

SENATE BILL NO. 434—COMMITTEE ON COMMERCE AND LABOR

MARCH 29, 2005

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions governing regulation of contractors. (BDR 52-1103)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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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; prohibiting a person from performing, for a fee, any work on residential pools or spas without the proper license or other authorization under state law; requiring the State Contractors' Board to adopt classifications of licensing that authorize contractors who perform work on residential pools and spas to install plumbing and gas lines in connection with such work; revising the scope of the provisions regulating contractors who perform work on residential pools and spas; requiring contractors who perform work on residential pools and spas to provide a bond or cash deposit for the protection of consumers under certain circumstances; providing procedures for administering such bonds and cash deposits; revising provisions governing performance, payment and consumer protection bonds; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

- 1 Existing law regulates contractors who perform certain work on residential
- 2 pools and spas. (NRS 597.713-597.7198) The type of work performed by a
- 3 contractor that is subject to regulation is defined under existing law to include the
- 4 construction, repair or maintenance of residential pools and spas. (NRS 597.713)
- 5 This bill expands the type of work performed by a contractor that is subject to
- 6 regulation. Such work is defined under this bill to include the design, construction,
- 7 repair, maintenance, restoration, alteration or improvement of residential pools and
- 8 spas, as well as any consultation or supervision that a contractor performs
- 9 concerning such work. This bill prohibits a person from performing or offering to



perform, for a fee, any such work on residential pools or spas without the proper license or other authorization under state law.

This bill also requires the State Contractors' Board to adopt regulations establishing classifications of licensing that authorize contractors who perform work on residential pools and spas to install plumbing and gas lines in connection with that work. The regulations must establish the qualifications, training and examinations required to receive such classifications.

Under existing law, certain contractors who perform work on residential pools and spas must meet certain performance and payment bonding requirements before performing the work. The bonding requirements apply to any contractor who is licensed by the State Contractors' Board on or after July 1, 2001, and to other contractors who commit certain violations. (NRS 624.270) Additionally, the Board may require a contractor who performs work on residential pools and spas to obtain an additional bond for the protection of consumers. (NRS 624.276)

This bill eliminates the requirement that a contractor who is licensed by the State Contractors' Board on or after July 1, 2001, must necessarily comply with the performance and payment bonding requirements which are specific to contractors who perform work on residential pools and spas.

This bill requires that a contractor who performs work on residential pools and spas must obtain an additional bond or provide a cash deposit for the protection of consumers. This bill provides for relief from this requirement for contractors who have been licensed in this State for at least 5 consecutive years. This bill also provides procedures for administering these bonds and deposits, including the resolution of claims against these bonds and deposits.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 597 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. *A person shall not, directly or indirectly, perform or offer to perform, for a fee, any work concerning a residential swimming pool or spa or any consultation or supervision concerning such work or otherwise hold himself out as being able to perform such acts for a fee, unless the person holds:*

1. A license as a contractor or subcontractor under state law which authorizes the person to perform such acts for a fee; or

2. Any other license, certificate, registration or permit under state law which authorizes the person to perform such acts for a fee.

Sec. 3. 1. *The Board shall adopt regulations to provide for classifications of licensing that authorize a contractor who performs work concerning a residential swimming pool or spa to perform, in connection with such work, the installation of:*

(a) Plumbing, including, without limitation, connections to potable water; and

(b) Gas lines.



2. *The regulations adopted by the Board must include, without limitation, regulations establishing the qualifications, training and examinations that are required for such classifications.*

Sec. 4. NRS 597.713 is hereby amended to read as follows:

597.713 As used in NRS 597.713 to 597.7198, inclusive ~~§~~, and sections 2 and 3 of this act:

1. "Board" means the State Contractors' Board.

2. *"Contract" means any contract or agreement in which a contractor agrees to perform work concerning a residential swimming pool or spa.*

3. "Contractor" means a person licensed pursuant to the provisions of chapter 624 of NRS ~~[whose scope of work includes the]~~ *who performs work concerning a residential swimming pool or spa.*

4. *"Work concerning a residential swimming pool or spa" means any of the following acts, if performed for a fee:*

(a) *The design, construction, repair, ~~or~~ maintenance, restoration, alteration or improvement* of any residential swimming pool or spa, regardless of use, including the repair or replacement of existing equipment or the installation of new equipment, as necessary ~~§~~; *or*

(b) *Any consultation or supervision concerning such work.*

➤ The scope of such work includes layout, excavation, operation of construction pumps for removal of water, steelwork, construction of floors, installation of gunite, fiberglass, tile and coping, installation of all perimeter and filter piping, installation of all filter equipment and chemical feeders of any type, plastering of the interior, construction of decks, installation of housing for pool equipment and installation of packaged pool heaters. *The scope of such work also includes the installation of plumbing, including, without limitation, connections to potable water, and the installation of gas lines if the contractor holds classifications for such work pursuant to section 3 of this act.*

Sec. 5. NRS 597.715 is hereby amended to read as follows:

597.715 1. Any contractor or subcontractor who performs work ~~[for the repair, restoration, improvement or construction of]~~ *concerning* a residential pool or spa shall, regardless of whether the work is performed under the direction of a builder who is also the owner of the property being improved:

(a) Apply for and obtain all applicable permits for the project; and

(b) Meet all applicable requirements imposed pursuant to:

(1) This chapter;



(2) Chapter 624 of NRS; and

(3) Any regulations adopted by the Board,

↪ with respect to contracts for ~~the repair, restoration, improvement or construction of~~ **work concerning** a residential pool or spa.

2. If a contractor or subcontractor performs work ~~for the repair, restoration, improvement or construction of~~ **concerning** a residential pool or spa and the work is performed under the direction of a builder who is also the owner of the property being improved, the owner shall comply with all state and local laws and ordinances for the submission of names, licenses and information concerning any required bonds and insurance with respect to the contractors and subcontractors working on the project.

3. With respect to a contract for ~~the repair, restoration, improvement or construction of~~ **work concerning** a residential pool or spa, ~~regardless of use,~~ the work performed pursuant to such a contract must be supervised and controlled directly by the qualified employee or qualified officer of the contractor.

4. If ~~the repair, restoration, improvement or construction of~~ **work concerning** a residential pool or spa is performed under the direction of a builder who is exempt from having to obtain a license as a contractor because the builder is also the owner of the property being improved, a person shall not, directly or indirectly, perform or offer to perform, for a fee, any act as a consultant, adviser, assistant or aide to the builder for the purposes of the project, including, without limitation, any act associated with obtaining permits for the project, or otherwise hold himself out as being able to perform such acts for a fee, unless the person holds:

(a) A license as a contractor or subcontractor under state law which authorizes the person to perform such acts for a fee; or

(b) Any other license, certificate, registration or permit under state law which authorizes the person to perform such acts for a fee.

Sec. 6. NRS 597.716 is hereby amended to read as follows:

597.716 1. A contractor who receives an initial **down payment or deposit** of \$1,000 or 10 percent of the aggregate contract price, whichever is less, for ~~the repair, restoration, improvement or construction of~~ **work concerning** a residential pool or spa shall start the work within 30 days after the date all necessary permits for the work, if any, are issued, unless the person who made the payment agrees in writing to a longer period to apply for the necessary permits or start the work or to longer periods for both.

2. A contractor who receives money for ~~the repair, restoration, addition, improvement or construction of~~ **work concerning** a residential pool or spa shall complete the work diligently and shall not refuse to perform any work for any 30-day period.



3. If satisfactory payment is made for any portion of the work performed, the contractor shall, before any further payment is made, furnish the owner a full and unconditional release from any claim of mechanic's lien for that portion of the work for which payment has been made.

4. The requirements of subsection 3 do not apply if the contract provides for the contractor to furnish a bond for payment and performance or joint control covering full performance and completion of the contract and the bond or joint control is furnished by the contractor.

5. ~~[An agreement or]~~ A contract for ~~[the repair, restoration, improvement or construction of]~~ *work concerning* a residential pool or spa must contain a written statement explaining the rights of the customer under NRS 597.713 to 597.7198, inclusive, *and sections 2 and 3 of this act* and other relevant statutes.

6. A contractor may require final payment for the final stage or phase of the construction of a residential pool or spa after the completion of the plastering and the final inspection by the local building department, unless any installation of equipment, decking or fencing that is required in the contract is not completed.

Sec. 7. NRS 597.719 is hereby amended to read as follows:

597.719 1. The Board shall adopt by regulation mandatory elements to be included in all contracts to be used by contractors for ~~[the repair, restoration, improvement or construction of]~~ *work concerning* a residential pool or spa. Such mandatory elements must not be waived or limited by contract or in any other manner. On and after October 1, 2001, any contract entered into between a contractor and the owner of a single-family residence for ~~[the repair, restoration, improvement or construction of]~~ *work concerning* a residential pool or spa must comply with the standard elements adopted by the Board. A contract that does not comply with the standard elements adopted by the Board is void and unenforceable against the owner.

2. Any such contract in an amount of more than \$1,000 must contain in writing at least the following information:

(a) The name of the contractor and his business address and license number.

(b) The name and mailing address of the owner and the address or legal description of the property.

(c) The date of execution of the contract.

(d) The estimated date of completion of all work to be performed under the contract.

(e) A description of the work to be performed under the contract.



1 (f) The total amount to be paid to the contractor by the owner for
2 all work to be performed under the contract, including all applicable
3 taxes.

4 (g) The amount, not to exceed \$1,000 or 10 percent of the
5 aggregate contract price, whichever is less, of any *initial down*
6 *payment or* deposit paid or promised to be paid to the contractor by
7 the owner before the start of construction.

8 (h) A statement that the contractor has provided the owner with
9 the notice and informational form required by NRS 624.600.

10 (i) A statement that any additional work to be performed under
11 the contract, whether or not pursuant to a change order, which will
12 require the owner to pay additional money and any other change in
13 the terms in the original contract must be agreed to in writing by the
14 parties and incorporated into the original contract as a change order.
15 A change order is not enforceable against the owner contracting for
16 ~~[the repair, restoration, improvement or construction of]~~ *work*
17 *concerning* a residential pool or spa unless the change order clearly
18 sets forth the scope of work to be completed and the price to be
19 charged for the changes and is signed by the owner.

20 (j) A plan and scale drawing showing the shape, size,
21 dimensions and the specifications for the construction and
22 equipment for the residential pool or spa and for other home
23 improvements, and a description of the work to be done, the
24 materials to be used and the equipment to be installed, and the
25 agreed consideration for the work.

26 (k) Except as otherwise provided in this subsection, the dollar
27 amount of any progress payment and the stage of construction at
28 which the contractor will be entitled to collect progress payments
29 during the course of construction under the contract. The schedule
30 of payments must show the amount of each payment as a sum in
31 dollars and cents. The schedule of payments must not provide for
32 the contractor to receive, nor may the contractor actually receive,
33 payments in excess of 100 percent of the value of the work
34 performed on the project at any time, excluding finance charges,
35 except for an initial down payment *or deposit* as authorized by
36 subsection 1 of NRS 597.716 or the regulations adopted by the
37 Board. With respect to a contract executed before October 1, 2001,
38 if any schedule of payments set forth in the contract does not
39 comply with the provisions of this chapter or chapter 624 of NRS or
40 any regulations adopted pursuant thereto:

41 (1) The obligation of the owner to make payments in
42 accordance with the payment schedule shall be deemed void and
43 unenforceable; and

44 (2) The lender, if any, may not initiate proceedings to
45 enforce the payment of any applicable loan unless and until the



1 contract is reformed or otherwise amended to comply with those
2 provisions of law.

3 ➔ The provisions of this paragraph do not apply if the contractor
4 has furnished a bond for payment and performance covering full
5 performance and completion of the contract and the cost of the bond
6 is included in the price of the project ~~H~~ *or if the contractor builds a*
7 *residential pool or spa as part of the original building plan*
8 *pursuant to which the contractor builds a single-family residence*
9 *on the premises.*

10 (l) If the contract provides for payment of a commission to a
11 salesperson out of the contract price, a statement that the payment
12 must be made on a pro rata basis in proportion to the schedule of
13 payments made to the contractor by the disbursing party in
14 accordance with the provisions of paragraph (k).

15 ➔ Except as otherwise provided in subsection 5, the contract may
16 contain such other conditions, stipulations or provisions as to which
17 the parties may agree.

18 3. The contract must contain:

19 (a) A method whereby the owner may initial provisions of the
20 contract, thereby indicating that those provisions have been read and
21 are understood.

22 (b) In close proximity to the signatures of the owner and the
23 contractor, a notice stating that the owner:

24 (1) May contact the Board if assistance is needed to clarify
25 any of the provisions of the contract that the owner does not fully
26 understand; and

27 (2) Has the right to request a bond for payment and
28 performance if such a bond is not otherwise required pursuant to
29 NRS 624.270.

30 4. At the time the owner signs the contract, the contractor shall
31 furnish him a legible copy of all documents signed and a written and
32 signed receipt for any money paid to the contractor by the owner.
33 All written information provided in the contract must be printed in
34 at least 10-point bold type.

35 5. A condition, stipulation or provision in a contract ~~for other~~
36 ~~agreement~~ that requires a person to waive any right provided by
37 NRS 597.713 to 597.7198, inclusive, *and sections 2 and 3 of this*
38 *act* or relieves a person of an obligation or liability imposed by
39 those sections is void. Failure to comply with the requirements of
40 NRS 597.713 to 597.7198, inclusive, *and sections 2 and 3 of this*
41 *act* renders a contract void and unenforceable against the owner.

42 6. The contractor shall apply for and obtain all necessary
43 permits.



Sec. 8. NRS 597.7191 is hereby amended to read as follows:

597.7191 1. The Board shall adopt by regulation standards for advertisements used by contractors in connection with the ~~solicitation or~~ sale of contracts for ~~[the repair, restoration, improvement or construction of]~~ **work concerning** residential pools or spas.

2. The regulations adopted pursuant to subsection 1 must prohibit a contractor from employing "bait and switch" advertising or otherwise intentionally publishing, displaying or circulating any advertisement which is misleading or inaccurate in any material particular or which misrepresents any of the goods or services sold or furnished by the contractor to members of the public.

3. The Board shall, in adopting the standards required by subsection 1, give consideration to the provisions of chapter 598 of NRS relating to advertisements that constitute deceptive trade practices and, to the extent practicable, adopt standards that are at least as stringent as those provisions.

4. A contractor shall not cause to be published or display or circulate any advertisement that does not comply with the standards adopted by the Board pursuant to subsection 1.

5. As used in this section, "bait and switch" advertising has the meaning ascribed to it in NRS 482.351.

Sec. 9. NRS 597.7192 is hereby amended to read as follows:

597.7192 1. Except as otherwise provided in this section and NRS 597.7194, a contractor who ~~[engages in the repair, restoration, improvement or construction of]~~ **performs work concerning** a residential pool or spa shall not act as, or carry out the duties of, an officer, director, employee or owner of a bonding company, finance company, or any other corporation or business entity who cosigns, underwrites, obtains a deed of trust for, issues, sells, purchases or acquires a loan to finance ~~[the repair, restoration, improvement or construction of]~~ **work concerning** a residential pool or spa.

2. The provisions of this section do not prohibit a contractor from owning, holding or possessing, either directly or indirectly through a mutual fund or any other financial arrangement or investment plan, any stocks or other securities issued by a company, corporation or business entity described in subsection 1 if:

(a) The stocks or other securities are offered openly to the public through a securities exchange; and

(b) The contractor does not own, hold or possess a controlling interest in the company, corporation or business entity.

Sec. 10. NRS 597.7194 is hereby amended to read as follows:

597.7194 1. A contract for ~~[the repair, restoration, improvement or construction of]~~ **work concerning** a residential pool or spa ~~[, regardless of use,]~~ is not enforceable against the owner if



1 the obtaining of a loan for all or a portion of the contract price is a
2 condition precedent to the contract unless all of the following
3 requirements are satisfied:

4 (a) A third party agrees to make the loan or give the financing.

5 (b) The owner agrees to accept the loan or financing.

6 (c) The owner does not rescind the loan or financing transaction
7 within the period prescribed for rescission pursuant to the Truth in
8 Lending Act, 15 U.S.C. §§ 1601 et seq., or chapter 598 of NRS, if
9 applicable.

10 2. Unless and until all applicable requirements of subsection 1
11 are satisfied, a contractor shall not:

12 (a) Perform or deliver any work, labor, material or services; or

13 (b) Represent in any manner that the contract is enforceable or
14 that the owner has any obligation under the contract.

15 3. A contract for ~~[the repair, restoration, improvement or~~
16 ~~construction of]~~ **work concerning** a residential pool or spa ~~[;~~
17 ~~regardless of use,]~~ is not enforceable against the owner if the
18 contractor provides a loan or gives financing for all or a portion of
19 the contract price unless all of the following requirements are
20 satisfied:

21 (a) The owner agrees to accept the loan or financing.

22 (b) The owner does not rescind the loan or financing transaction
23 within the period prescribed for rescission pursuant to the Truth in
24 Lending Act, 15 U.S.C. §§ 1601 et seq., or chapter 598 of NRS, if
25 applicable.

26 4. Unless and until all applicable requirements of subsection 3
27 are satisfied, a contractor shall not:

28 (a) Perform or deliver any work, labor, material or services; or

29 (b) Represent in any manner that the contract is enforceable or
30 that the owner has any obligation under the contract.

31 5. A contract for ~~[the repair, restoration, improvement or~~
32 ~~construction of]~~ **work concerning** a residential pool or spa ~~[;~~
33 ~~regardless of use,]~~ is not enforceable against the owner if the
34 contractor receives from a third party, either directly or indirectly,
35 remuneration or any other thing of value for a loan to finance the
36 ~~[repair, restoration, improvement or construction]~~ **work** and that fact
37 is not disclosed in writing in the contract.

38 6. As used in this section, "third party" means a bonding
39 company, finance company, or any other corporation or business
40 entity who cosigns, underwrites, obtains a deed of trust for, issues,
41 sells, purchases or acquires a loan to finance ~~[the repair, restoration,~~
42 ~~improvement or construction of]~~ **work concerning** a residential pool
43 or spa.



Sec. 11. NRS 597.7196 is hereby amended to read as follows:

597.7196 1. If a contractor who ~~engages in the repair, restoration, improvement or construction of~~ **performs work concerning** a residential pool or spa is determined by the Board to have violated:

(a) One or more of the provisions of NRS 597.716, 597.719 **or section 2 of this act** or 624.301 to 624.305, inclusive; or

(b) Any regulation adopted by the Board with respect to contracts for ~~the repair, restoration, improvement or construction of~~ **work concerning** a residential pool or spa,

↳ the Board may require that the contractor obtain the services of a construction control for each contract that the contractor enters into for ~~the repair, restoration, improvement or construction of~~ **work concerning** a residential pool or spa.

2. The contractor may not:

(a) Be related to the construction control or to an employee or agent of the construction control; or

(b) Hold, directly or indirectly, a financial interest in the business of the construction control.

3. As used in this section, "construction control" has the meaning ascribed to it in NRS 627.050.

Sec. 12. NRS 597.7198 is hereby amended to read as follows:

597.7198 1. A violation of any provision of NRS 597.715 to 597.7196, inclusive, **or section 2 or 3 of this act** or any ~~regulations~~ **regulation** adopted **by the Board** with respect to contracts for ~~the repair, restoration, improvement or construction of~~ **work concerning** a residential pool or spa by a contractor constitutes cause for disciplinary action pursuant to NRS 624.300.

2. It is unlawful for a person to violate any provision of NRS 597.715 to 597.7196, inclusive ~~[-],~~ **or section 2 or 3 of this act.**

3. Any person who violates any provision of NRS 597.715 to 597.7196, inclusive ~~[-],~~ **or section 2 or 3 of this act:**

(a) For a first offense, is guilty of a misdemeanor and shall be punished by a fine of not more than \$1,000, and may be further punished by imprisonment in the county jail for not more than 6 months.

(b) For the second offense, is guilty of a gross misdemeanor and shall be punished by a fine of not less than \$2,000 nor more than \$4,000, and may be further punished by imprisonment in the county jail for not more than 1 year.

(c) For the third or subsequent offense, is guilty of a class E felony and shall be punished by a fine of not less than \$5,000 nor more than \$10,000 and may be further punished by imprisonment in the state prison for not less than 1 year and not more than 4 years.



1 4. The imposition of a penalty provided for in this section is
2 not precluded by any disciplinary action taken by the Board against
3 a contractor pursuant to the provisions of NRS 624.300 to 624.305,
4 inclusive.

5 **Sec. 13.** NRS 624.270 is hereby amended to read as follows:

6 624.270 1. Before issuing a contractor's license to any
7 applicant, the Board shall require that the applicant:

8 (a) File with the Board a surety bond in a form acceptable to the
9 Board executed by the contractor as principal with a corporation
10 authorized to transact surety business in the State of Nevada as
11 surety; or

12 (b) In lieu of such a bond, establish with the Board a cash
13 deposit as provided in this section.

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

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

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

43 5. After a licensee has acted in the capacity of a licensed
44 contractor in the State of Nevada for not less than 5 consecutive
45 years, the Board may relieve the licensee of the requirement of



1 filing a bond or establishing a cash deposit if evidence supporting
2 such relief is presented to the Board. The Board may at any time
3 thereafter require the licensee to file a new bond or establish a new
4 cash deposit as provided in subsection 4:

5 (a) If evidence is presented to the Board supporting this
6 requirement;

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

9 (c) Pursuant to subsection 7.

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

13 6. If the Board is notified by the Labor Commissioner pursuant
14 to NRS 607.165 or otherwise receives notification that three
15 substantiated claims for wages have been filed against a contractor
16 within a 2-year period, the Board shall require the contractor to file
17 a bond or establish a cash deposit in an amount fixed by the Board.
18 The contractor shall maintain the bond or cash deposit for the period
19 required by the Board.

20 7. If a contractor who ~~engages in the repair, restoration,~~
21 ~~improvement or construction of~~ *performs work concerning* a
22 residential pool or spa:

23 (a) ~~Becomes licensed pursuant to this chapter on or after July 1,~~
24 ~~2001;~~

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

27 ~~(c)~~ *(b)* Enters into a contract on or after July 1, 2001, that is
28 later found to be void and unenforceable against the owner pursuant
29 to subsection 5 of NRS 597.719 or pursuant to any regulation
30 adopted by the Board with respect to contracts for ~~the repair,~~
31 ~~restoration, improvement or construction of~~ *work concerning* a
32 residential pool or spa; or

33 ~~(d)~~ *(c)* Has five valid complaints filed against him with the
34 Board within any 15-day period,

35 ➔ the *Board may require the* contractor ~~shall~~ *to* comply with the
36 provisions of subsection 8.

37 8. ~~[A]~~ *If the Board requires a* contractor described in
38 subsection 7 *to comply with the provisions of this subsection, the*
39 *contractor* shall, before commencing work ~~for the repair,~~
40 ~~restoration, improvement or construction of~~ *concerning* a
41 residential pool or spa, obtain:

42 (a) A performance bond in an amount equal to not less than 50
43 percent of the amount of the contract, conditioned upon the faithful
44 performance of the contract in accordance with the plans,
45 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]~~ *Except as otherwise provided in this paragraph, 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. *In lieu of a performance or payment bond, the contractor may obtain an equivalent form of security approved by the Board.*

9. As used in this section, "substantiated claim for wages" has the meaning ascribed to it in NRS 607.165.

Sec. 13.5. NRS 624.275 is hereby amended to read as follows:

624.275 1. With respect to a surety bond that a licensed contractor maintains in accordance with NRS 624.270 ~~[A]~~ *or 624.276:*

(a) The surety shall give prompt notice to the Board of any claims paid against the bond of the licensed contractor.

(b) The surety may cancel the bond upon giving 60 days' notice to the Board and to the contractor by certified mail.

2. Upon receipt by the Board of the notice described in paragraph (a) of subsection 1, the Board shall immediately notify the contractor who is the principal on the bond that his license will be suspended or revoked unless he furnishes an equivalent bond or establishes an equivalent cash deposit before a date set by the Board.

3. Upon receipt by the Board of the notice described in paragraph (b) of subsection 1, the Board shall immediately notify the contractor who is the principal on the bond that his license will be suspended or revoked unless he furnishes an equivalent bond or establishes an equivalent cash deposit before the effective date of the cancellation.

4. The notice mailed to the contractor by the Board pursuant to subsection 2 or 3 must be addressed to his latest address of record in the office of the Board.

5. If the contractor does not comply with the requirements of the notice from the Board, his license must be suspended or revoked on the date:



(a) Set by the Board, if the notice was provided to the contractor pursuant to subsection 2; or

(b) The bond is cancelled, if the notice was provided to the contractor pursuant to subsection 3.

Sec. 14. NRS 624.276 is hereby amended to read as follows:

624.276 1. Before granting an original contractor's license to, or renewing the contractor's license of, an applicant who ~~engages~~ *performs* or will ~~engage in the repair, restoration, improvement or construction of~~ *perform work concerning* residential pools or spas, the Board ~~may~~ *shall*, in addition to any other conditions for the issuance or renewal of a license, require the applicant to ~~file~~ :

(a) *File* with the Board a bond *solely* for the protection of consumers in an amount fixed by the Board ~~it~~ ; or

(b) *In lieu of filing a bond, establish with the Board a cash deposit as provided in this section.*

2. A bond required pursuant to subsection 1 is in addition to, may not be combined with and does not replace any other bond required pursuant to the provisions of this chapter. A contractor required to file a bond pursuant to subsection 1 shall maintain the bond for ~~2~~ 5 years or for such longer period as the Board may require.

3. *After a contractor who performs work concerning a residential pool or spa 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 contractor of the requirements of subsection 1 if evidence supporting such relief is presented to the Board. The Board may at any time thereafter require the contractor to comply with subsection 1 if evidence is presented to the Board supporting this requirement.*

4. *If a licensee is relieved of the requirement of establishing a cash deposit pursuant to this section, the deposit may be withdrawn 2 years after such relief is granted, if there is no outstanding claim against it.*

5. *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.*

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 \$10,000 or more than \$400,000. 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.*



1 7. A bond required pursuant to subsection 1 must be provided
2 by a person whose long-term debt obligations are rated "A" or better
3 by a nationally recognized rating agency. *The Board may increase*
4 *or reduce the amount of any bond or cash deposit if evidence*
5 *supporting such a change in the amount is presented to the Board*
6 *at the time application is made for renewal of a license or at any*
7 *hearing conducted pursuant to NRS 624.2545 or 624.291.*

8 8. *Unless released earlier pursuant to subsection 3, any cash*
9 *deposit may be withdrawn 2 years after termination of the license*
10 *in connection with which it was established or 2 years after*
11 *completion of all work authorized by the Board after termination*
12 *of the license, whichever occurs later, if there is no outstanding*
13 *claim against it.*

14 9. *Each bond or deposit required pursuant to this section*
15 *must be in favor of the State of Nevada solely for the benefit of*
16 *any consumer who entered into a contract with the contractor to*
17 *perform work concerning a residential pool or spa and:*

18 (a) *Is damaged by failure of the contractor to perform the*
19 *contract or to remove liens filed against the property; or*

20 (b) *Is injured by any unlawful act or omission of the*
21 *contractor in the performance of a contract.*

22 10. *Any consumer claiming against the bond or deposit may*
23 *bring an action in a court of competent jurisdiction on the bond or*
24 *against the Board on the deposit for the amount of damage he has*
25 *suffered to the extent covered by the bond or deposit.*

26 11. *If an action is commenced on the bond, the surety that*
27 *executed the bond shall notify the Board of the action within 30*
28 *days after the date that:*

29 (a) *The surety is served with a complaint and summons; or*

30 (b) *The action is commenced,*

31 ↪ *whichever occurs first.*

32 12. *A claim or action pursuant to this section must proceed*
33 *and be administered in the manner provided pursuant to NRS*
34 *624.273 for a claim or action.*

35 13. *The Board shall adopt regulations necessary to carry out*
36 *the provisions of this section, including, without limitation,*
37 *regulations concerning:*

38 (a) *The determination of the amount of a bond pursuant to*
39 *this section;*

40 (b) *The form of bond required pursuant to this section;*

41 (c) *The time within which an applicant or licensee must*
42 *comply with the provisions of this section; and*

43 (d) *Procedures to contest the amount of a bond required*
44 *pursuant to this section.*



1 **14. The Board shall immediately suspend the license of a**
2 **contractor who fails to post the bond or provide the deposit**
3 **required pursuant to this section. Failure by a licensee for 6**
4 **months to post the bond or provide the deposit required pursuant**
5 **to this section constitutes grounds for disciplinary action.**

6 **15. As used in this section:**

7 **(a) "Consumer" means a natural person who:**

8 **(1) Owns a single-family residence; and**

9 **(2) Enters into a contract with a licensee to perform work**
10 **concerning a residential pool or spa.**

11 **(b) "Work concerning a residential pool or spa" has the**
12 **meaning ascribed to it in NRS 597.713.**

13 **Sec. 15.** NRS 624.3016 is hereby amended to read as follows:

14 624.3016 The following acts or omissions, among others,
15 constitute cause for disciplinary action under NRS 624.300:

16 1. Any fraudulent or deceitful act committed in the capacity of
17 a contractor, including, without limitation, misrepresentation or the
18 omission of a material fact.

19 2. A conviction of a violation of NRS 624.730, a felony
20 relating to the practice of a contractor or a crime involving moral
21 turpitude.

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

25 4. Failure to give a notice required by NRS 108.227, 108.245
26 or 108.246.

27 5. Failure to comply with NRS 597.715, 597.716 or 597.719 **or**
28 **section 2 of this act** or any regulations of the Board governing
29 contracts for ~~the construction of~~ **work concerning** residential pools
30 and spas.

31 6. Failure to comply with NRS 624.600.

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

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

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

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

42 **Sec. 16.** This act becomes effective:

43 1. Upon passage and approval for the purpose of adopting
44 regulations and performing any other preparatory administrative
45 tasks that are necessary to carry out the provisions of this act; and



- 1
2. On July 1, 2005, for all other purposes.

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