

ASSEMBLY BILL NO. 511—COMMITTEE ON COMMERCE AND LABOR

MARCH 23, 2007

Referred to Committee on Commerce and Labor

SUMMARY—Makes certain changes regarding contractors.
(BDR 54-1398)

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; providing that certain types of provisions must be voided and made unenforceable in certain contractor agreements; providing that certain provisions relating to contractor agreements apply to all such agreements, including, without limitation, those contractor agreements entered into before the enactment of those provisions; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 In agreements between an owner and a prime contractor, existing law provides
2 for the voiding and unenforceability of certain provisions in those agreements
3 because they are against public policy. (NRS 624.622) **Section 1** of this bill adds a
4 new type of provision which must be voided and made unenforceable. That type of
5 provision is one which, under certain circumstances, requires a prime contractor to
6 hold harmless or indemnify an owner. **Section 1** also requires that these provisions
7 apply to all specified agreements, including, without limitation, agreements entered
8 into before the enactment of the statute in 2001. **Section 2** of this bill makes similar
9 revisions to the statutes governing agreements between a higher-tiered contractor
10 and a lower-tiered contractor.

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

1 **Section 1.** NRS 624.622 is hereby amended to read as follows:
2 624.622 1. A prime contractor shall provide a copy of any
3 notice given to an owner pursuant to subsection 1 or 2 of NRS
4 624.610 to each lower-tiered subcontractor with whom the prime



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1 contractor has entered into an agreement. Upon receipt of payment
2 pursuant to NRS 624.609, the prime contractor shall notify all such
3 lower-tiered subcontractors in writing of his receipt of payment.

4 2. A condition, stipulation or provision in an agreement ,
5 *including, without limitation, an agreement entered into before the*
6 *date of enactment of this section*, which:

7 (a) Requires a prime contractor to waive any rights provided in
8 this section, NRS 624.609, 624.610, 624.620 or 624.630, or which
9 limits those rights;

10 (b) Relieves an owner of any obligation or liability imposed
11 pursuant to NRS 624.606 to 624.630, inclusive; ~~for~~

12 (c) Requires a prime contractor to waive, release or extinguish a
13 claim or right for damages or an extension of time that the prime
14 contractor may otherwise possess or acquire as a result of delay,
15 acceleration, disruption or an impact event that is unreasonable
16 under the circumstances, that was not within the contemplation of
17 the parties at the time the agreement was entered into, or for which
18 the prime contractor is not responsible ~~H~~; or

19 *(d) Requires a prime contractor to hold harmless or to*
20 *indemnify, including, without limitation, to indemnify the costs to*
21 *defend against claims of liability, the owner against claims of*
22 *liability:*

23 *(1) For damages for death or bodily injury to persons, for*
24 *injury to property, or for any other loss, damage or expense*
25 *arising from the negligence or willful misconduct of:*

26 *(I) The owner; or*

27 *(II) Other persons who are directly responsible to the*
28 *owner, including, without limitation, persons who are the owner's*
29 *other agents, servants or independent contractors; or*

30 *(2) For defects in workmanship, materials, equipment or*
31 *design furnished by:*

32 *(I) The owner; or*

33 *(II) Other persons who are directly responsible to the*
34 *owner, including, without limitation, persons who are the owner's*
35 *other agents, servants or independent contractors;*

36 ➤ is against public policy and is void and unenforceable.

37 3. All notices required pursuant to this section, NRS 624.609,
38 624.610 and 624.620 must be:

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

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

45 (c) Delivered by certified mail; or



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1 (d) Delivered in the manner provided for in the agreement.
2 4. This section, NRS 624.609, 624.610 and 624.620 do not
3 apply to an agreement between:

4 (a) A prime contractor and a natural person who owns a single-
5 family residence for the performance of qualified services with
6 respect to the residence; or

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

9 5. Within 5 days after an owner receives a written request for
10 the information set forth in paragraphs (a), (b) and (c) from a lower-
11 tiered subcontractor, the owner shall notify the lower-tiered
12 subcontractor in writing of the following:

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

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

17 (c) The amount withheld by the owner from a specified payment
18 to the prime contractor and the condition or reason for the
19 withholding.

20 **Sec. 2.** NRS 624.628 is hereby amended to read as follows:

21 624.628 1. A lower-tiered subcontractor shall provide a copy
22 of any notice given to a higher-tiered contractor pursuant to this
23 section or NRS 624.624 or 624.626 to each lower-tiered
24 subcontractor with whom the lower-tiered subcontractor has entered
25 into an agreement and who has not fully performed under the
26 agreement. Upon receipt of payment pursuant to NRS 624.624, the
27 lower-tiered subcontractor shall notify all of his lower-tiered
28 subcontractors in writing of his receipt of payment.

29 2. A lower-tiered subcontractor shall provide a copy of any
30 notice given to a higher-tiered contractor pursuant to this section or
31 NRS 624.624 or 624.626 to all other higher-tiered contractors and
32 the owner, if known. The failure of a lower-tiered subcontractor to
33 comply with this subsection does not invalidate any notice otherwise
34 properly given.

35 3. A condition, stipulation or provision in an agreement ,
36 *including, without limitation, an agreement entered into before the*
37 *date of enactment of this section,* which:

38 (a) Requires a lower-tiered subcontractor to waive any rights
39 provided in this section or NRS 624.624, 624.626 or 624.630 or
40 which limits those rights;

41 (b) Relieves a higher-tiered contractor of any obligation or
42 liability imposed pursuant to this section, NRS 624.624, 624.626 or
43 624.630; ~~for~~

44 (c) Requires a lower-tiered subcontractor to waive, release or
45 extinguish a claim or right for damages or an extension of time that



1 the lower-tiered subcontractor may otherwise possess or acquire as a
2 result of delay, acceleration, disruption or an impact event that is
3 unreasonable under the circumstances, that was not within the
4 contemplation of the parties at the time the agreement was entered
5 into, or for which the lower-tiered subcontractor is not responsible
6 **H**; or

7 *(d) Requires a lower-tiered contractor to hold harmless or to*
8 *indemnify, including, without limitation, to indemnify for the costs*
9 *to defend against claims of liability, a higher-tiered contractor or*
10 *the owner or both against claims of liability:*

11 *(1) For damages for death or bodily injury to persons, for*
12 *injury to property, or for any other loss, damage or expense*
13 *arising from the negligence or willful misconduct of:*

14 *(I) The higher-tiered contractor;*

15 *(II) The owner; or*

16 *(III) Other persons who are directly responsible to either*
17 *the higher-tiered contractor or the owner or both, including,*
18 *without limitation, persons who are the owner's other agents,*
19 *servants, independent contractors or subcontractors;*

20 *(2) For defects in the workmanship, materials, equipment*
21 *or design furnished by:*

22 *(I) The higher-tiered contractor;*

23 *(II) The owner; or*

24 *(III) Other persons who are directly responsible to either*
25 *the higher-tiered contractor or the owner or both, including,*
26 *without limitation, persons who are the owner's other agents,*
27 *servants, independent contractors or subcontractors; or*

28 *(3) That do not arise out of, pertain to or relate to the scope*
29 *of work in the written agreement between the lower-tiered*
30 *subcontractor and the higher-tiered contractor or the owner or*
31 *both;*

32 **↳** is against public policy and is void and unenforceable.

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

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

38 (b) Sent by facsimile and delivered by regular mail, in which
39 case the lower-tiered subcontractor shall retain proof of a successful
40 transmission of the facsimile;

41 (c) Delivered by certified mail; or

42 (d) Delivered in the manner provided in the agreement between
43 the higher-tiered contractor and the lower-tiered subcontractor.

44 5. Within 5 days after the owner or any higher-tiered contractor
45 receives a written request for the information set forth in paragraphs



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- 1 (a), (b) and (c) from a lower-tiered subcontractor with respect to an
2 agreement that has not been fully performed, the owner or higher-
3 tiered contractor shall notify the lower-tiered subcontractor in
4 writing of the following:
- 5 (a) The date the owner or higher-tiered contractor made a
6 specified payment to the prime contractor or lower-tiered
7 subcontractor;
- 8 (b) Whether the owner or higher-tiered contractor has paid the
9 prime contractor or lower-tiered subcontractor the entire amount of
10 a specified payment; and
- 11 (c) The amount withheld by the owner or higher-tiered
12 contractor of a specified payment to his prime contractor or lower-
13 tiered subcontractor and the condition or reason for the withholding.

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