

SENATE BILL NO. 181—SENATOR CARLTON (BY REQUEST)

FEBRUARY 28, 2007

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions governing certain construction contracts. (BDR 54-270)

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

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to contractors; revising provisions governing the withholding and payment of retention amounts and the processing of change orders under certain construction contracts; providing that certain indemnification provisions in such contracts are void and unenforceable; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Existing law governs certain construction contracts between owners of property
2 and prime contractors, and between higher-tiered contractors and lower-tiered
3 subcontractors. (NRS 624.609-624.628) **Sections 1 and 4** of this bill specify when
4 payments of any retention amount withheld under such a contract must be made.
5 **Sections 3 and 6** of this bill provide that a provision in such a contract that requires
6 a prime contractor or lower-tiered subcontractor to indemnify, respectively, an
7 owner or higher-tiered contractor against certain damages, losses and expenses is
8 against public policy and is void and unenforceable.

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

1 **Section 1.** NRS 624.609 is hereby amended to read as follows:
2 624.609 1. Except as otherwise provided in ~~subsections 2~~
3 ~~and 4~~ *this section* and subsection 4 of NRS 624.622, if an owner of
4 real property enters into a written or oral agreement with a prime



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1 contractor for the performance of work or the provision of materials
2 or equipment by the prime contractor, the owner ~~[must:]~~ *shall*:

3 (a) Pay the prime contractor on or before the date a payment is
4 due pursuant to a schedule for payments established in a written
5 agreement; or

6 (b) If no such schedule is established or if the agreement is oral,
7 pay the prime contractor within 21 days after the date the prime
8 contractor submits a request for payment.

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

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

12 (1) A retention amount ~~[that, if the]~~ *if*:

13 (I) *The* owner is authorized to withhold ~~[a retention]~~ *that*
14 amount pursuant to the *terms of the* agreement ~~[, must:]~~ *; and*

15 (II) *The retention amount does* not exceed 10 percent of
16 the amount of the payment to be made ~~[:]~~ *to the prime contractor;*

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

18 (I) Any work or labor that has not been performed or
19 materials or equipment that has not been furnished for which
20 payment is being sought, unless the agreement otherwise allows or
21 requires such a payment to be made; and

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

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

33 (b) Require as a condition precedent to the payment of any
34 amount due, lien releases furnished by the prime contractor and his
35 lower-tiered subcontractors and suppliers in accordance with the
36 provisions of paragraphs (a) and (c) of subsection ~~[4]~~ *5* of
37 NRS 108.2457.

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

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



(b) Give a reasonably detailed explanation of the condition or the reason the owner will withhold that amount, including, without limitation, a specific reference to the provision or section of the 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 or a notice of objection pursuant to subparagraph (2) of paragraph (b) may:

(a) Give the owner a written notice and thereby dispute in good faith and for reasonable cause the amount withheld, or the condition or reason for the withholding; or

(b) Correct any condition or reason for the withholding described in the notice of withholding and thereafter provide written notice to the owner of the correction of 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 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 paragraph, the owner shall:

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

(2) 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 condition or 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 the payment to be made pursuant to the prime contractor's next payment request, the amount withheld for the correction of the condition or reason for the withholding to which the owner no longer objects.

5. Except as otherwise allowed in subsections 2, 3 and 4, an owner shall not withhold from a payment to be made to a prime contractor more than the retention amount.

6. If an owner withholds from payments to be made to a prime contractor a retention amount or any other amount with respect to the performance of work or the provision of materials or equipment by a lower-tiered subcontractor, the owner shall pay all such amounts withheld over the course of the work of



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improvement to the prime contractor when the lower-tiered subcontractor has completed his performance of the work or provision of materials or equipment and the work, materials or equipment is no longer required to be accessible or exposed for inspection by a building official.

Sec. 2. NRS 624.610 is hereby amended to read as follows:

624.610 1. If:

(a) An owner fails to pay the prime contractor in the time and manner required by subsection 1, 4 or ~~4~~ 6 of NRS 624.609;

(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) After receipt of a notice of withholding given pursuant to subsection 3 or 4 of NRS 624.609, the prime contractor gives the owner written notice pursuant to subsection 4 of NRS 624.609 and thereby disputes in good faith and for reasonable cause the amount withheld or the condition or reason for the withholding; or

(d) Within 30 days after the date that a written 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 or does not contain sufficient information to make a determination, give written notice to the prime contractor of the reasons why the change order is unreasonable or explain that additional information and time are necessary to make a determination,

→ 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 paragraph (a), (b) or (c) of subsection 1, the prime contractor may terminate the agreement by giving written notice of termination to the owner after stopping work but at least 15 days before terminating the agreement. If the prime contractor is paid the amount due before the date for termination of the agreement set forth in the written notice, the prime contractor shall not terminate the agreement and shall resume his work.

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;



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(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 agreement if:

(a) The prime contractor gives written notice of his intent to terminate to the owner at least 10 days before terminating the 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).

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

6. If the agreement is terminated pursuant to subsection 4, or if the prime contractor stops work in accordance with this section and the agreement is terminated pursuant to subsection 1 or 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 overhead the prime contractor and his lower-tiered subcontractors and suppliers incurred and profit the prime contractor and his lower-tiered subcontractors and suppliers earned 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 agreement had been performed in full;

(c) Interest 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.

➔ 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 and his lower-tiered subcontractors and suppliers or, if the trier of fact determines that the prime contractor stopped work or terminated the agreement without a reasonable



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basis in law or fact, the trier of fact may award reasonable attorney's fees and costs, including court and arbitration costs, to the owner.

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

8. The right of a prime contractor to stop work or terminate 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 agreement with the owner to arbitration.

9. No prime contractor or his lower-tiered subcontractors or suppliers, 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 or lower-tiered subcontractors or suppliers stopping their work or the provision of materials or equipment or terminating an agreement for a reasonable basis in law or fact and in accordance with this section or reasonable cause and in accordance with this section or NRS 624.626.

Sec. 3. 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 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 an agreement which:

(a) Requires a prime contractor to waive any rights provided in this section, NRS 624.609, 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; ~~for~~

(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 ~~for~~; or

(d) Requires a prime contractor to indemnify or hold harmless an owner against liability for damages for death or bodily injury to



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1 *persons, injury to property or any other loss, damage or expense*
2 *arising from the negligence or willful misconduct of the owner,*
3 *his agent or servant or any independent contractor who is*
4 *directly responsible to the owner, or for defects in any*
5 *workmanship, material, equipment or design furnished by such*
6 *persons,*

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

8 3. All notices required pursuant to this section, NRS 624.609,
9 624.610 and 624.620 must be:

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

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

16 (c) Delivered by certified mail; or

17 (d) Delivered in the manner provided for in the agreement.

18 4. This section, NRS 624.609, 624.610 and 624.620 do not
19 apply to an agreement between:

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

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

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

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

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

33 (c) The amount withheld by the owner from a specified payment
34 to the prime contractor and the condition or reason for the
35 withholding.

36 **Sec. 4.** NRS 624.624 is hereby amended to read as follows:

37 624.624 1. Except as otherwise provided in this section, if a
38 higher-tiered contractor enters into:

39 (a) A written agreement with a lower-tiered subcontractor that
40 includes a schedule for payments, the higher-tiered contractor shall
41 pay the lower-tiered subcontractor:

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

43 (2) Within 10 days after the date the higher-tiered contractor
44 receives payment for all or a portion of the work, materials or



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equipment described in a request for payment submitted by the lower-tiered subcontractor,

↳ whichever is earlier.

(b) A written agreement with a lower-tiered subcontractor that does not contain a schedule for payments, or an agreement that is oral, the higher-tiered contractor 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 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 has complied with subsection 3, the higher-tiered contractor may:

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

(1) A retention amount ~~that the~~ if:

(I) *The* higher-tiered contractor is authorized to withhold *that amount* pursuant to the *terms of the* agreement ~~[-, but the]~~; and

(II) *The* retention amount ~~{withheld—must}~~ *does* 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, unless the agreement otherwise allows or requires such a payment to be made; 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 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 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 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 in accordance with the provisions of paragraphs (a) and (c) of subsection ~~4~~ 5 of NRS 108.2457.



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3. If, pursuant to subparagraph (2) or (3) of paragraph (a) of subsection 2 or paragraph (b) of subsection 2, a higher-tiered contractor intends to withhold any amount from a payment to be made to a lower-tiered subcontractor, the higher-tiered contractor 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 contractors and the owner. The written notice of withholding 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 condition or the reason the higher-tiered contractor will withhold that amount, including, without limitation, a specific reference to the provision or section of the 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.

4. A lower-tiered subcontractor who receives a notice of withholding pursuant to subsection 3 or a notice of objection pursuant to subparagraph (2) of paragraph (b) may:

(a) Give the higher-tiered contractor a written notice and thereby dispute in good faith and for reasonable cause the amount withheld or the conditions or reasons for the withholding; or

(b) Correct any condition or reason for the withholding described in the notice of withholding and thereafter provide written notice to the higher-tiered contractor of the correction of 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 receives a written notice from the lower-tiered subcontractor of the correction of a condition or reason for the withholding pursuant to this paragraph, the higher-tiered contractor shall:

(1) Pay the amount withheld by the higher-tiered contractor for that condition or reason for the withholding on or before the date the next payment is due the lower-tiered subcontractor; or

(2) 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 condition or reason for the objection and which complies with subsection 3. If the higher-tiered contractor objects to the scope and manner of the correction of a



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condition or reason for the withholding, he shall nevertheless pay to the lower-tiered subcontractor, along with payment to be made pursuant to the lower-tiered subcontractor's next payment request, the amount withheld for the correction of the conditions or reasons for the withholding to which the higher-tiered contractor no longer objects.

5. Except as otherwise allowed in subsections 2, 3 and 4, a higher-tiered contractor shall not withhold from a payment to be made to a lower-tiered subcontractor more than the retention amount.

6. If a higher-tiered contractor withholds from payments to be made to a lower-tiered subcontractor a retention amount or any other amount, the higher-tiered contractor shall pay all such amounts withheld over the course of the work of improvement to the lower-tiered subcontractor on or before the date payment of the retention amount is due under the agreement, or within 10 days after the date the higher-tiered contractor receives payment for all or a portion of the retention amount or other amount withheld from the lower-tiered subcontractor, whichever is earlier.

Sec. 5. NRS 624.626 is hereby amended to read as follows:

624.626 1. If:

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

(b) A higher-tiered contractor fails to pay the lower-tiered subcontractor within 45 days after the 25th day of the month in which the lower-tiered subcontractor submits a request for payment, even if the higher-tiered contractor has not been paid and the agreement contains a provision which requires the higher-tiered contractor to pay the lower-tiered subcontractor only if or when the higher-tiered contractor is paid;

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

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

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

(1) Issue the change order; or



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(2) If the request for a change order is unreasonable ~~§~~ *or does not contain sufficient information*, give written notice to the lower-tiered subcontractor of the reasons why the change order is unreasonable ~~§~~ *or does not contain sufficient information*, ➡ the lower-tiered subcontractor may stop work under the agreement until payment is received if the lower-tiered subcontractor gives written notice to the higher-tiered contractor at least 10 days before stopping work.

2. If a lower-tiered subcontractor stops work pursuant to paragraph (a), (c) or (d) of subsection 1, the lower-tiered subcontractor may terminate the agreement with the higher-tiered contractor by giving written notice of the termination to the higher-tiered contractor after stopping work but at least 15 days before the termination of the agreement. If the lower-tiered subcontractor is paid the amount due before the date for termination set forth in the written notice, the lower-tiered subcontractor shall not terminate the agreement and shall resume his work.

3. If a higher-tiered contractor fails to issue a change order or fails to give written notice pursuant to paragraph (e) 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 lower-tiered subcontractor may submit to the higher-tiered contractor 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 higher-tiered contractor shall pay the lower-tiered subcontractor for such labor, materials, equipment or services with the next payment made to the lower-tiered subcontractor.

4. If an owner or higher-tiered contractor 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 in work schedules, causes the work to be stopped for a period of 15 days or more, the lower-tiered subcontractor may terminate the agreement if:

(a) The lower-tiered subcontractor gives written notice of his intent to terminate to the higher-tiered contractor at least 10 days before terminating the agreement; and

(b) The higher-tiered contractor fails to allow the lower-tiered subcontractor to resume the work within the time set forth in the written notice given pursuant to paragraph (a).

5. If a lower-tiered subcontractor stops work pursuant to paragraph (a), (c) or (d) of subsection 1, the higher-tiered contractor may terminate the agreement by giving the lower-tiered



1 subcontractor written notice of his intent to terminate at least 15
2 days before terminating the agreement.

3 6. If the agreement is terminated pursuant to subsection 4, or if
4 the lower-tiered subcontractor stops work in accordance with this
5 section and the agreement is terminated pursuant to subsection 2 or
6 5, the lower-tiered subcontractor is entitled to recover from the
7 higher-tiered contractor with whom he has entered into an
8 agreement the amount found by a trier of fact to be due the lower-
9 tiered subcontractor, including, without limitation:

10 (a) The cost of all work, labor, materials, equipment and
11 services furnished by and through the lower-tiered subcontractor,
12 including any overhead the lower-tiered subcontractor and his
13 lower-tiered subcontractors and suppliers incurred and profit the
14 lower-tiered subcontractor and his lower-tiered subcontractors and
15 suppliers earned through the date of termination;

16 (b) The balance of the profit that the lower-tiered subcontractor
17 and his lower-tiered subcontractors and suppliers would have
18 received if the agreement had been performed in full;

19 (c) Interest determined pursuant to NRS 624.630; and

20 (d) The reasonable costs, including court costs and arbitration
21 costs, incurred by the lower-tiered subcontractor and his lower-
22 tiered subcontractors in collecting the amount due.

23 ➤ In any action brought to enforce the rights or obligations set forth
24 in this subsection, the trier of fact may award reasonable attorney's
25 fees to the lower-tiered subcontractor and his lower-tiered
26 subcontractors and suppliers or, if the trier of fact determines that
27 the lower-tiered subcontractor stopped work or terminated the
28 agreement without a reasonable basis in law or fact, the trier of fact
29 may award reasonable attorney's fees and costs, including court
30 costs and arbitration costs, to the higher-tiered contractor.

31 7. If a lower-tiered subcontractor stops work pursuant to this
32 section, each lower-tiered subcontractor with whom the lower-tiered
33 subcontractor has entered into an agreement and who has not fully
34 performed under the agreement may also stop work on the work of
35 improvement. If a lower-tiered subcontractor terminates an
36 agreement pursuant to this section, all of his lower-tiered
37 subcontractors may terminate their agreements with the lower-tiered
38 subcontractor.

39 8. The right of a lower-tiered subcontractor to stop work or
40 terminate an agreement pursuant to this section is in addition to all
41 other rights that the lower-tiered subcontractor may have at law or in
42 equity and does not impair or affect the right of a lower-tiered
43 subcontractor to maintain a civil action or to submit any controversy
44 arising under the agreement to arbitration.



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9. No lower-tiered subcontractor or his lower-tiered subcontractors or suppliers, or their respective sureties, may be held liable for any delays or damages that an owner or higher-tiered contractor may suffer as a result of the lower-tiered subcontractor and his lower-tiered subcontractors and suppliers stopping their work or the provision of materials or equipment or terminating an agreement for a reasonable basis in law or fact and in accordance with this section.

Sec. 6. NRS 624.628 is hereby amended to read as follows:

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

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

3. A condition, stipulation or provision in an agreement which:

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

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

(c) Requires a lower-tiered subcontractor to waive, release or extinguish a claim or right for damages or an extension of time that the lower-tiered subcontractor 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 lower-tiered subcontractor is not responsible ~~or~~; or

(d) Requires a lower-tiered subcontractor to indemnify or hold harmless a higher-tiered contractor or owner against liability for damages for death or bodily injury to persons, injury to property or any other loss, damage or expense arising from the negligence or willful misconduct of the higher-tiered contractor or owner, the agent or servant of the higher-tiered contractor or owner or any independent contractor or subcontractor who is directly



1 *responsible to the higher-tiered contractor or owner, or for defects*
2 *in any workmanship, material, equipment or design furnished by*
3 *such persons,*

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

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

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

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

13 (c) Delivered by certified mail; or

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

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

22 (a) The date the owner or higher-tiered contractor made a
23 specified payment to the prime contractor or lower-tiered
24 subcontractor;

25 (b) Whether the owner or higher-tiered contractor has paid the
26 prime contractor or lower-tiered subcontractor the entire amount of
27 a specified payment; and

28 (c) The amount withheld by the owner or higher-tiered
29 contractor of a specified payment to his prime contractor or lower-
30 tiered subcontractor and the condition or reason for the withholding.

31 **Sec. 7.** This act becomes effective on July 1, 2007.

