

SENATE BILL NO. 309—SENATOR CEGAVSKE

MARCH 19, 2007

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions concerning agreements between owners of real estate and contractors. (BDR 54-993)

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; amending limitations on the authority of a real estate owner or a contractor to withhold certain payments from a contractor or a subcontractor; amending provisions requiring written notice needed before a contractor or subcontractor may stop work on an improvement to real estate; declaring void and unenforceable certain agreements between real estate owners and contractors or between contractors and subcontractors that limit liability; prohibiting a real estate owner or a contractor from impairing or obtaining a waiver of certain statutory rights granted to contractors and subcontractors; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides grounds and procedures for an owner of real estate to withhold certain amounts from payment to a prime contractor and for a higher-tiered contractor to withhold certain amounts from payment to a lower-tiered subcontractor. (NRS 624.609, 624.620, 624.624) **Sections 2, 4 and 6** of this bill revise those provisions and provide deadlines after the completion of work by which previously withheld payments must be made.

Existing law provides grounds and procedures for a prime contractor or a subcontractor to stop work on a project of improvement to real estate. (NRS 624.610, 624.626) **Sections 3 and 7** of this bill amend requirements for notice that must be given to a prime contractor or subcontractor before the prime contractor or subcontractor may stop work.

Existing law prohibits certain provisions in agreements between an owner of real estate and a prime contractor and between a higher-tiered contractor and lower-tiered subcontractor. (NRS 624.622, 624.628) **Sections 5 and 8** of this bill declare



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15 void and unenforceable such agreements that limit liability for death or bodily
16 injury, property damage, or any other loss, damage or expense arising from any act,
17 omission, negligence or misconduct. **Sections 5 and 8** also prohibit an owner of
18 real estate and a prime contractor from impairing or obtaining a waiver of statutory
19 rights granted to prime contractors and subcontractors.

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

1 **Section 1.** NRS 624.6084 is hereby amended to read as
2 follows:

3 624.6084 1. "Owner" means an owner or lessee of real
4 property or any improvement who enters into an oral or written
5 agreement with a prime contractor pursuant to which the prime
6 contractor agrees to provide work, materials or equipment for a
7 work of improvement.

8 2. The term includes, without limitation ~~[-, and]~~ :

9 (a) *An* owner of a planned unit development who enters into one
10 or more oral or written agreements to construct a work of
11 improvement in the planned unit development in the manner
12 described in subsection 5 of NRS 624.020 ~~[-]~~ ; *and*

13 (b) *An agent or affiliated person of an owner or lessee of real*
14 *property who has charge or control of the real property or any*
15 *improvement to the real property.*

16 **Sec. 2.** NRS 624.609 is hereby amended to read as follows:

17 624.609 1. Except as otherwise provided in subsections 2 and
18 4 and subsection 4 of NRS 624.622, if an owner ~~[of real property]~~
19 enters into a written or oral agreement with a prime contractor for
20 the performance of work or the provision of materials or equipment
21 by the prime contractor, the owner must:

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

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

28 2. If an owner has complied with subsection 3, *and subject to*
29 *the provisions of subsections 6 and 7*, the owner may:

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

32 (1) A retention amount ; ~~[-that, if the owner is authorized to~~
33 ~~withhold a retention amount pursuant to the agreement, must not~~
34 ~~exceed 10 percent of the amount of the payment to be made;]~~

35 (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 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 in accordance with the provisions of paragraphs (a) and (c) of subsection ~~4~~ 5 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 of withholding 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 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



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1 identify the scope and manner of the correction of the condition or
2 reason for the withholding and be signed by an authorized
3 representative of the prime contractor. If an owner receives a written
4 notice from the prime contractor of the correction of a condition or
5 reason for the withholding pursuant to this paragraph, the owner
6 shall:

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

10 (2) Object to the scope and manner of the correction of the
11 condition or reason for the withholding, on or before the date the
12 next payment is due to the prime contractor, in a written statement
13 which sets forth the condition or reason for the objection and which
14 complies with subsection 3. If the owner objects to the scope and
15 manner of the correction of a condition or reason for the
16 withholding, he shall nevertheless pay to the prime contractor, along
17 with the payment to be made pursuant to the prime contractor's next
18 payment request, the amount withheld for the correction of the
19 condition or reason for the withholding to which the owner no
20 longer objects.

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

24 *6. An owner shall not withhold a retention amount pursuant*
25 *to subsection 2 unless the owner is authorized to withhold the*
26 *retention amount pursuant to the terms of the agreement with the*
27 *prime contractor.*

28 *7. A retention amount withheld pursuant to subsection 2:*

29 *(a) Must not exceed 10 percent of the amount of the payment*
30 *to be made to the prime contractor pursuant to subsection 1; and*

31 *(b) Must be paid, along with any other amounts that the owner*
32 *has withheld from payments made to the prime contractor over the*
33 *course of the work of improvement with respect to the*
34 *performance of work or the provision of materials or equipment by*
35 *a particular lower-tiered subcontractor, to the prime contractor*
36 *when the lower-tiered subcontractor has completed the*
37 *performance of work or the provision of materials or equipment.*

38 **Sec. 3.** NRS 624.610 is hereby amended to read as follows:

39 624.610 1. If:

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

42 (b) An owner fails to give the prime contractor written notice of
43 any withholding in the time and manner required by subsection 3 or
44 4 of NRS 624.609;



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(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~~ *written notice that specifically identifies* the reasons why the change order is unreasonable or ~~explain~~ *that explains* that additional information and time are necessary to make a determination ~~and~~ *and specifically identifies the additional information and time necessary for such 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;

(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:



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1 (a) The prime contractor gives written notice of his intent to
2 terminate to the owner at least 10 days before terminating the
3 agreement; and

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

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

10 6. If the agreement is terminated pursuant to subsection 4, or if
11 the prime contractor stops work in accordance with this section and
12 the agreement is terminated pursuant to subsection 1 or 5, the prime
13 contractor is entitled to recover from the owner payment in an
14 amount found by a trier of fact to be due the prime contractor,
15 including, without limitation:

16 (a) The cost of all work, labor, materials, equipment and
17 services furnished by and through the prime contractor, including
18 any overhead the prime contractor and his lower-tiered
19 subcontractors and suppliers incurred and profit the prime contractor
20 and his lower-tiered subcontractors and suppliers earned through the
21 date of termination;

22 (b) The balance of the profit that the prime contractor and his
23 lower-tiered subcontractors and suppliers would have received if the
24 agreement had been performed in full;

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

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

29 ➤ In any action brought to enforce the rights or obligations set forth
30 in this subsection, the trier of fact may award reasonable attorney's
31 fees to the prime contractor and his lower-tiered subcontractors and
32 suppliers or, if the trier of fact determines that the prime contractor
33 stopped work or terminated the agreement without a reasonable
34 basis in law or fact, the trier of fact may award reasonable attorney's
35 fees and costs, including court and arbitration costs, to the owner.

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

43 8. The right of a prime contractor to stop work or terminate an
44 agreement pursuant to this section is in addition to all other rights
45 that the prime contractor may have at law or in equity and does not



1 impair or affect the right of a prime contractor to maintain a civil
2 action or to submit any controversy arising under the agreement
3 with the owner to arbitration.

4 9. No prime contractor or his lower-tiered subcontractors or
5 suppliers, or their respective sureties, may be held liable for any
6 delays or damages that an owner may suffer as a result of the prime
7 contractor or lower-tiered subcontractors or suppliers stopping their
8 work or the provision of materials or equipment or terminating an
9 agreement for a reasonable basis in law or fact and in accordance
10 with this section or reasonable cause and in accordance with this
11 section or NRS 624.626.

12 **Sec. 4.** NRS 624.620 is hereby amended to read as follows:

13 624.620 1. Except as otherwise provided in this section, any
14 money remaining unpaid for the construction of a work of
15 improvement is payable to the prime contractor within 30 days after:

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

18 (b) The availability of a work of improvement for its intended
19 use. The prime contractor must have provided to the owner ~~the~~
20 *whichever of the following is available earlier:*

21 (1) A written notice of availability on or before the day on
22 which he claims that the work of improvement became available for
23 use or occupancy; or

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

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

27 (a) Withhold payment for the amount of:

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

31 (2) The costs and expenses reasonably necessary to correct or
32 repair any work that is not materially in compliance with the
33 agreement ~~[to the extent that such costs and expenses exceed 50~~
34 ~~percent of the amount of retention being withheld pursuant to the~~
35 ~~terms of the agreement;], but the amount of the withholding must~~
36 *not exceed 10 percent of the total amount of the agreement*
37 *between the parties, with the balance to be paid to the prime*
38 *contractor; and*

39 (3) Money the owner has paid or is required to pay pursuant
40 to an official notice from a state agency, or employee benefit trust
41 fund, for which the owner is liable for the prime contractor or his
42 lower-tiered subcontractors in accordance with chapter 608, 612,
43 616A to 616D, inclusive, or 617 of NRS.

44 (b) Require, as a condition precedent to the payment of any
45 unpaid amount under the agreement, that lien releases be furnished



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1 by the prime contractor and his lower-tiered subcontractors and
2 suppliers in accordance with the provisions of paragraphs (a) and (c)
3 of subsection ~~4~~ 5 of NRS 108.2457.

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

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

11 (b) Give a reasonably detailed explanation of the condition for
12 which or the reason the owner will withhold that amount, including,
13 without limitation, a specific reference to the provision or section of
14 the agreement with the prime contractor, and any documents
15 relating thereto, and the applicable building code, law or regulation
16 with which the prime contractor has failed to comply; and

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

18 4. A prime contractor who receives a notice of withholding
19 pursuant to subsection 3 may correct any condition or reason for the
20 withholding described in the notice of withholding and thereafter
21 provide written notice to the owner of the correction of the condition
22 or reason for the withholding. The notice of correction must be
23 sufficient to identify the scope and manner of the correction of the
24 condition or reason for the withholding and be signed by an
25 authorized representative of the prime contractor. If an owner
26 receives a written notice from the prime contractor of the correction
27 of a condition or reason for the withholding described in an owner's
28 notice of withholding pursuant to subsection 3, the owner must,
29 within 10 days after receipt of such notice:

30 (a) Pay the amount withheld by the owner for that condition or
31 reason for the withholding; or

32 (b) Object to the scope and manner of the correction of the
33 condition or reason for the withholding in a written statement that
34 sets forth the reason for the objection and complies with subsection
35 3. If the owner objects to the scope and manner of the correction of
36 a condition or reason for the withholding, he shall nevertheless pay
37 to the prime contractor, along with the payment to be made pursuant
38 to the prime contractor's next payment request, the amount withheld
39 for the correction of the condition or reason for the withholding to
40 which the owner no longer objects.

41 5. The partial occupancy or availability of a building requires
42 payment in direct proportion to the value of the part of the building
43 which is partially occupied or partially available. For works of
44 improvement which involve more than one building, each building



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1 must be considered separately in determining the amount of money
2 which is payable to the prime contractor.

3 **Sec. 5.** NRS 624.622 is hereby amended to read as follows:

4 624.622 1. A prime contractor shall provide a copy of any
5 notice given to an owner pursuant to subsection 1 or 2 of NRS
6 624.610 to each lower-tiered subcontractor with whom the prime
7 contractor has entered into an agreement. Upon receipt of payment
8 pursuant to NRS 624.609, the prime contractor shall notify all such
9 lower-tiered subcontractors in writing of his receipt of payment.

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

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

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

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

23 *(d) Requires a prime contractor to indemnify, defend or hold*
24 *an owner or other person harmless against liability for damages*
25 *for death or bodily injury to natural persons, damage or injury to*
26 *property, or any other loss, damage or expense arising from any*
27 *act, omission, negligence or misconduct of the owner or other*
28 *person,*

29 ➔ is against public policy and is void and unenforceable.

30 3. All notices required pursuant to this section, NRS 624.609,
31 624.610 and 624.620 must be:

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

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

38 (c) Delivered by certified mail; or

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

40 4. This section, NRS 624.609, 624.610 and 624.620 do not
41 apply to an agreement between ~~for~~

42 ~~—(a) A~~ a prime contractor and a natural person who owns a
43 single-family residence for the performance of qualified services
44 with respect to the residence. ~~for~~



~~(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, 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 condition or reason for the withholding.

6. An owner may not impair or obtain a waiver of, by any term of an agreement or otherwise, the rights provided prime contractors and lower-tiered subcontractors pursuant to the provisions of NRS 624.606 to 624.630, inclusive. Any written consent given by a prime contractor or a lower-tiered subcontractor that impairs or waives such rights is unenforceable.

Sec. 6. 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 enters into:

(a) A written agreement with a lower-tiered subcontractor that includes a schedule for payments, the higher-tiered contractor 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 receives payment for all or a portion of the work, materials or 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, *and subject to the provisions of subsections 6 and 7*, the higher-tiered contractor may:



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

(1) A retention amount ; ~~that the higher-tiered contractor is authorized to withhold pursuant to the 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, 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.

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 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. A higher-tiered contractor shall not withhold a retention amount pursuant to subsection 2 unless the higher-tiered contractor is authorized to withhold the retention amount pursuant to the terms of the agreement with the lower-tiered subcontractor.

7. A retention amount withheld pursuant to subsection 2:



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1 (a) *Must not exceed 10 percent of the amount of the payment*
2 *to be made to the lower-tiered subcontractor pursuant to*
3 *subsection 1; and*

4 (b) *Must be paid, along with any other amounts that the*
5 *higher-tiered contractor has withheld from payments made to the*
6 *lower-tiered subcontractor over the course of the work of*
7 *improvement, to the lower-tiered subcontractor on or before the*
8 *earlier of the following:*

9 (1) *The date payment is due pursuant to subsection 1; or*

10 (2) *Ten days after the date the higher-tiered contractor*
11 *receives payment for all or a portion of the lower-tiered*
12 *subcontractor's retention amount and any other amounts that the*
13 *higher-tiered contractor has withheld from payments made to the*
14 *lower-tiered subcontractor over the course of the work of*
15 *improvement.*

16 **Sec. 7.** NRS 624.626 is hereby amended to read as follows:

17 624.626 1. If:

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

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

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

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

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

40 (1) Issue the change order; or

41 (2) If the request for a change order is unreasonable ~~[, give~~
42 ~~written notice]~~ *or does not contain sufficient information to make*
43 *a determination, give* to the lower-tiered subcontractor ~~[of]~~ *written*
44 *notice that specifically identifies* the reasons why the change order
45 is unreasonable ~~[,]~~ *or that explains that additional information and*



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time are necessary to make a determination and specifically identifies the additional information and time necessary for such a determination,

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



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

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

(b) The balance of the profit that the lower-tiered subcontractor 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 costs and arbitration costs, incurred by the lower-tiered subcontractor 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 lower-tiered subcontractor and his lower-tiered subcontractors and suppliers or, if the trier of fact determines that the lower-tiered subcontractor stopped work or terminated the agreement without a reasonable basis in law or fact, the trier of fact may award reasonable attorney's fees and costs, including court costs and arbitration costs, to the higher-tiered contractor.

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

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

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



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1 contractor may suffer as a result of the lower-tiered subcontractor
2 and his lower-tiered subcontractors and suppliers stopping their
3 work or the provision of materials or equipment or terminating an
4 agreement for a reasonable basis in law or fact and in accordance
5 with this section.

6 **Sec. 8.** NRS 624.628 is hereby amended to read as follows:

7 624.628 1. A lower-tiered subcontractor shall provide a copy
8 of any notice given to a higher-tiered contractor pursuant to this
9 section or NRS 624.624 or 624.626 to each lower-tiered
10 subcontractor with whom the lower-tiered subcontractor has entered
11 into an agreement and who has not fully performed under the
12 agreement. Upon receipt of payment pursuant to NRS 624.624, the
13 lower-tiered subcontractor shall notify all of his lower-tiered
14 subcontractors in writing of his receipt of payment.

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

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

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

25 (b) Relieves a higher-tiered contractor of any obligation or
26 liability imposed pursuant to this section, NRS 624.624, 624.626 or
27 624.630; ~~or~~

28 (c) Requires a lower-tiered subcontractor to waive, release or
29 extinguish a claim or right for damages or an extension of time that
30 the lower-tiered subcontractor may otherwise possess or acquire as a
31 result of delay, acceleration, disruption or an impact event that is
32 unreasonable under the circumstances, that was not within the
33 contemplation of the parties at the time the agreement was entered
34 into, or for which the lower-tiered subcontractor is not responsible
35 ~~or~~; or

36 *(d) Requires a lower-tiered subcontractor to indemnify, defend*
37 *or hold a higher-tiered contractor or any other person harmless*
38 *against liability for damages for death or bodily injury to natural*
39 *persons, damage or injury to property, or any other loss, damage*
40 *or expense arising from any act, omission, negligence or*
41 *misconduct of the higher-tiered contractor or other person,*

42 *↪ is against public policy and is void and unenforceable.*

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



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

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

7 (c) Delivered by certified mail; or

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

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

16 (a) The date the owner or higher-tiered contractor made a
17 specified payment to the prime contractor or lower-tiered
18 subcontractor;

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

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

25 *6. A higher-tiered contractor may not impair or obtain a*
26 *waiver of, by any term of an agreement or otherwise, the rights*
27 *provided lower-tiered subcontractors pursuant to the provisions of*
28 *NRS 624.606 to 624.630, inclusive. Any written consent given by a*
29 *lower-tiered subcontractor that impairs or waives such rights is*
30 *unenforceable.*

