

## SENATE BILL NO. 386—SENATORS CEGAVSKE AND HARDY

MARCH 19, 2007

Referred to Committee on Judiciary

SUMMARY—Makes various changes to the provisions governing mechanics' and materialmen's liens. (BDR 9-1021)

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 liens; making various changes to the provisions governing mechanics' and materialmen's liens; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law requires a lien claimant to designate the lienable amount due to him on each building or mining claim in every case in which a notice of lien is recorded against two or more separate buildings or mining claims which are owned by the same person and which are located on separate legal parcels that existed at the commencement of construction. (NRS 108.231) **Section 3** of this bill requires a lien claimant to designate the lienable amount due to him on each building or mining claim in every case in which a notice of lien is recorded against two or more separate buildings or mining claims which are owned by different persons and which are located on separate legal parcels that existed at the commencement of construction.

Existing law sets forth provisions governing the manner in which a notice of lien may be enforced by an action in court. (NRS 108.239) **Section 4** of this bill revises those provisions to allow the recovery of consequential damages in such actions and removes the provision that all liens not exhibited in court shall be deemed to be waived in favor of those which were exhibited.

Existing law provides that if a lessee fails to satisfy certain requirements, the prime contractor who has furnished or will furnish materials or equipment for the work of improvement may stop work. (NRS 108.2403) **Section 5** of this bill provides for the prime contractor to stop work if a lessee fails to satisfy those requirements at any time during the construction of a work improvement.

Under existing law, to obtain the release of all prospective and existing lien rights of lien claimants related to a work of improvement, the principal and a surety must execute and cause to be recorded a surety bond in an amount equal to 1.5 times the amount of the prime contract. (NRS 108.2415) **Section 6** of this bill provides that the surety bond must be in an amount equal to 1.5 times the total amount of the prime contract to be paid by the owner for the work, materials and



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equipment to be furnished by or through the prime contractor for the work of improvement.

Under existing law, a lien claimant, other than one who performs only labor, must, at any time after the first delivery of material or performance of work or services under his contract, deliver in person or by certified mail to the owner of the property a notice of right to lien. (NRS 108.245) **Section 7** of this bill requires a lien claimant to deliver a notice of right to lien at any time before or after the first delivery of material or equipment or the performance of work of a work of improvement.

Existing law sets forth the various conditions, stipulations or provisions which are prohibited in a contract or other agreement for an improvement or a work of improvement. **Section 8** of this bill also prohibits in a contract or other agreement a requirement that a lien claimant indemnify, defend or hold harmless an owner or any other person, firm or entity against liability for damages for death of or bodily injury to a person, damage or injury to property, or any other loss, damage or expense arising from the acts, omissions, negligence or misconduct of the owner or any other person, firm or entity.

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

**Section 1.** NRS 108.22118 is hereby amended to read as follows:

108.22118 ~~["Construction control" has the meaning ascribed to it in NRS 627.050.]~~

*1. "Construction control" includes any person that engages:*

*(a) In the control or disbursement of any funds payable or paid to lien claimants for work, materials or equipment with respect to an improvement or a work of improvement; or*

*(b) In the processing or approval of any waivers and releases, vouchers or authorizations for a payment made, or to be made, to a lien claimant.*

*2. "Construction control" does not include:*

*(a) An owner who pays a prime contractor, a subcontractor, a supplier of materials, a laborer or any other person for bills or charges incurred in the construction of an improvement or a work of improvement.*

*(b) A prime contractor who pays a subcontractor, a supplier of materials, a laborer or any other person for bills or charges incurred in the construction of an improvement or a work of improvement.*

*(c) A subcontractor who pays a subcontractor, a supplier of materials, a laborer or any other person for bills or charges incurred in the construction of an improvement or a work of improvement.*

**Sec. 2.** NRS 108.22164 is hereby amended to read as follows:

108.22164 "Prime contractor" means:



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1 1. A person who contracts with an owner or a lessee of  
2 property to provide work, materials or equipment to be used for the  
3 improvement of the property or in the construction, alteration or  
4 repair of a work of improvement; or

5 2. A person who is an owner of the property, is licensed as a  
6 general *building* contractor *or a general engineering contractor*  
7 pursuant to chapter 624 of NRS and provides work, materials or  
8 equipment to be used for the improvement of the property or in the  
9 construction, alteration or repair of a work of improvement.

10 **Sec. 3.** NRS 108.231 is hereby amended to read as follows:

11 108.231 1. In every case in which a notice of lien is recorded  
12 against two or more separate buildings or mining claims ~~[that]~~  
13 *which* are owned by ~~[the same person]~~ *different persons* and ~~[that]~~  
14 *which* are located on separate legal parcels that existed at the  
15 commencement of construction, the lien claimant must, at the time  
16 of recording the notice of lien, designate the lienable amount due to  
17 him on each building or mining claim.

18 2. The lien of a lien claimant only applies to the lienable  
19 amount designated in the notice of lien, plus all amounts that may be  
20 awarded by the court pursuant to NRS 108.237, as against other  
21 creditors having liens by judgment or otherwise, upon the buildings  
22 or mining claims. However, the lienable amount chargeable to the  
23 interest of ~~[the]~~ *each* owner in each building must be the total  
24 amount of the lien claimant's notice of lien, without regard to the  
25 proportionate amount designated to each separate building in the  
26 lien claimant's notice of lien, plus all amounts that may be awarded  
27 by the court pursuant to NRS 108.237, but upon the trial thereof, the  
28 court may, where it deems it equitable to do so, distribute the lien  
29 equitably as among the several buildings involved.

30 3. If a lien claimant fails to designate in his notice of lien the  
31 amount due to him on each separate building as provided in  
32 subsection 1, the lien claimant's notice of lien must be postponed to  
33 the notices of lien of other lien claimants and other encumbrancers  
34 for value who have designated the amount due on each building or  
35 mining claim but must not be inferior to any rights or interests of the  
36 owner. For purposes of this subsection, a lien claimant's lien must  
37 not be postponed to other liens or encumbrances if the lien  
38 claimant's designation among the parcels was estimated by the lien  
39 claimant in good faith or was based upon a pro rata division of the  
40 total lienable amount.

41 **Sec. 4.** NRS 108.239 is hereby amended to read as follows:

42 108.239 1. A notice of lien may be enforced by an action in  
43 any court of competent jurisdiction that is located within the county  
44 where the property upon which the work of improvement is located,



1 on setting out in the complaint the particulars of the demand, with a  
2 description of the property to be charged with the lien.

3 2. At the time of filing the complaint and issuing the summons,  
4 the lien claimant shall:

5 (a) File a notice of pendency of the action in the manner  
6 provided in NRS 14.010; and

7 (b) Cause a notice of foreclosure to be published at least once a  
8 week for 3 successive weeks, in one newspaper published in the  
9 county, and if there is no newspaper published in the county, then in  
10 such mode as the court may determine, notifying all persons holding  
11 or claiming a notice of lien pursuant to the provisions of NRS  
12 108.221 to 108.246, inclusive, on the property to file with the clerk  
13 and serve on the lien claimant and also on the defendant, if the  
14 defendant is within the State or is represented by counsel, written  
15 statements of the facts constituting their liens, together with the  
16 dates and amounts thereof.

17 3. All persons holding or claiming a notice of lien may join a  
18 lien claimant's action by filing a statement of facts within a  
19 reasonable time after publication of the notice of foreclosure or  
20 receiving notice of the foreclosure, whichever occurs later. Any  
21 number of persons claiming liens may join in the same action if they  
22 timely file a statement of facts in the lien claimant's action. The lien  
23 claimant and other parties adversely interested must be allowed 20  
24 days to answer the statements.

25 4. If it appears from the records of the county recorder that  
26 there are other notices of lien recorded against the same property at  
27 the time of the commencement of the action, the lien claimant shall,  
28 in addition to and after the initial publication of the notice of  
29 foreclosure as provided in paragraph (b) of subsection 2, mail to  
30 those other lien claimants, by registered or certified mail, or deliver  
31 in person a copy of the notice of foreclosure as published.

32 5. At the time of any change in the venue of the action, the lien  
33 claimant shall file a notice of pendency of the action, in the manner  
34 provided in NRS 14.010, and include in the notice the court and  
35 county to which the action is changed.

36 6. When separate actions are commenced by lien claimants to  
37 foreclose on their respective notices of lien, the court may  
38 consolidate all the actions. The consolidation does not affect or  
39 change the priority of lien claims.

40 7. The court shall enter judgment according to the right of the  
41 parties, and shall, by decree, proceed to hear and determine the  
42 claims in a summary way, or may, if it be the district court, refer  
43 the claims to a special master to ascertain and report upon the liens  
44 and the amount justly due thereon. ~~No—consequential~~  
45 **Consequential** damages may be recovered in an action pursuant to



1 this section. ~~[All liens not so exhibited shall be deemed to be waived~~  
2 ~~in favor of those which are so exhibited.]~~

3 8. Upon petition by a lien claimant for a preferential trial  
4 setting:

5 (a) The court shall give preference in setting a date for the trial  
6 of an action brought pursuant to this section; and

7 (b) If a lien action is designated as complex by the court, the  
8 court may take into account the rights and claims of all lien  
9 claimants in setting a date for the preferential trial.

10 9. If the lienable amount of a lien claimant's lien is the subject  
11 of binding arbitration:

12 (a) The court may, at the request of a party to the arbitration,  
13 stay the lien claimant's action to foreclose the lien pending the  
14 outcome of the binding arbitration. If the foreclosure on the lien  
15 involves the rights of other lien claimants or persons whose claims  
16 are not the subject of the binding arbitration, the court may stay the  
17 lien claimant's foreclosure proceeding only upon terms which are  
18 just and which afford the lien claimant a fair opportunity to protect  
19 his lien rights and priorities with respect to other lien claimants and  
20 persons.

21 (b) Upon the granting of an award by the arbitrator, any party to  
22 the arbitration may seek an order from the court in the action to  
23 foreclose on the lien confirming or adopting the award and  
24 determining the lienable amount of the lien claimant's lien in  
25 accordance with the order, if any. Upon determining the lienable  
26 amount, the court shall enter a judgment or decree for the lienable  
27 amount, plus all amounts that may be awarded by the court to the  
28 lien claimant pursuant to NRS 108.237, and the court may include  
29 as part of the lien all costs and attorney's fees awarded to the lien  
30 claimant by the arbitrator and all costs and attorney's fees incurred  
31 by the lien claimant pertaining to any application or motion to  
32 confirm, adopt, modify or correct the award of the arbitrator. A  
33 judgment or decree entered by the court pursuant to this subsection  
34 may be enforced against the property as provided in subsections 10,  
35 11 and 12.

36 10. On ascertaining the whole amount of the liens with which  
37 the property is justly chargeable, as provided in NRS 108.221 to  
38 108.246, inclusive, the court shall cause the property to be sold in  
39 satisfaction of all liens and the costs of sale, including all amounts  
40 awarded to all lien claimants pursuant to NRS 108.237, and any  
41 party in whose favor judgment may be rendered may cause the  
42 property to be sold within the time and in the manner provided for  
43 sales on execution, issued out of any district court, for the sale of  
44 real property.



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11. If the proceeds of sale, after payment of the costs of sale, are not sufficient to satisfy all liens to be included in the decree of sale, including all amounts awarded to all lien claimants pursuant to NRS 108.237, the proceeds must be apportioned according to the right of the various lien claimants. If the proceeds of the sale amount to more than the sum of all liens and the cost of sale, the remainder must be paid over to the owner of the property.

12. Each party whose claim is not satisfied in the manner provided in this section is entitled to personal judgment for the residue against the party legally liable for it if that person has been personally summoned or has appeared in the action.

**Sec. 5.** NRS 108.2403 is hereby amended to read as follows:

108.2403 1. Except as otherwise provided in NRS 108.2405, before a lessee may cause a work of improvement to be constructed, altered or repaired upon property that he is leasing, the lessee shall:

(a) Record a notice of posted security with the county recorder of the county where the property is located upon which the improvement is or will be constructed, altered or repaired; and

(b) Either:

(1) Establish a construction disbursement account and:

(I) Fund the account in an amount equal to the total cost of the work of improvement, but in no event less than the total amount of the prime contract;

(II) Obtain the services of a construction control to administer the construction disbursement account; and

(III) Notify each person who gives the lessee a notice of right to lien of the establishment of the construction disbursement account as provided in paragraph (f) of subsection 2; or

(2) Record a surety bond for the prime contract that meets the requirements of subsection 2 of NRS 108.2415 and notify each person who gives the lessee a notice of right to lien of the recording of the surety bond as provided in paragraph (f) of subsection 2.

2. The notice of posted security required pursuant to subsection 1 must:

(a) Identify the name and address of the lessee;

(b) Identify the location of the improvement and the address, legal description and assessor's parcel number of the property upon which the improvement is or will be constructed, altered or repaired;

(c) Describe the nature of the lessee's interest in:

(1) The property upon which the improvement is or will be constructed, altered or repaired; and

(2) The improvement on such property;

(d) If the lessee establishes a construction disbursement account pursuant to subsection 1, include:

(1) The name and address of the construction control;



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(2) The date that the lessee obtained the services of the construction control and the total amount of funds in the construction disbursement account; and

(3) The number of the construction disbursement account, if any;

(e) If the lessee records a surety bond pursuant to subsection 1, include:

(1) The name and address of the surety;

(2) The surety bond number;

(3) The date that the surety bond was recorded in the office of the county recorder of the county where the property is located upon which the improvement is or will be constructed, altered or repaired;

(4) The book and the instrument or document number of the recorded surety bond; and

(5) A copy of the recorded surety bond with the notice of posted security; and

(f) Be served upon each person who gives a notice of right to lien within 10 days after receipt of the notice of right to lien, in one of the following ways:

(1) By personally delivering a copy of the notice of posted security to the person who gives a notice of right to lien at the address identified in the notice of right to lien; or

(2) By mailing a copy of the notice of posted security by certified mail, return receipt requested, to the person who gives a notice of right to lien at the address identified in the notice of right to lien.

3. If a lessee fails to satisfy the requirements of subsection 1 of this section or subsection 2 of NRS 108.2407 **at any time during the construction of a work of improvement**, the prime contractor who has furnished or will furnish materials or equipment for the work of improvement may stop work. If the lessee:

(a) Satisfies the requirements of subsection 1 of this section or subsection 2 of NRS 108.2407 within 25 days after any work stoppage, the prime contractor who stopped work shall resume work and the prime contractor and his lower-tiered subcontractors and suppliers are entitled to compensation for any reasonable costs and expenses that any of them have incurred because of the delay and remobilization; or

(b) Does not satisfy the requirements of subsection 1 of this section or subsection 2 of NRS 108.2407 within 25 days after the work stoppage, the prime contractor who stopped work may terminate his contract relating to the work of improvement and the prime contractor and his lower-tiered subcontractors and suppliers are entitled to recover:



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(1) The cost of all work, materials and equipment, 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;

(2) The balance of the profit the prime contractor and his lower-tiered subcontractors and suppliers would have earned if the contract had not been terminated;

(3) Any interest, costs and attorney's fees that the prime contractor and his lower-tiered subcontractors and suppliers are entitled to pursuant to NRS 108.237; and

(4) Any other amount awarded by a court or other trier of fact.

4. The rights and remedies provided *a prime contractor and his lower-tiered subcontractors and suppliers* pursuant to this section are in addition to any other rights and remedies that may exist at law or in equity, including, without limitation, the rights and remedies provided pursuant to NRS 624.606 to 624.630, inclusive.

**Sec. 6.** NRS 108.2415 is hereby amended to read as follows:

108.2415 1. To obtain the release of a lien for which notice of lien has been recorded against the property, the principal and a surety must execute a surety bond in an amount equal to 1.5 times the lienable amount in the notice of lien, which must be in the following form:

(Assessor's Parcel Numbers)

(Title of court and cause, if action has been commenced)

WHEREAS, ..... (name of principal), located at ..... (address of principal), desires to give a bond for releasing the following described property owned by ..... (name of owners) from that certain notice of lien in the sum of \$...... recorded .... (month) .... (day) ....., (year), in the office of the recorder in ..... (name of county where the property is located):

(Legal Description)

NOW, THEREFORE, the undersigned principal and surety do hereby obligate themselves to the lien claimant named in the notice of lien, ....., (name of lien claimant) under the conditions prescribed by NRS 108.2413 to 108.2425, inclusive, in the sum of \$...... (1 1/2 x lienable amount), from which sum they will pay the lien claimant that amount as a court of competent





(Assessor's Parcel Numbers)

(Title of court and cause, if action has been commenced)

WHEREAS, ..... (name of principal), located at  
..... (address of principal), desires to give a  
bond for releasing the following described property owned by  
..... (name of owners) from all prospective  
and existing lien rights and notices of liens arising from materials,  
equipment or work provided or to be provided under the prime  
contract described as follows:

(Parties to the Prime Contract)

(Amount of the Prime Contract)

(Date of the Prime Contract)

(Summary of Terms of the Prime Contract)

WHEREAS, the property that is the subject of the surety bond is  
described as follows:

(Legal Description)

NOW, THEREFORE, the undersigned principal and surety do  
hereby obligate themselves in the sum of \$..... (1 1/2 x *the*  
*total* amount of prime contract ~~H~~ *to be paid by the owner*) to all  
prospective and existing lien claimants who have provided or  
hereafter provide materials, equipment or work under the prime  
contract, from which sum the principal and surety will pay the lien  
claimants the lienable amount that a court of competent jurisdiction  
may determine is owed to each lien claimant, and such additional  
amounts as may be awarded pursuant to NRS 108.237, but the  
liability of the surety may not exceed the penal sum of the surety  
bond.

IN TESTIMONY WHEREOF, the principal and surety have  
executed this bond at ....., Nevada, on the ..... day  
of the month of ..... of the year .....

.....  
(Signature of Principal)

(Surety Corporation)

By.....

(Its Attorney in Fact)



1 State of Nevada }  
2 } ss.  
3 County of ..... }  
4

5 On ..... (month) ..... (day), ..... (year), before me, the undersigned,  
6 a notary public of this County and State, personally appeared  
7 ..... who acknowledged that he executed the  
8 foregoing instrument as principal for the purposes therein mentioned  
9 and also personally appeared ..... known (or  
10 satisfactorily proved) to me to be the attorney in fact of the surety  
11 that executed the foregoing instrument, known to me to be the  
12 person who executed that instrument on behalf of the surety therein  
13 named, and he acknowledged to me that the surety executed the  
14 foregoing instrument.

15  
16 .....  
17 (Notary Public in and for  
18 the County and State)  
19

20 3. The principal must record the surety bond in the office of the  
21 county recorder in the county in which the property upon which the  
22 improvement is located, either before or after the commencement of  
23 an action to enforce the lien. A certified copy of the recorded surety  
24 bond shall be deemed an original for purposes of this section.

25 4. Upon the recording of the surety bond, the principal must  
26 serve a file-stamped copy of the recorded surety bond in the  
27 following manner:

28 (a) If a lien claimant has appeared in an action that is pending to  
29 enforce the notice of lien, service must be made by certified or  
30 registered mail, return receipt requested, upon the lien claimant at  
31 the address set forth in the lien and the lien claimant's counsel of  
32 record at his place of business;

33 (b) If a notice of lien is recorded at the time the surety bond is  
34 recorded and no action is pending to enforce the notice of lien,  
35 personal service must be made upon each lien claimant pursuant to  
36 Rule 4 of the Nevada Rules of Civil Procedure; or

37 (c) If no notice of lien is recorded at the time the surety bond is  
38 recorded, service must be made by personal service or certified  
39 mail, return receipt requested, upon each lien claimant and  
40 prospective lien claimant that has provided or thereafter provides the  
41 owner or lessee with a notice of a right to lien. Such service must be  
42 within 10 days after the recording of the surety bond, or the service  
43 of notice of the right to lien upon the owner by a lien claimant,  
44 whichever is later.



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5. Failure to serve the surety bond as provided in subsection 4 does not affect the validity of the surety bond, but the statute of limitations on any action on the surety bond, including a motion excepting to the sufficiency of the surety pursuant to NRS 108.2425, is tolled until notice is given.

6. Subject to the provisions of NRS 108.2425, the recording and service of the surety bond pursuant to:

(a) Subsection 1 releases the property described in the surety bond from the lien and the surety bond shall be deemed to replace the property as security for the lien.

(b) Subsection 2 releases the property described in the surety bond from any liens and prospective liens for work, materials or equipment related to the prime contract and the surety bond shall be deemed to replace the property as security for the lien.

**Sec. 7.** NRS 108.245 is hereby amended to read as follows:

108.245 1. Except as otherwise provided in subsection 5, every lien claimant, other than one who performs only labor, who claims the benefit of NRS 108.221 to 108.246, inclusive, shall, ~~at any time~~ *before or* after the first delivery of material *or equipment* ~~or the~~ performance of work ~~for services under his contract,~~ *for a work of improvement,* deliver in person or by certified mail to the owner ~~of the property~~ a notice of right to lien in substantially the following form:

#### NOTICE OF RIGHT TO LIEN

To: .....

(Owner's name and address)

The undersigned notifies you that he has supplied *or that he intends to supply* materials or equipment or *that he has* performed work or ~~services~~ *that he intends to perform work* as follows:

.....  
(General description of materials, equipment ~~for~~ *or* work ) ~~for services~~

for improvement of property identified as (property description or street address) under contract with (general contractor or subcontractor). This is not a notice that the undersigned has not been or does not expect to be paid, but a notice required by law that the undersigned may, at a future date, record a notice of lien as provided by law against the property if the undersigned is not paid.

.....  
(Claimant)

A subcontractor or equipment or material supplier who gives such a notice must also deliver in person or send by certified mail a copy of



1 the notice to the prime contractor for information only. The failure  
2 by a subcontractor to deliver the notice to the prime contractor is a  
3 ground for disciplinary proceedings against the subcontractor under  
4 chapter 624 of NRS but does not invalidate the notice to the owner.

5 2. Such a notice does not constitute a lien or give actual or  
6 constructive notice of a lien for any purpose.

7 3. No lien for materials or equipment furnished or for work ~~for~~  
8 ~~services~~ performed, except labor, may be perfected or enforced  
9 pursuant to NRS 108.221 to 108.246, inclusive, unless the notice  
10 has been given ~~[.]~~ *or the owner knows the lien claimant has*  
11 *furnished materials or equipment for or performed work on the*  
12 *work of improvement.*

13 4. The notice need not be verified, sworn to or acknowledged.

14 5. A prime contractor or other person who contracts directly  
15 with an owner or sells materials directly to an owner is not required  
16 to give notice pursuant to this section.

17 6. A lien claimant who is required by this section to give a  
18 notice of right to lien to an owner and who gives such a notice has a  
19 right to lien for materials or equipment furnished or for work ~~for~~  
20 ~~services~~ performed in the 31 days before the date the notice of right  
21 to lien is given and for the materials or equipment furnished or for  
22 work ~~for—services~~ performed anytime thereafter until the  
23 completion of the work of improvement.

24 **Sec. 8.** NRS 108.2453 is hereby amended to read as follows:

25 108.2453 1. Except as otherwise provided in NRS 108.221 to  
26 108.246, inclusive, a person may not ~~[waive or modify a right,]~~ *by*  
27 *any term of an agreement or otherwise:*

28 *(a) Be relieved of an obligation or liability [set forth in] owed to*  
29 *a lien claimant pursuant to* the provisions of NRS 108.221 to  
30 108.246, inclusive ~~[.]~~ *; or*

31 *(b) Obtain a waiver, a modification or an impairment of any of*  
32 *the rights and remedies provided to a lien claimant pursuant to the*  
33 *provisions of NRS 108.221 to 108.246, inclusive.*

34 2. A condition, stipulation or provision in a contract or other  
35 agreement for the improvement of property or for the construction,  
36 alteration or repair of a work of improvement in this State that  
37 attempts to do any of the following is contrary to public policy and  
38 is void and unenforceable:

39 (a) Require a lien claimant to waive rights provided by law to  
40 lien claimants or to limit the rights provided to lien claimants, other  
41 than as expressly provided in NRS 108.221 to 108.246, inclusive;

42 (b) Relieve a person of an obligation or liability imposed by the  
43 provisions of NRS 108.221 to 108.246, inclusive;

44 (c) Make the contract or other agreement subject to the laws of a  
45 state other than this State;



(d) Require any litigation, arbitration or other process for dispute resolution on disputes arising out of the contract or other agreement to occur in a state other than this State; ~~for~~

(e) Require a prime contractor or subcontractor to waive, release or extinguish a claim or right that the prime contractor or subcontractor may otherwise possess or acquire for delay, acceleration, disruption or impact damages or an extension of time for delays incurred, for any delay, acceleration, disruption or impact event which was unreasonable under the circumstances, not within the contemplation of the parties at the time the contract was entered into, or for which the prime contractor or subcontractor is not responsible ~~for~~; or

*(f) Require a lien claimant to indemnify, defend or hold harmless an owner or any other person, firm or entity against liability for damages for death of or bodily injury to a person, damage or injury to property, or any other loss, damage or expense arising from the acts, omissions, negligence or misconduct of the owner or any other person, firm or entity.*

**Sec. 9.** NRS 108.2457 is hereby amended to read as follows:

108.2457 1. Any term of a contract that attempts to waive or impair the lien rights of a contractor, subcontractor or supplier is void. An owner, contractor or subcontractor by any term of a contract, or otherwise, may not obtain the waiver of, or impair the lien rights of, a contractor, subcontractor or supplier, except as provided in this section. Any written consent given by a lien claimant that waives or limits his lien rights is unenforceable unless the lien claimant:

(a) Executes and delivers a waiver and release that is signed by the lien claimant or his authorized agent in the form set forth in this section; and

(b) In the case of a conditional waiver and release, receives payment of the amount identified in the conditional waiver and release.

2. An oral or written statement purporting to waive, release or otherwise adversely affect the rights of a lien claimant is not enforceable and does not create any estoppel or impairment of a lien unless:

(a) There is a written waiver and release in the form set forth in this section; and

(b) The lien claimant received payment for the lien and then only to the extent of the payment received.

3. Payment in the form of a two-party joint check made payable to a lien claimant and another joint payee who are in privity with each other shall, upon endorsement by the lien claimant and the



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joint check clearing the bank upon which it is drawn, be deemed to be payment to the lien claimant for only:

- (a) The amount of the joint check;
- (b) The amount the payor intended to pay the lien claimant out of the joint check; or
- (c) The balance owed to the lien claimant for the work, materials or equipment covered by the joint check, whichever is less.

4. This section does not affect the enforceability of either an accord and satisfaction regarding a bona fide dispute or any agreement made in settlement of an action pending in any court or arbitration, provided the accord and satisfaction or settlement makes specific reference to the lien rights waived or impaired and is in a writing signed by the lien claimant.

5. The waiver and release given by any lien claimant is unenforceable unless it is in the following forms in the following circumstances:

(a) Where the lien claimant is required to execute a waiver and release in exchange for or to induce the payment of a progress billing and the lien claimant is not in fact paid in exchange for the waiver and release or a single payee check or joint payee check is given in exchange for the waiver and release, the waiver and release must be in the following form:

#### CONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT

Property Name:.....  
Property Location: .....  
Undersigned's Customer: .....  
Invoice/Payment Application Number: .....  
Payment Amount: .....  
*Payment Period:.....*

Upon receipt by the undersigned of a check in the above-referenced Payment Amount payable to the undersigned, and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release and the undersigned shall be deemed to waive any notice of lien, any private bond right, any claim for payment and any rights under any similar ordinance, rule or statute related to payment rights that the undersigned has on the above-described Property to the following extent:

This release covers a progress payment for the work, materials or equipment furnished by the undersigned to the Property or to the Undersigned's Customer which are the subject of the Invoice or



1 Payment Application, but only to the extent of the Payment Amount  
2 or such portion of the Payment Amount as the undersigned is  
3 actually paid, and does not cover any retention withheld, any items,  
4 modifications or changes pending approval, disputed items and  
5 claims, or items furnished that are not paid. Before any recipient of  
6 this document relies on it, he should verify evidence of payment to  
7 the undersigned. The undersigned warrants that he either has already  
8 paid or will use the money he receives from this progress payment  
9 promptly to pay in full all his laborers, subcontractors, materialmen  
10 and suppliers for all work, materials or equipment that are the  
11 subject of this waiver and release.

12  
13 Dated:.....

.....  
(Company Name)

17 By:.....

18  
19 Its:.....

20  
21 (b) Where the lien claimant has been paid in full or a part of the  
22 amount provided for in the progress billing, the waiver and release  
23 of the amount paid must be in the following form:

24  
25 UNCONDITIONAL WAIVER AND RELEASE  
26 UPON PROGRESS PAYMENT

27  
28 Property Name:.....

29 Property Location: .....

30 Undersigned's Customer: .....

31 Invoice/Payment Application Number: .....

32 Payment Amount: .....

33 *Payment Period:*.....

34  
35 The undersigned has been paid and has received a progress  
36 payment in the above-referenced Payment Amount for all work,  
37 materials and equipment the undersigned furnished to his Customer  
38 for the above-described Property and does hereby waive and release  
39 any notice of lien, any private bond right, any claim for payment  
40 and any rights under any similar ordinance, rule or statute related to  
41 payment rights that the undersigned has on the above-described  
42 Property to the following extent:

43 This release covers a progress payment for the work, materials  
44 and equipment furnished by the undersigned to the Property or to  
45 the Undersigned's Customer which are the subject of the Invoice or



1 Payment Application, but only to the extent of the Payment Amount  
2 or such portion of the Payment Amount as the undersigned is  
3 actually paid, and does not cover any retention withheld, any items,  
4 modifications or changes pending approval, disputed items and  
5 claims, or items furnished that are not paid. The undersigned  
6 warrants that he either has already paid or will use the money he  
7 receives from this progress payment promptly to pay in full all his  
8 laborers, subcontractors, materialmen and suppliers for all work,  
9 materials or equipment that are the subject of this waiver and  
10 release.

11  
12 Dated:.....

.....  
(Company Name)

16 By:.....

18 Its:.....

20 (Each unconditional waiver and release must contain the following  
21 language, in type at least as large as the largest type otherwise on  
22 the document:)

23  
24 Notice: This document waives rights unconditionally and  
25 states that you have been paid for giving up those rights. This  
26 document is enforceable against you if you sign it to the  
27 extent of the Payment Amount or the amount received. If you  
28 have not been paid, use a conditional release form.  
29

30 (c) Where the lien claimant is required to execute a waiver and  
31 release in exchange for or to induce payment of a final billing and  
32 the lien claimant is not paid in exchange for the waiver and release  
33 or a single payee check or joint payee check is given in exchange for  
34 the waiver and release, the waiver and release must be in the  
35 following form:

36  
37 **CONDITIONAL WAIVER AND RELEASE**  
38 **UPON FINAL PAYMENT**  
39

40 Property Name:.....  
41 Property Location: .....  
42 Undersigned's Customer: .....  
43 Invoice/Payment Application Number: .....  
44 Payment Amount: .....



1 Payment Period:.....  
2 Amount of Disputed Claims:.....  
3

4 Upon receipt by the undersigned of a check in the above-  
5 referenced Payment Amount payable to the undersigned, and when  
6 the check has been properly endorsed and has been paid by the bank  
7 on which it is drawn, this document becomes effective to release  
8 and the undersigned shall be deemed to waive any notice of lien,  
9 any private bond right, any claim for payment and any rights under  
10 any similar ordinance, rule or statute related to payment rights that  
11 the undersigned has on the above-described Property to the  
12 following extent:

13 This release covers the final payment to the undersigned for all  
14 work, materials or equipment furnished by the undersigned to the  
15 Property or to the Undersigned's Customer and does not cover  
16 payment for Disputed Claims, if any. Before any recipient of this  
17 document relies on it, he should verify evidence of payment to the  
18 undersigned. The undersigned warrants that he either has already  
19 paid or will use the money he receives from the final payment  
20 promptly to pay in full all his laborers, subcontractors, materialmen  
21 and suppliers for all work, materials or equipment that are the  
22 subject of this waiver and release.  
23

24 Dated:.....

.....  
(Company Name)

27 By:.....

30 Its:.....

31  
32 (d) Where the lien claimant has been paid the final billing, the  
33 waiver and release must be in the following form:  
34

35 UNCONDITIONAL WAIVER AND RELEASE  
36 UPON FINAL PAYMENT  
37

38 Property Name:.....

39 Property Location: .....

40 Undersigned's Customer: .....

41 Invoice/Payment Application Number: .....

42 Payment Amount: .....

43 **Payment Period:**.....

44 Amount of Disputed Claims:.....



The undersigned has been paid in full for all work, materials and equipment furnished to his Customer for the above-described Property and does hereby waive and release any notice of lien, any private bond right, any claim for payment and any rights under any similar ordinance, rule or statute related to payment rights that the undersigned has on the above-described Property, except for the payment of Disputed Claims, if any, noted above. The undersigned warrants that he either has already paid or will use the money he receives from this final payment promptly to pay in full all his laborers, subcontractors, materialmen and suppliers for all work, materials and equipment that are the subject of this waiver and release.

Dated:.....

.....  
(Company Name)

By:.....

Its:.....

(Each unconditional waiver and release must contain the following language, in type at least as large as the largest type otherwise on the document:)

Notice: This document waives rights unconditionally and states that you have been paid for giving up those rights. This document is enforceable against you if you sign it, even if you have not been paid. If you have not been paid, use a conditional release form.

(e) Notwithstanding any language in any waiver and release form set forth in this section, if the payment given in exchange for any waiver and release of lien is made by check, draft or other such negotiable instrument, and the same fails to clear the bank on which it is drawn for any reason, then the waiver and release shall be deemed null, void and of no legal effect whatsoever and all liens, lien rights, bond rights, contract rights or any other right to recover payment afforded to the lien claimant in law or equity will not be affected by the lien claimant's execution of the waiver and release.

**Sec. 10.** NRS 624.609 is hereby amended to read as follows:  
624.609 1. Except as otherwise provided in subsections 2 and 4 and subsection 4 of NRS 624.622, if an owner of real property enters into a written or oral agreement with a prime contractor for



\* S B 3 8 6 \*

1 the performance of work or the provision of materials or equipment  
2 by the prime contractor, the owner must:

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 owner is authorized to  
13 withhold a retention amount pursuant to the agreement, must not  
14 exceed 10 percent of the amount of the payment to be made;

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

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

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

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

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

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

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

44 (b) Give a reasonably detailed explanation of the condition or  
45 the reason the owner will withhold that amount, including, without



1 limitation, a specific reference to the provision or section of the  
2 agreement, and any documents relating thereto, and the applicable  
3 building code, law or regulation with which the prime contractor has  
4 failed to comply; and

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

6 4. A prime contractor who receives a notice of withholding  
7 pursuant to subsection 3 or a notice of objection pursuant to  
8 subparagraph (2) of paragraph (b) may:

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

12 (b) Correct any condition or reason for the withholding  
13 described in the notice of withholding and thereafter provide written  
14 notice to the owner of the correction of the condition or reason for  
15 the withholding. The notice of correction must be sufficient to  
16 identify the scope and manner of the correction of the condition or  
17 reason for the withholding and be signed by an authorized  
18 representative of the prime contractor. If an owner receives a written  
19 notice from the prime contractor of the correction of a condition or  
20 reason for the withholding pursuant to this paragraph, the owner  
21 shall:

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

25 (2) Object to the scope and manner of the correction of the  
26 condition or reason for the withholding, on or before the date the  
27 next payment is due to the prime contractor, in a written statement  
28 which sets forth the condition or reason for the objection and which  
29 complies with subsection 3. If the owner objects to the scope and  
30 manner of the correction of a condition or reason for the  
31 withholding, he shall nevertheless pay to the prime contractor, along  
32 with the payment to be made pursuant to the prime contractor's next  
33 payment request, the amount withheld for the correction of the  
34 condition or reason for the withholding to which the owner no  
35 longer objects.

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

