

SENATE BILL NO. 300—COMMITTEE ON GOVERNMENT AFFAIRS

MARCH 24, 2005

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions governing regulation of contractors. (BDR 54-1061)

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; limiting the amount of money that may be withheld as a retention amount under certain contracts and subcontracts; revising provisions governing when contractors and subcontractors may stop work; revising provisions governing payments to contractors and subcontractors; 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
2 thereto the provisions set forth as sections 2, 3 and 4 of this act.

3 **Sec. 2.** *“Owner” means an owner or lessee of real property*
4 *who enters into an oral or written agreement with a prime*
5 *contractor pursuant to which the prime contractor agrees to*
6 *provide work, materials or equipment for a work of improvement.*

7 **Sec. 3.** *“Prime contractor” means a contractor who enters*
8 *into an oral or written agreement with an owner pursuant to*
9 *which the prime contractor agrees to provide work, materials or*
10 *equipment for a work of improvement.*

11 **Sec. 4.** *“Work of improvement” has the meaning ascribed to*
12 *it in NRS 108.22188.*

13 **Sec. 5.** NRS 624.606 is hereby amended to read as follows:

14 624.606 As used in NRS 624.606 to ~~[624.640,]~~ **624.630,**
15 inclusive, *and sections 2, 3 and 4 of this act,* the words and terms



defined in NRS 624.607 and 624.608 *and sections 2, 3 and 4 of this act* have the meanings ascribed to them in those sections.

Sec. 6. NRS 624.607 is hereby amended to read as follows:

624.607 “Higher-tiered ~~{subcontractor}~~ *contractor*” means a *prime contractor* or subcontractor ~~{under a contract}~~ who has entered into an oral or written ~~{subcontract with another}~~ *agreement with a lower-tiered* subcontractor pursuant to which the ~~{other}~~ *lower-tiered* subcontractor has agreed to ~~{perform any of the duties of the subcontractor under the oral or written subcontract.}~~ *provide work, materials or equipment for a work of improvement.*

Sec. 7. NRS 624.608 is hereby amended to read as follows:

624.608 “Lower-tiered subcontractor” means a subcontractor who has agreed in an oral or written ~~{contract to perform any of the duties of another subcontractor under another oral or written subcontract.}~~ *agreement with a higher-tiered contractor to provide work, materials or equipment for a work of improvement.*

Sec. 8. NRS 624.609 is hereby amended to read as follows:

624.609 1. Except as otherwise provided in subsections 2 and 4 and subsection 4 of NRS 624.622, if an owner of real property enters into a written or oral ~~{contract}~~ *agreement* with a *prime contractor* for the performance of work *or the provision of materials or equipment* by the *prime contractor*, the owner must:

(a) Pay ~~{that}~~ *the prime* contractor on or before the date a payment is due pursuant to a schedule for payments established in a written ~~{contract;}~~ *agreement*; or

(b) If no such schedule is established or if the ~~{contract}~~ *agreement* is oral, pay the *prime* contractor within 21 days after the date the *prime* contractor submits a request for payment.

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

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

(1) A retention amount that , *if* the owner is authorized to withhold *a retention amount* pursuant to the ~~{contract;}~~ *agreement, must not exceed 10 percent of the amount of the payment to be made;*

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

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

(II) Costs and expenses reasonably necessary to correct or repair any work which is the subject of the request for payment and which is not materially in compliance with the ~~{contract}~~ *agreement* to the extent that such costs and expenses exceed 50 percent of the *retention* amount withheld pursuant to subparagraph (1); and



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

(b) Require as a condition precedent to the payment of any amount due, lien releases furnished by the *prime* contractor and his *lower-tiered* subcontractors and suppliers ~~[. For purposes of this paragraph:~~

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

~~(2) The lien releases must be limited to the amount of the payment received.] in accordance with the provisions of paragraphs (a) and (c) of subsection 4 of NRS 108.2457.~~

3. If, pursuant to ~~[subparagraph (2) or (3) of paragraph (a) of subsection 2 or paragraph (b) of]~~ subsection 2, an owner intends to withhold any amount from a payment to be made to a *prime* contractor, the owner must give, on or before the date the payment is due, a written notice to the *prime* contractor of any amount that will be withheld. The written notice must:

(a) Identify the amount of the request for payment that will be withheld from the *prime* contractor;

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

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

4. A *prime* contractor who receives a notice *of withholding* pursuant to subsection 3 may *correct any condition or reason for the withholding described in the notice and* provide written notice *of the correction of the condition or reason for the withholding* to the owner. ~~[of the correction of a condition described in the notice received pursuant to subsection 3.]~~ The notice of correction must be sufficient to identify the scope and manner of the correction of the condition *or reason for the withholding* and be signed by an authorized representative of the *prime* contractor. If an owner receives a written notice from the *prime* contractor of the correction of a condition *or reason for the withholding* pursuant to this subsection, the owner ~~[must:]~~ *shall:*



(a) Pay the amount withheld by the owner for that condition on or before the date the next payment is due the *prime* contractor; or

(b) Object to the scope and manner of the correction of the condition ~~[.]~~ *or reason for the withholding*, on or before the date the next payment is due to the *prime* contractor, in a written statement which sets forth the reason for the objection and which complies with subsection 3. If the owner objects to the scope and manner of the correction of a condition ~~[.]~~ *or reason for the withholding*, he shall nevertheless pay to the *prime* contractor, along with payment made pursuant to the *prime* contractor's next payment request, the amount withheld for the correction of conditions *or reasons for the withholding* to which the owner no longer objects.

5. Except as otherwise provided in subsections 2, 3 and 4, an owner shall not withhold from a contractor any payment in excess of the retention amount.

Sec. 9. NRS 624.610 is hereby amended to read as follows:

624.610 1. If ~~[an]~~ :

~~(a) An owner fails ~~[to]~~~~
~~—(a) Pay]~~ to pay the *prime* contractor in the time and manner required by subsection 1 or 4 of NRS 624.609; ~~[or]~~

~~—(b) Give]~~
(b) An owner fails to give the *prime* contractor written notice of any withholding in the time and manner required by subsection 3 or 4 of NRS 624.609 ~~[.]~~ ;

(c) A prime contractor in good faith and for reasonable cause disagrees with a written notice provided by an owner in the time and manner required by subsection 3 or 4 of NRS 624.609; or

(d) Within 30 days after the date that a request for a change order is submitted by the prime contractor to the owner, the owner fails to:

(1) Issue the change order; or

(2) If the request for a change order is unreasonable, give written notice to the prime contractor of the reasons why the change order is unreasonable,

→ the *prime* contractor may stop work after giving written notice to the owner at least 10 days before stopping work.

2. If a *prime* contractor stops work pursuant to ~~[this subsection.]~~ *paragraph (a), (b) or (c) of subsection 1*, the *prime* contractor may terminate the ~~[contract]~~ *agreement* by giving written notice of termination to the owner after stopping work but at least 15 days before terminating the ~~[contract.]~~ *agreement*. If the *prime* contractor is paid the amount due before the date for termination of the ~~[contract]~~ *agreement* set forth in the written notice, the *prime*



contractor shall not terminate the ~~{contract}~~ *agreement* and shall resume his work.

~~{2-}~~ 3. *If an owner fails to issue a change order or give written notice to the prime contractor pursuant to the provisions of paragraph (d) of subsection 1:*

(a) *The agreement price must be increased by the amount sought in the request for a change order;*

(b) *The time for performance must be extended by the amount sought in the request for a change order;*

(c) *The prime contractor may submit to the owner a bill or invoice for the labor, materials, equipment or services that are the subject of the request for a change order; and*

(d) *The owner shall pay the prime contractor for such labor, materials, equipment or services with the next payment made to the prime contractor.*

4. If the owner through his own act or neglect, or through an act or neglect of his agent, excluding acts of God, floods, fires, labor disputes, strikes or reasonable adjustments to work schedules, causes the work to be stopped for a period of 15 days or more, the *prime* contractor may terminate the ~~{contract}~~ *agreement* if:

(a) The *prime* contractor gives written notice of his intent to terminate to the owner at least 10 days before terminating the ~~{contract;}~~ *agreement*; and

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

~~{3-}~~ 5. If a *prime* contractor stops work pursuant to subsection 1, the owner may terminate the ~~{contract}~~ *agreement* by giving the *prime* contractor written notice of his intent to terminate at least 15 days before terminating the ~~{contract-~~

~~—4-}~~ *agreement.*

6. If the ~~{contract}~~ *agreement* is terminated pursuant to subsection ~~{2-}~~ 4, or if the *prime* contractor stops work in accordance with this section and the ~~{contract}~~ *agreement* is terminated pursuant to subsection 1 or ~~{3-}~~ 5, the *prime* contractor is entitled to recover from the owner payment in an amount found by a trier of fact to be due the *prime* contractor, including, without limitation:

(a) The cost of all work, labor, materials, equipment and services furnished by and through the *prime* contractor, including any profit and overhead the *prime* contractor ~~{incurred or}~~ and his *lower-tiered subcontractors and suppliers* earned *or incurred* through the date of termination;

(b) The *balance of the* profit that the *prime* contractor and his *lower-tiered subcontractors and suppliers* would have received if the ~~{contract}~~ *agreement* had been performed in full;



(c) Interest ~~[at a rate equal to the rate agreed upon in the contract or, if no interest rate is so provided, then interest at a rate equal to the prime rate at the largest bank in this State, as determined by the Commissioner of Financial Institutions on January 1 or July 1, as the case may be, immediately preceding:~~

~~—— (1) The time the contract was signed; or~~

~~—— (2) If the contract was oral, the time the terms of the contract were agreed to by the parties,~~

~~➔ plus 2 percent;]~~ *determined pursuant to NRS 624.630; and*

(d) The reasonable costs, including court *and arbitration* costs, incurred by the *prime* contractor and his *lower-tiered* subcontractors in collecting the amount due.

➔ ~~[A:]~~ *In any action brought to enforce the rights or obligations set forth in this subsection, the trier of fact may award reasonable attorney's fees to the *prime* contractor or, if the trier of fact determines that the *prime* contractor stopped work or terminated the ~~[contract]~~ *agreement* without reasonable cause, the trier of fact may award reasonable attorney's fees *and costs, including court and arbitration costs,* to the owner.*

~~[5:]~~ 7. If a *prime* contractor stops work pursuant to subsection 1, each *lower-tiered* subcontractor with whom the *prime* contractor has ~~[contracted]~~ *entered into an agreement and* who has not fully performed under that ~~[contract]~~ *agreement* may also stop work on the ~~[project.]~~ *work of improvement*. If a *prime* contractor terminates ~~[a contract]~~ *an agreement* pursuant to this section, all such *lower-tiered* subcontractors may terminate their ~~[contracts]~~ *agreements* with the *prime* contractor.

~~[6:]~~ 8. The right of a *prime* contractor to stop work or terminate ~~[a contract]~~ *an agreement* pursuant to this section is in addition to all other rights that the *prime* contractor may have at law or in equity and does not impair or affect the right of a *prime* contractor to maintain a civil action or to submit any controversy arising under the ~~[contract]~~ *agreement with the owner* to arbitration.

~~[7:]~~ 9. No *prime* contractor or ~~[his]~~ *lower-tiered* subcontractors, or their respective sureties, may be held liable for any delays or damages that an owner may suffer as a result of the *prime* contractor ~~[, subcontractor]~~ or lower-tiered subcontractor stopping his work or terminating ~~[a contract]~~ *an agreement* for reasonable cause and in accordance with this section or NRS 624.626.

Sec. 10. NRS 624.620 is hereby amended to read as follows:

624.620 1. Except as otherwise provided in this section, any money remaining unpaid for the construction of a work of improvement is payable to the *prime* contractor within 30 days after:



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

(b) The availability of a work of improvement for its intended use. The *prime* contractor must have ~~[given a]~~ *provided to the owner:*

(1) A written notice of availability ~~[to the owner]~~ on or before the day on which he claims that the work of improvement became available for use or occupancy ~~[]~~; or

(2) A *certificate of occupancy issued by the appropriate building inspector or other authority.*

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

(a) Withhold payment for the amount of:

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

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

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

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

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

~~—— (2) The lien releases must be limited to the amount of the payment received.]~~ *prime contractor or his lower-tiered subcontractors in accordance with the provisions of paragraphs (a) and (c) of subsection 4 of NRS 108.2457.*

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

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



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

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

4. A *prime* contractor who receives a notice pursuant to subsection 3 may *correct any condition described in the notice and thereafter* provide written notice to the owner of the correction of ~~[a condition described in the notice received pursuant to subsection 3.]~~ *the condition*. The notice of correction must be sufficient to identify the scope and manner of the correction of the condition and be signed by an authorized representative of the *prime* contractor. If an owner receives a written notice from the *prime* contractor of the correction of a condition described in an owner's notice of withholding pursuant to subsection 3, the owner must, within 10 days after receipt of such notice:

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

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

5. The partial occupancy or availability of a building requires payment in direct proportion to the value of the part of the building which is partially occupied or partially available. For ~~[projects]~~ *works of improvement* which involve more than one building, each building must be considered separately in determining the amount of money which is payable to the *prime* contractor.

~~[6. Unless otherwise provided in the construction contract, any money which is payable to a contractor pursuant to this section accrues interest at a rate equal to the lowest daily prime rate at the largest bank in this State, as determined by the Commissioner of Financial Institutions on January 1 or July 1, as the case may be, immediately preceding:~~

~~—(a) The time the contract was signed; or~~

~~—(b) If the contract was oral, the time the terms of the contract were agreed to by the parties;~~

~~—plus 2 percent.~~

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

~~—(a) Any residential building; or~~



~~(b) Public works.~~

~~8. As used in this section, unless the context otherwise requires, "work of improvement" has the meaning ascribed to it in NRS 108.22188.]~~

Sec. 11. NRS 624.622 is hereby amended to read as follows:

624.622 1. A *prime* contractor shall provide a copy of any notice given to an owner pursuant to subsection 1 or 2 of NRS 624.610 to each *lower-tiered* subcontractor with whom the *prime* contractor has ~~[contracted who has not fully performed under that contract.]~~ *entered into an agreement.* Upon receipt of payment pursuant to NRS 624.609, the *prime* contractor shall notify all such *lower-tiered* subcontractors in writing of his receipt of payment.

2. A condition, stipulation or provision in ~~[a contract or other]~~ *an agreement which [requires] :*

(a) *Requires a prime contractor to waive any rights provided in this section, NRS 624.609 , ~~[or]~~ 624.610, 624.620 or 624.630, or which limits those rights [;]*;

(b) *Relieves an owner of any obligation or liability imposed pursuant to NRS 624.606 to 624.630, inclusive, and sections 2, 3 and 4 of this act; or*

(c) *Requires a prime contractor to waive, release or extinguish a claim or right for damages or an extension of time that the prime contractor may otherwise possess or acquire as a result of delay, acceleration, disruption or an impact event that is unreasonable under the circumstances, that was not within the contemplation of the parties at the time the agreement was entered into, or for which the prime contractor is not responsible,
↪ is against public policy and is void [;] and unenforceable.*

3. All notices required pursuant to this section, NRS 624.609 , ~~[and]~~ 624.610 *and 624.620* must be:

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

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

(c) Delivered by certified mail; or

(d) Delivered in the manner provided for in the ~~[contract-]~~ *agreement.*

4. This section, NRS 624.609 , ~~[and]~~ 624.610 , *624.620 and 624.622* do not apply to ~~[a contract]~~ *an agreement* between:

(a) A ~~[residential]~~ *prime* contractor and a natural person who owns a single-family residence for the performance of qualified services with respect to the residence; ~~[and]~~ *or*



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

5. Within 5 days after an owner receives a written request for the information set forth in paragraphs (a), (b) and (c) from a *lower-tiered* subcontractor, ~~[with respect to a subcontract that has not been fully performed,]~~ the owner shall notify the *lower-tiered* subcontractor in writing of the following:

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

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

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

Sec. 12. NRS 624.624 is hereby amended to read as follows:

624.624 1. Except as otherwise provided in this section, if a *higher-tiered* contractor ~~[or higher-tiered subcontractor]~~ enters into:

(a) A written ~~[subcontract]~~ *agreement* with a *lower-tiered* subcontractor that includes a schedule for payments, the *higher-tiered* contractor ~~[or higher-tiered subcontractor]~~ shall pay the *lower-tiered* subcontractor:

(1) On or before the date payment is due; or

(2) Within 10 days after the date the *higher-tiered* contractor ~~[or higher-tiered subcontractor]~~ receives payment for all or a portion of the work, ~~[labor, materials, equipment or services]~~ *materials or equipment* described in a request for payment submitted by the *lower-tiered* subcontractor,

↳ whichever is earlier.

(b) A written ~~[subcontract]~~ *agreement with a lower-tiered subcontractor* that does not contain a schedule for payments, or ~~[a subcontract]~~ *an agreement* that is oral, the *higher-tiered* contractor ~~[or higher-tiered subcontractor]~~ shall pay the *lower-tiered* subcontractor:

(1) Within 30 days after the date the *lower-tiered* subcontractor submits a request for payment; or

(2) Within 10 days after the date the *higher-tiered* contractor ~~[or higher-tiered subcontractor]~~ receives payment for all or a portion of the work, labor, materials, equipment or services described in a request for payment submitted by the *lower-tiered* subcontractor,

↳ whichever is earlier.

2. If a *higher-tiered* contractor ~~[or higher-tiered subcontractor]~~ has complied with subsection 3, the *higher-tiered* contractor ~~[or higher-tiered subcontractor]~~ may:

(a) Withhold from any payment owed to the *lower-tiered* subcontractor:



(1) A retention amount that the ~~[subcontractor]~~ *higher-tiered contractor* is authorized to withhold pursuant to the ~~[contract; agreement, but the retention amount withheld must not exceed 10 percent of the payment that is required pursuant to subsection 1;~~

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

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

(II) Costs and expenses reasonably necessary to correct or repair any work which is the subject of the request for payment and which is not materially in compliance with the ~~[subcontract]~~ *agreement* to the extent that such costs and expenses exceed 50 percent of the *retention* amount withheld pursuant to subparagraph (1); and

(3) The amount the owner ~~[, contractor or higher-tiered subcontractor]~~ *or higher-tiered contractor* has paid or is required to pay pursuant to an official notice from a state agency or employee benefit trust fund, for which the owner ~~[, contractor or higher-tiered subcontractor]~~ *or higher-tiered contractor* is or may reasonably be liable for the *lower-tiered* subcontractor or his *lower-tiered* subcontractors in accordance with chapter 608, 612, 616A to 616D, inclusive, or 617 of NRS; and

(b) Require as a condition precedent to the payment of any amount due, lien releases furnished by the *lower-tiered* subcontractor ~~[and his lower-tiered subcontractors and suppliers. For purposes of this paragraph:~~

~~—— (1) If the amount due is paid with a check or is not paid concurrently with the contractor's or higher-tiered subcontractor's receipt of the lien releases, the lien releases must be conditioned upon the check clearing the bank upon which it is drawn and the receipt of payment and shall be deemed to become unconditional upon the receipt of payment; and~~

~~—— (2) The lien releases must be limited to the amount of the payment received.] in accordance with the provisions of paragraphs (a) and (c) of subsection 4 of NRS 108.2457.~~

3. If, pursuant to subparagraph (2) or (3) of paragraph (a) of subsection 2 or paragraph (b) of subsection 2, a *higher-tiered* contractor ~~[or higher-tiered subcontractor]~~ intends to withhold any amount from a payment to be made to a *lower-tiered* subcontractor, the *higher-tiered* contractor ~~[or higher-tiered subcontractor]~~ must give, on or before the date the payment is due, a written notice to the *lower-tiered* subcontractor of any amount that will be withheld and give a copy of such notice to all reputed higher-tiered ~~[subcontractors,]~~ contractors and the owner. The written notice must:



(a) Identify the amount of the request for payment that will be withheld from the *lower-tiered* subcontractor;

(b) Give a reasonably detailed explanation of the reason the *higher-tiered* contractor ~~{or higher-tiered subcontractor}~~ will withhold that amount, including, without limitation, a specific reference to the provision or section of the ~~{subcontract,}~~ *agreement with the lower-tiered subcontractor*, and any documents relating thereto, and the applicable building code, law or regulation with which the *lower-tiered* subcontractor has failed to comply; and

(c) Be signed by an authorized agent of the *higher-tiered* contractor. ~~{or higher-tiered subcontractor.}~~

4. A *lower-tiered* subcontractor who receives a notice of withholding pursuant to subsection 3 may *dispute in good faith and for reasonable cause the amount withheld or reasons for the withholding by providing written notice to the higher-tiered contractor, or may correct any condition or reason for the withholding described in the notice and thereafter* provide written notice to the *higher-tiered* contractor ~~{or higher-tiered subcontractor}~~ of the correction of ~~{a condition described in the notice received pursuant to subsection 3.}~~ *the condition or reason for the withholding*. The notice of correction must be sufficient to identify the scope and manner of the correction of the condition *or reason for the withholding* and be signed by an authorized representative of the *lower-tiered* subcontractor. If a *higher-tiered* contractor ~~{or higher-tiered subcontractor}~~ receives a written notice from the *lower-tiered* subcontractor of the correction of a condition *or reason for the withholding* pursuant to this subsection, the *higher-tiered* contractor ~~{or higher-tiered subcontractor must:}~~ *shall*:

(a) Pay the amount withheld by the *higher-tiered* contractor ~~{or higher-tiered subcontractor}~~ for that condition on or before the date the next payment is due the *lower-tiered* subcontractor; or

(b) Object to the scope and manner of the correction of the condition ~~{}~~ *or reason for the withholding*, on or before the date the next payment is due to the *lower-tiered* subcontractor, in a written statement which sets forth the reason for the objection and which complies with subsection 3. If the *higher-tiered* contractor ~~{or higher-tiered subcontractor}~~ objects to the scope and manner of the correction of a condition ~~{}~~ *or reason for the withholding*, he shall nevertheless pay to the *lower-tiered* subcontractor, along with payment made pursuant to the *lower-tiered* subcontractor's next payment request, the amount withheld for the correction of conditions *or reasons for the withholding* to which the *higher-tiered* contractor ~~{or higher-tiered subcontractor}~~ no longer objects.



1 **Sec. 13.** NRS 624.626 is hereby amended to read as follows:

2 624.626 1. If ~~[a contractor or higher-tiered subcontractor fails~~
3 ~~to:~~

4 ~~—(a) Pay]:~~

5 (a) *A higher-tiered contractor fails to pay the lower-tiered*
6 *subcontractor within the time provided in subsection 1 or 4 of*
7 *NRS 624.624;*

8 (b) ~~[Pay]~~ *A higher-tiered contractor fails to pay the lower-*
9 *tiered subcontractor within 45 days after the 25th day of the month*
10 *in which the lower-tiered subcontractor submits a request for*
11 *payment, even if the higher-tiered contractor ~~for higher-tiered~~*
12 *~~subcontractor~~ has not been paid and the ~~[subcontract]~~ agreement*
13 *contains a provision which requires the higher-tiered contractor ~~for~~*
14 *~~higher-tiered subcontractor~~ to pay the lower-tiered subcontractor*
15 *only if or when the higher-tiered contractor ~~for higher-tiered~~*
16 *~~subcontractor~~ is paid; ~~for~~*

17 ~~—(c) Give]~~

18 (c) *A higher-tiered contractor fails to give the lower-tiered*
19 *subcontractor written notice of any withholding in the time and*
20 *manner required by subsection 3 or 4 of NRS 624.624 ~~];~~*

21 (d) *After receipt of a notice of withholding pursuant to*
22 *subsection 3 or 4 of NRS 624.624, the lower-tiered subcontractor*
23 *gives the higher-tiered contractor written notice pursuant to*
24 *subsection 4 of NRS 624.624 and thereby disputes in good faith*
25 *and for reasonable cause the amount withheld or the condition or*
26 *reason for the withholding; or*

27 (e) *Within 30 days after the date that a request for a change*
28 *order is submitted by the lower-tiered subcontractor to the higher-*
29 *tiered contractor, the higher-tiered contractor fails to:*

30 (1) *Issue the change order; or*

31 (2) *If the request for a change order is unreasonable, give*
32 *written notice to the lower-tiered subcontractor of the reasons why*
33 *the change order is unreasonable,*

34 ➔ *the lower-tiered subcontractor may stop work under the*
35 *~~[subcontract]~~ agreement until payment is received if the lower-*
36 *tiered subcontractor gives written notice to the higher-tiered*
37 *contractor ~~for higher-tiered subcontractor~~ at least 10 days before*
38 *stopping work.*

39 2. If a *lower-tiered* subcontractor stops work pursuant to
40 paragraph (a) , ~~for~~ (c) or (d) of subsection 1, the *lower-tiered*
41 subcontractor may terminate the ~~[subcontract]~~ *agreement with the*
42 *higher-tiered contractor* by giving written notice of the termination
43 to the *higher-tiered* contractor ~~for higher-tiered subcontractor~~ after
44 stopping work but at least 15 days before the termination of the
45 ~~[subcontract-]~~ *agreement.* If the *lower-tiered* subcontractor is paid



1 the amount due before the date for termination set forth in the
2 written notice, the *lower-tiered* subcontractor shall not terminate the
3 ~~{subcontract}~~ *agreement* and shall resume work.

4 3. *If a higher-tiered contractor fails to issue a change order*
5 *or fails to give written notice pursuant to paragraph (e) of*
6 *subsection 1:*

7 (a) *The agreement price must be increased by the amount*
8 *sought in the request for a change order;*

9 (b) *The time for performance must be extended by the amount*
10 *sought in the request for a change order;*

11 (c) *The lower-tiered subcontractor may submit to the higher-*
12 *tiered contractor a bill or invoice for the labor, materials,*
13 *equipment or services that are the subject of the request for a*
14 *change order; and*

15 (d) *The higher-tiered contractor shall pay the lower-tiered*
16 *subcontractor for such labor, materials, equipment or services*
17 *with the next payment made to the lower-tiered subcontractor.*

18 4. If an owner ~~{contractor or higher-tiered subcontractor}~~ *or*
19 *higher-tiered contractor* through his own act or neglect, or through
20 an act or neglect of his agent, excluding acts of God, floods, fires,
21 labor disputes, strikes or reasonable adjustments in work schedules,
22 causes the work to be stopped for a period of 15 days or more, the
23 *lower-tiered* subcontractor may terminate the ~~{subcontract}~~
24 *agreement* if:

25 (a) The *lower-tiered* subcontractor gives written notice of his
26 intent to terminate to the *higher-tiered* contractor ~~{or higher-tiered~~
27 ~~subcontractor}~~ at least 10 days before terminating the ~~{subcontract;}~~
28 *agreement;* and

29 (b) The *higher-tiered* contractor ~~{or higher-tiered subcontractor}~~
30 fails to allow the *lower-tiered* subcontractor to resume the work
31 within the time set forth in the written notice given pursuant to
32 paragraph (a).

33 ~~{4.}~~ 5. If a *lower-tiered* subcontractor stops work pursuant to
34 paragraph (a) , ~~{or}~~ (c) *or (d)* of subsection 1, the *higher-tiered*
35 contractor ~~{or higher-tiered subcontractor}~~ may terminate the
36 ~~{subcontract}~~ *agreement* by giving the *lower-tiered* subcontractor
37 written notice of his intent to terminate at least 15 days before
38 terminating the ~~{subcontract.~~

39 ~~—5.} agreement.~~

40 6. If the ~~{subcontract}~~ *agreement* is terminated pursuant to
41 subsection ~~{3.}~~ 4, or if the *lower-tiered* subcontractor stops work in
42 accordance with this section and the ~~{subcontract}~~ *agreement* is
43 terminated pursuant to subsection 2 or ~~{4.}~~ 5, the *lower-tiered*
44 subcontractor is entitled to recover from the *higher-tiered* contractor
45 ~~{or higher-tiered subcontractor}~~ with whom he has ~~{contracted}~~



1 *entered into an agreement* the amount found by a trier of fact to be
2 due the *lower-tiered* subcontractor, including, without limitation:

3 (a) The cost of all work, labor, materials, equipment and
4 services furnished by and through the *lower-tiered* subcontractor,
5 including any ~~{profit and}~~ overhead the *lower-tiered* subcontractor
6 *and his lower-tiered subcontractors and suppliers* incurred ~~{or}~~ *and*
7 *any profit the lower-tiered subcontractor and his lower-tiered*
8 *subcontractors and suppliers* earned through the date of
9 termination;

10 (b) The *balance of the* profit that the *lower-tiered* subcontractor
11 and his lower-tiered subcontractors *and suppliers* would have
12 received if the ~~{subcontract}~~ *agreement* had been performed in full;

13 (c) Interest ~~{at a rate equal to the rate agreed upon in the~~
14 ~~subcontract or, if no interest rate is so provided, interest at a rate~~
15 ~~equal to the prime rate at the largest bank in this State, as~~
16 ~~determined by the Commissioner of Financial Institutions on~~
17 ~~January 1 or July 1, as the case may be, immediately preceding:~~

18 ~~—— (1) The time the subcontract was signed; or~~

19 ~~—— (2) If the subcontract was oral, the time the terms of the~~
20 ~~subcontract were agreed upon by the parties,~~

21 ~~↪ plus 2 percent;}~~ *determined pursuant to NRS 624.630; and*

22 (d) The reasonable costs, including court costs ~~{}~~ *and*
23 *arbitration costs*, incurred by the *lower-tiered* subcontractor and his
24 lower-tiered subcontractors in collecting the amount due.

25 ↪ ~~{At}~~ *In* any action brought to enforce the rights or obligations set
26 forth in this subsection, the trier of fact ~~{may}~~ *shall* award
27 reasonable attorney's fees to the *lower-tiered* subcontractor or, if the
28 trier of fact determines that the *lower-tiered* subcontractor stopped
29 work or terminated the ~~{contract}~~ *agreement* without reasonable
30 cause, the trier of fact may award reasonable attorney's fees *and*
31 *costs, including court costs and arbitration costs*, to the *higher-*
32 *tiered* contractor . ~~{or higher-tiered subcontractor.~~

33 ~~—6.}~~ 7. If a *lower-tiered* subcontractor stops work pursuant to
34 this section, each lower-tiered subcontractor with whom the *lower-*
35 *tiered* subcontractor has ~~{contracted}~~ *entered into an agreement*
36 *and* who has not fully performed under the ~~{contract}~~ *agreement*
37 may also stop work on the ~~{project.}~~ *work of improvement*. If a
38 *lower-tiered* subcontractor terminates ~~{a subcontract}~~ *an agreement*
39 pursuant to this section, all ~~{such}~~ *of his* lower-tiered subcontractors
40 may terminate their ~~{contracts}~~ *agreements* with the *lower-tiered*
41 subcontractor.

42 ~~{7.}~~ 8. The right of a *lower-tiered* subcontractor to stop work or
43 terminate ~~{a subcontract}~~ *an agreement* pursuant to this section is in
44 addition to all other rights that the *lower-tiered* subcontractor may
45 have at law or in equity and does not impair or affect the right of a



1 *lower-tiered* subcontractor to maintain a civil action or to submit
2 any controversy arising under the ~~[contract]~~ *agreement* to
3 arbitration.

4 ~~[8.]~~ 9. No *lower-tiered* subcontractor or his lower-tiered
5 subcontractors, or their respective sureties, may be held liable for
6 any delays or damages that an owner ~~[, contractor]~~ or higher-tiered
7 ~~[subcontractor]~~ *contractor* may suffer as a result of the
8 ~~[subcontractor or]~~ lower-tiered subcontractor stopping his work or
9 terminating ~~[a subcontract]~~ *an agreement* for reasonable cause and
10 in accordance with this section.

11 **Sec. 14.** NRS 624.628 is hereby amended to read as follows:

12 624.628 1. A *lower-tiered* subcontractor shall provide a copy
13 of any notice given to a *higher-tiered* contractor ~~[or higher-tiered~~
14 ~~subcontractor]~~ pursuant to this section or NRS 624.624 or 624.626
15 to each lower-tiered subcontractor with whom the *lower-tiered*
16 subcontractor has ~~[contracted]~~ *entered into an agreement and* who
17 has not fully performed under the ~~[contract.]~~ *agreement*. Upon
18 receipt of payment pursuant to NRS 624.624, the *lower-tiered*
19 subcontractor shall notify all ~~[such]~~ *of his* lower-tiered
20 subcontractors in writing of his receipt of payment.

21 2. A *lower-tiered* subcontractor shall provide a copy of any
22 notice given to a *higher-tiered* contractor ~~[or higher-tiered~~
23 ~~subcontractor]~~ pursuant to this section or NRS 624.624 or 624.626
24 to ~~[each reputed higher-tiered subcontractor, contractor]~~ *all other*
25 *higher-tiered contractors* and the owner, if known. The failure of a
26 *lower-tiered* subcontractor to comply with this subsection does not
27 invalidate any notice otherwise properly given.

28 3. A condition, stipulation or provision in ~~[a subcontract or~~
29 ~~other]~~ *an agreement* which ~~[requires]~~ :

30 (a) *Requires* a *lower-tiered* subcontractor to waive any rights
31 provided in this section or NRS 624.624 ~~[or 624.626,]~~ *624.626 or*
32 *624.630* or which limits those rights ~~[,]~~ ;

33 (b) *Relieves a higher-tiered contractor of any obligation or*
34 *liability imposed pursuant to this section, NRS 624.624, 624.626 or*
35 *624.630; or*

36 (c) *Requires a lower-tiered subcontractor to waive, release or*
37 *extinguish a claim or right for damages or an extension of time*
38 *that the lower-tiered subcontractor may otherwise possess or*
39 *acquire as a result of delay, acceleration, disruption or an impact*
40 *event that is unreasonable under the circumstances, that was not*
41 *within the contemplation of the parties at the time the agreement*
42 *was entered into, or for which the lower-tiered subcontractor is*
43 *not responsible,*

44 *↪ is against public policy and* is void ~~[,]~~ *and unenforceable.*



1 4. All notices required pursuant to this section or NRS 624.624
2 or 624.626 must be:

3 (a) Delivered personally, in which case the *lower-tiered*
4 subcontractor shall obtain a notarized statement from the person
5 who delivered the notice as proof of delivery;

6 (b) Sent by facsimile and delivered by regular mail, in which
7 case the *lower-tiered* subcontractor shall retain proof of a successful
8 transmission of the facsimile;

9 (c) Delivered by certified mail; or

10 (d) Delivered in the manner provided in the ~~[contract.]~~
11 *agreement between the higher-tiered contractor and the lower-*
12 *tiered subcontractor.*

13 5. Within 5 days after ~~[a]~~ *the owner or any higher-tiered*
14 contractor receives a written request for the information set forth in
15 paragraphs (a), (b) and (c) from a *lower-tiered* subcontractor with
16 respect to ~~[a-subcontract]~~ *an agreement* that has not been fully
17 performed, the *owner or higher-tiered* contractor shall notify the
18 *lower-tiered* subcontractor in writing of the following:

19 (a) The date the *owner or higher-tiered* contractor made a
20 specified payment to ~~[his]~~ *the prime contractor or lower-tiered*
21 subcontractor;

22 (b) Whether the *owner or higher-tiered* contractor has paid ~~[his]~~
23 *the prime contractor or lower-tiered* subcontractor the entire
24 amount of a specified payment; and

25 (c) The amount withheld by the *owner or higher-tiered*
26 contractor of a specified payment to his *prime contractor or lower-*
27 *tiered* subcontractor and the reason for the withholding.

28 **Sec. 15.** NRS 624.630 is hereby amended to read as follows:

29 624.630 ~~[1.—Each contractor shall disburse money paid to him~~
30 ~~pursuant to NRS 624.620, including any interest which he receives,~~
31 ~~to his subcontractors and suppliers within 15 days after he receives~~
32 ~~the money, in direct proportion to the subcontractors' and suppliers'~~
33 ~~basis in the total contract between the contractor and the owner.~~

34 ~~—2.]~~ Any money which is payable to a *prime contractor, higher-*
35 *tiered contractor or lower-tiered* subcontractor pursuant to ~~[this~~
36 ~~section]~~ *NRS 624.609, 624.610, 624.620, 624.624, 624.626 or*
37 *624.628* accrues interest *from the time it becomes due* at a rate
38 equal to the ~~[lowest daily prime rate at the three largest United~~
39 ~~States banking institutions on the date the contract is executed plus 2~~
40 ~~percent, from 15 days after the date on which the money was~~
41 ~~received by the contractor]~~ *rate agreed upon in the agreement*
42 *between the parties or, if no interest rate is so provided, then*
43 *interest at a rate equal to the prime rate at the largest bank in this*
44 *State, as determined by the Commissioner of Financial*



Institutions on January 1 or July 1, as the case may be, immediately preceding:

- 1. The time at which the agreement was signed; or*
- 2. If the agreement was oral, the time at which the terms of the agreement were agreed to by the parties,*
↳ plus 4 percent until the date of payment.

Sec. 16. NRS 99.040 is hereby amended to read as follows:

99.040 1. When there is no express contract in writing fixing a different rate of interest, interest must be allowed at a rate equal to the prime rate at the largest bank in Nevada, as ascertained by the Commissioner of Financial Institutions, on January 1 or July 1, as the case may be, immediately preceding the date of the transaction, plus 2 percent, upon all money from the time it becomes due, in the following cases:

(a) Upon contracts, express or implied, other than book accounts.

(b) Upon the settlement of book or store accounts from the day on which the balance is ascertained.

(c) Upon money received to the use and benefit of another and detained without his consent.

(d) Upon wages or salary, if it is unpaid when due, after demand therefor has been made.

↳ The rate must be adjusted accordingly on each January 1 and July 1 thereafter until the judgment is satisfied.

2. The provisions of this section do not apply to money owed ~~[(a) For the construction of a work of improvement pursuant to NRS 624.620; or~~

~~[(b) By a contractor to his subcontractor]]~~ pursuant to *chapter 624 of NRS which is governed by the provisions of* NRS 624.630.

Sec. 17. This act becomes effective on July 1, 2005.



