 taking disciplinary action.



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1 ~~5.1~~ 6. If the Board finds that a licensee has engaged in
2 repeated acts that would be cause for disciplinary action, the
3 correction of any resulting conditions does not preclude the Board
4 from taking disciplinary action pursuant to this section.

5 ~~6.1~~ 7. The expiration of a license by operation of law or by
6 order or decision of the Board or a court, or the voluntary surrender
7 of a license by a licensee, does not deprive the Board of jurisdiction
8 to proceed with any investigation of, or action or disciplinary
9 proceeding against, the licensee or to render a decision suspending
10 or revoking the license.

11 ~~7.1~~ 8. If discipline is imposed pursuant to this section,
12 including any discipline imposed pursuant to a stipulated settlement,
13 the costs of the proceeding, including investigative costs and
14 attorney's fees, may be recovered by the Board.

15 ~~8.1~~ 9. All fines collected pursuant to this section must be
16 deposited with the State Treasurer for credit to the Construction
17 Education Account created pursuant to NRS 624.580.

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

19 624.3016 The following acts or omissions, among others,
20 constitute cause for disciplinary action under NRS 624.300:

21 1. Any fraudulent or deceitful act committed in the capacity of
22 a contractor ~~1.1~~, *including, without limitation, misrepresentation or*
23 *the omission of a material fact.*

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

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

29 4. Failure to give a notice required by NRS 108.245 or
30 108.246.

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

34 6. Failure to comply with NRS 624.600.

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

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

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

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



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1 **Sec. 11.** NRS 338.017 is hereby amended to read as follows:
2 338.017 If any administrative penalty is imposed against a
3 person for the commission of an offense ~~[, that]~~ :

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

6 ~~[1-1]~~ **(a)** For the first offense, for a period of 3 years after the date
7 of the imposition of the administrative penalty; and

8 ~~[2-1]~~ **(b)** For the second or subsequent offense, for a period of 5
9 years after the date of the imposition of the administrative penalty.

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

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

15 607.165 1. The Labor Commissioner shall notify the State
16 Contractors' Board after three substantiated claims for wages have
17 been filed against a contractor within a 2-year period. The
18 notification must include a copy of the final written decision of the
19 Labor Commissioner with regard to each such claim.

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

24 3. As used in this section:

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

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

30 (c) "Substantiated ~~[claims]~~ **claim** for wages" means ~~[claims]~~ **a**
31 **claim** for wages **by an employee** against a contractor that the Labor
32 Commissioner determines to be valid after providing notice and
33 ~~[conducting]~~ **an opportunity for** a hearing pursuant to the provisions
34 of this chapter.

