

Amendment No. 213

Senate Amendment to Senate Bill No. 343

(BDR 9-787)

Proposed by: Committee on Judiciary**Amendment Box:****Resolves Conflicts with:** N/A**Amends:** Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: No

ASSEMBLY ACTION	Initial and Date	SENATE ACTION	Initial and Date
Adopted <input type="checkbox"/> Lost <input type="checkbox"/>	_____	Adopted <input type="checkbox"/> Lost <input type="checkbox"/>	_____
Concurred In <input type="checkbox"/> Not <input type="checkbox"/>	_____	Concurred In <input type="checkbox"/> Not <input type="checkbox"/>	_____
Receded <input type="checkbox"/> Not <input type="checkbox"/>	_____	Receded <input type="checkbox"/> Not <input type="checkbox"/>	_____

Amend the bill as a whole by deleting sections 2 through 5 and adding new sections designated sections 2 through 5, following section 1, to read as follows:

“Sec. 2. 1. “Consequential damages” means damages, losses or injuries that do not flow directly from the act of a party.

2. The term does not include the following:

(a) Costs the lien claimant incurs, resulting from any delay, acceleration or disruption or other significant event, for which the lien claimant is entitled to compensation at law or in equity; or

(b) A reasonable allowance for overhead and profit on the costs described in paragraph (a).

Sec. 3. “Construction control” has the meaning ascribed to it in NRS 627.050.

AM/MSM

Date: 4/22/2005

S.B. No. 343—Makes various changes to provisions related to mechanics’ and materialmen’s liens.

Sec. 4. 1. Except as otherwise provided in subsection 2, before a lessee may cause a work of improvement to be constructed, altered or repaired upon property that he is leasing, the lessee shall:

(a) Record a notice of posted security with the county recorder of the county where the property is located upon which the improvement is or will be constructed, altered or repaired; and

(b) Either:

(1) Establish a construction disbursement account and:

(I) Fund the account in an amount equal to the total cost of the work of improvement, but in no event less than the total amount of the prime contract;

(II) Obtain the services of a construction control to administer the construction disbursement account; and

(III) Notify each person who gives the lessee a notice of right to lien of the establishment of the construction disbursement account as provided in subparagraph (1) or (2) of paragraph (f) of subsection 3; or

(2) Record a surety bond for the prime contract that meets the requirements of subsection 2 of NRS 108.2415 and notify each person who gives the lessee a notice of right to lien of the recording of the surety bond as provided in subparagraph (1) or (2) of paragraph (f) of subsection 3.

2. If the owner of a property is this State or a county, city, town, school district, public agency or other political subdivision of this State, and if the lessee of such property enters into a prime contract which exceeds \$100,000,000 to construct, alter or repair a work of improvement on the property:

(a) The lessee may establish a construction disbursement account pursuant to this subsection, in which event the lessee must:

(1) Record a notice of posted security with the county recorder of the county where the property is located upon which the improvement is or will be constructed, altered or repaired;

(2) Fund the account in an amount equal to 50 percent of the estimated total cost of the work of improvement, but in no event less than 50 percent of the total amount of the prime contract;

(3) Obtain the services of a construction control to administer the construction disbursement account;

(4) Before the disbursement of any funds from the construction disbursement account for a given pay period:

(I) Deposit sufficient funds in the account so that upon disbursement an amount equal to 50 percent of the total costs to complete the work of improvement is maintained in the account; and

(II) Ensure that the construction control certifies in writing that upon disbursement an amount equal to 50 percent of the total costs to complete the work of improvement is held in the account; and

(5) Notify each person who gives the lessee a notice of right to lien of the establishment of the construction disbursement account as provided in subparagraph (1) or (2) of paragraph (f) of subsection 3; and

(b) The lessee is relieved of the obligations set forth in subsection 1 if the lessee complies with the provisions of paragraph (a).

3. The notice of posted security required pursuant to subsection 1 or 2 must:

(a) Identify the name and address of the lessee;

(b) Identify the location of the improvement and the address, legal description and assessor's parcel number of the property upon which the improvement is or will be constructed, altered or repaired;

(c) Describe the nature of the lessee's interest in:

(1) The property upon which the improvement is or will be constructed, altered or repaired;
and

(2) The improvement on such property;

(d) If the lessee establishes a construction disbursement account pursuant to subsection 1 or subsection 2, include:

(1) The name and address of the construction control;

(2) The date that the lessee obtained the services of the construction control and the total amount of funds in the construction disbursement account; and

(3) The number of the construction disbursement account, if any, unless publication is prohibited by law;

(e) If the lessee records a surety bond pursuant to subsection 1, include:

(1) The name and address of the surety;

(2) The surety bond number;

(3) The date that the surety bond was recorded in the office of the county recorder of the county where the property is located upon which the improvement is or will be constructed, altered or repaired;

(4) The book and the instrument or document number of the recorded surety bond; and

(5) A copy of the recorded surety bond with the notice of posted security; and

(f) Be served upon each person who gives a notice of right to lien within 10 days after receipt of the notice of right to lien, in one of the following ways:

(1) By personally delivering a copy of the notice of posted security to the person who gives a notice of right to lien at the address identified in the notice of right to lien; or

(2) By mailing a copy of the notice of posted security by certified mail, return receipt requested, to the person who gives a notice of right to lien at the address identified in the notice of right to lien.

4. If a lessee fails to satisfy the requirements of subsection 1 or 2, any person who has performed work or will perform work or has furnished or will furnish materials or equipment for the work of improvement may stop work. If the lessee:

(a) Satisfies the requirements of subsection 1 or 2 within 25 days of any work stoppage, any person who stopped work shall resume work and is entitled to compensation for any reasonable costs and expenses that he incurred because of the delay and remobilization; or

(b) Does not satisfy the requirements of subsection 1 or 2 within 25 days after the work stoppage, any person who stopped work may terminate his contract relating to the work of improvement and is entitled to recover:

(1) The cost of all work, materials and equipment, including any overhead he and his lower-tiered subcontractors and suppliers incurred and profit he and his lower-tiered subcontractors and suppliers earned through the date of termination;

(2) The balance of the profit he and his lower-tiered subcontractors and suppliers would have earned if the contract had not been terminated;

(3) Any interest, costs and attorney's fees that he and his lower-tiered subcontractors and suppliers are entitled to pursuant to NRS 108.237; and

(4) Any other amount awarded by a court or other trier of fact.

Sec. 5. 1. If a construction disbursement account is established and funded pursuant to subsection 1 or 2 of section 4 of this act, each lien claimant has a lien upon the funds in the account for an amount equal to the lienable amount owed to him.

2. The construction control described in subsection 1 or 2 of section 4 of this act shall disburse money to lien claimants from the construction disbursement account for the lienable amount owed such lien claimants.

3. A lien claimant may notify the construction control of a claim of lien by:

(a) Recording a notice of lien pursuant to NRS 108.226; or

(b) Personally delivering or mailing by certified mail, return receipt requested, a written notice of a claim of lien to the construction control within 90 days after the completion of the work of improvement.

4. Except as otherwise provided in subsection 5, the construction control shall pay a meritorious claim of lien upon receipt of the written notice described in subsection 3 from the funds available in the construction disbursement account.

5. If the construction disbursement account does not have sufficient funds to pay all claims of liens for which the construction control has received notice, the construction control may bring

an action for interpleader against all lien claimants in the district court for the county where the property or some part thereof is located.

6. If an action for interpleader is brought pursuant to subsection 5, the construction control shall:

(a) Deposit with the court an amount equal to one and one-half times the amount of the lien claims to the extent that there are funds available in the construction disbursement account;

(b) Notify each lien claimant and any laborer, materialman, supplier, contractor, subcontractor, architect, engineer, supplier and other person who performed work or furnished materials or supplies for the work of improvement of the action for interpleader; and

(c) Publish a notice of the action for interpleader once each week, for 3 successive weeks, in a newspaper of general circulation in the county in which the work of improvement is located.

7. A construction control who brings an action for interpleader pursuant to subsection 5 is entitled to be reimbursed from the construction disbursement account for the reasonable costs that he incurred in bringing such action.

8. If a construction control for a construction disbursement account established by a lessee does not properly certify the account, as provided for in sub-subparagraph (II) of subparagraph (4) of paragraph (a) of subsection 2 of section 4 of this act, the lessee is responsible for any resulting damages to any lien claimants.”.

Amend sec. 12, page 6, by deleting lines 10 and 11 and inserting:

“all of the **existing or new** work, material and equipment furnished”.

Amend sec. 13, page 7, by deleting lines 18 through 21 and inserting:

“1. The amount of the original contract is: \$.....

2. The total amount of all ~~[changes and additions,]~~ ***new work, materials and equipment***, if any, is:
\$.....

3. The total amount of all payments received to date is: \$.....

4. The amount of the lien, after deducting all just credits and”.

Amend sec. 13, page 7, line 23, by deleting “[5.] 2.” and inserting “5.”.

Amend sec. 13, page 7, line 25, by deleting “[6.] 3.” and inserting “6.”.

Amend sec. 13, page 7, line 28, by deleting “[7.] 4.” and inserting “7.”.

Amend sec. 13, page 7, line 30, by deleting “[8.] 5.” and inserting “8.”.

Amend sec. 13, page 8, line 17, after “residences,” by inserting:

“including, without limitation, apartment houses,”.

Amend sec. 13, page 8, line 32, by deleting:

“apartment houses or”.

Amend sec. 15, page 10, line 27, by deleting “Each” and inserting:

“[Each] To be effective and valid, each”.

Amend sec. 15, page 11, lines 16 and 19, before “***lien***” by inserting “***right to***”.

Amend sec. 15, page 11, line 24, by deleting “***design,***”.

Amend sec. 15, page 11, line 31, by deleting:

“(a) The] the disinterested” and inserting:

“(a) The disinterested] the”.

Amend sec. 15, page 11, by deleting lines 40 through 45 and inserting:

“(b) The owner notifies the lessee in writing that ~~[pursuant to subsection 4,]~~ the lessee must
~~[record a surety bond]~~ ***comply with section 4 or 5 of this act*** before causing a work of improvement

to be constructed, altered or repaired upon the property ~~[-]~~, *and the lessee complies with section 4 or 5 of this act.*”.

Amend sec. 17, page 13, lines 6 and 7, by deleting:

“*highest of:*

(1) *The*”.

Amend sec. 17, page 13, line 10, by deleting “2” and inserting “[~~2~~] 4”.

Amend sec. 17, page 13, line 12, by deleting “paid ~~[-]~~” and inserting “paid.”.

Amend sec. 17, page 13, by deleting lines 13 through 19 and inserting:

“Interest is payable from the date on which the payment is found”.

Amend sec. 19, page 17, line 14, by deleting “*an*” and inserting:

“*a work of*”.

Amend sec. 19, page 19, line 18, after “*owner*” by inserting “*or lessee*”.

Amend sec. 19, page 19, line 26, by deleting “*proper*”.

Amend the bill as a whole by deleting sec. 20 and adding a new section designated sec. 20, following sec. 19, to read as follows:

“**Sec. 20.** NRS 108.2421 is hereby amended to read as follows:

108.2421 1. The lien claimant is entitled to ~~[-]~~:

—(a) ~~Bring]~~ *bring* an action against ~~[-]~~ ~~or~~

—(b) ~~If an action has been commenced, join in the pending action against,~~

↪ ~~[-]~~ the principal and surety on the surety bond and the lien claimant’s debtor ~~[-]~~ *in any court of*

competent jurisdiction that is located within the county where the property upon which the work of improvement is located.

2. *If an action by a lien claimant to foreclose upon a lien has been brought:*

(a) Before the surety bond is recorded:

(1) The lien claimant may amend his complaint to state a claim against the principal and the surety on the surety bond; or

(2) The liability of the principal and surety on the surety bond may be enforced pursuant to NRS 108.2423; or

(b) After the surety bond is recorded:

(1) If the surety bond is recorded pursuant to subsection 1 of NRS 108.2415, the lien claimant may bring an action against the principal and the surety not later than 9 months after the date that the lien claimant was served with notice of the recording of the surety bond.

(2) If the surety bond is recorded pursuant to subsection 2 of NRS 108.2415, the lien claimant may bring an action against the principal and the surety within the later of:

(I) Nine months after the date that the lien claimant was served with notice of the recording of the surety bond; or

(II) Nine months after the date of the completion of the work of improvement.

3. At any time after the filing of a joint case conference report pursuant to Rule 16.1 of the Nevada Rules of Civil Procedure or, if the case is designated by the court as complex litigation, after the approval of the initial case management order by the court, each lien claimant in the action may serve upon the adverse party a “demand for preferential trial setting” and file the demand with the clerk of the court. Upon filing, the clerk of the court shall, before the Friday after the demand is filed, vacate a case or cases in a department of the court and set the lien claimant’s case for hearing, on a day or days certain, to be heard within 60 days after the filing of the “demand for preferential

trial setting.” Only one such preferential trial setting need be given by the court, unless the hearing date is vacated without stipulation of counsel for the lien claimant in writing. If the hearing date is vacated without that stipulation, upon service and filing, a new preferential trial setting must be given.

~~{3-}~~ 4. A lien claimant shall, at the time of making his demand for a preferential trial setting, and each other party to the preferential trial shall, within 20 days after the lien claimant’s service of the demand, serve upon all parties to the preferential trial the following documents and information:

- (a) A copy of all documents that the party intends to rely upon at the time of the trial;
- (b) A list of witnesses whom the party intends to call at the time of the trial, which must include for each witness:
 - (1) The name of the witness;
 - (2) The company for whom the witness works and title of the witness; and
 - (3) A brief summary of the expected testimony of the witness;
- (c) Any supplemental discovery responses as required by the Nevada Rules of Civil Procedure;
- (d) The identity of each person whom the party expects to call as an expert witness at the trial, together with a statement of the substance of the facts and opinions to which the expert witness is expected to testify and a summary of the grounds for each opinion;
- (e) Any expert reports not previously disclosed; and
- (f) A detailed summary of all claims, offsets and defenses that the party intends to rely upon at the trial.

~~{4-}~~ 5. Within 20 days after receipt of an opposing party’s identification of an expert witness, a party who desires to call a rebuttal expert witness at the trial must identify each person whom the

party expects to call as a rebuttal expert witness, and must provide a statement of the substance of the facts and opinions to which the rebuttal expert witness is expected to testify and a summary of the grounds for each opinion.

~~{5-}~~ **6.** A prevailing lien claimant on a claim against a surety bond must be awarded the lienable amount plus the total amount that may be awarded by the court pursuant to NRS 108.237 ~~{-}~~, *so long as the liability of the surety is limited to the penal sum of the surety bond.* Such a judgment is immediately enforceable and may be appealed regardless of whether any other claims asserted or consolidated actions or suits have been resolved by a final judgment.”.

Amend sec. 21, page 22, line 6, by deleting “*obtain*” and inserting “*provide*”.

Amend sec. 24, pages 23 and 24, by deleting lines 44 and 45 on page 23 and lines 1 through 6 on page 24, and inserting:

“3. No lien for materials or equipment furnished or for work ~~{or services}~~ performed, except labor, may be perfected or enforced pursuant to NRS 108.221 to 108.246, inclusive, *and sections 2 to 5, inclusive, of this act* unless the ~~{notice}~~ *owner or the agent of the owner* has been given ~~{-}~~ *the notice described in subsection 1.*”.

Amend the bill as a whole by deleting sec. 25 and adding a new section designated sec. 25, following sec. 24, to read as follows:

“**Sec. 25.** NRS 108.2453 is hereby amended to read as follows:

108.2453 1. Except as otherwise provided in NRS 108.221 to 108.246, inclusive, *and sections 2 to 5, inclusive, of this act*, a person may not waive or modify a right, obligation or liability set forth in the provisions of NRS 108.221 to 108.246, inclusive ~~{-}~~, *and sections 2 to 5, inclusive, of this act.*

2. A condition, stipulation or provision in a contract or other agreement for the improvement of property or for the construction, alteration or repair of a work of improvement in this State that attempts to do any of the following is ***contrary to public policy and is void*** ~~and~~ ***unenforceable***:

(a) Require a lien claimant to waive rights provided by law to lien claimants or to limit the rights provided to lien claimants, other than as expressly provided in NRS 108.221 to 108.246, inclusive ~~and~~ ***, and sections 2 to 5, inclusive, of this act***;

(b) Relieve a person of an obligation or liability imposed by the provisions of NRS 108.221 to 108.246, inclusive ~~and~~ ***, and sections 2 to 5, inclusive, of this act***;

(c) Make the contract or other agreement subject to the laws of a state other than this State;

(d) Require any litigation, arbitration or other process for dispute resolution on disputes arising out of the contract or other agreement to occur in a state other than this State; or

(e) Require a ***prime*** contractor or subcontractor to waive ***, release or extinguish*** a claim ***or right*** ***that*** the ***prime*** contractor or subcontractor may otherwise possess ***or acquire*** for ~~delay damages or an extension of time for delays incurred, for~~ any delay ***, acceleration or disruption or other significant event*** which was unreasonable under the circumstances, not within the contemplation of the parties at the time the contract was entered into, ~~and~~ ***or*** for which the contractor or subcontractor is not responsible.”.

Amend sec. 26, page 25, by deleting lines 28 through 30, and inserting:

“then only to the extent of the payment ~~to~~ or

~~—(c) Payment has been~~ ***received***.

3. Payment in the form of a two-party joint check made payable to the a lien”.

Amend the bill as a whole by deleting sections 27 and 28.

Amend the title of the bill by deleting the eighteenth through twentieth lines and inserting:
“action against a principal and surety; and”.