

Amendment No. 435

Assembly Amendment to Assembly Bill No. 215

(BDR 54-893)

Proposed by: Assembly Committee on Commerce and Labor**Amends:** Summary: Yes Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

Adoption of this amendment will REMOVE the 2/3s majority vote requirement from A.B. 215.

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) green bold dashed underlining is newly added transitory language.

DP/LJM



Date: 4/20/2009

A.B. No. 215—Expands the circumstances under which an owner of a residence may recover damages from the Recovery Fund administered by the State Contractors' Board. (BDR 54-893)



ASSEMBLY BILL NO. 215—ASSEMBLYMAN OCEGUERA

FEBRUARY 26, 2009

Referred to Committee on Commerce and Labor

SUMMARY—~~[Expands the circumstances under which an owner of a residence may recover damages from the Recovery Fund administered by the State Contractors' Board.]~~ Requires a contractor or an applicant for an original or a renewal of a contractor's license to obtain and maintain certain liability insurance. (BDR 54-893)

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; ~~[expanding the circumstances under which an owner of a residence may recover damages from the Recovery Fund administered by the State Contractors' Board for an act or omission of a contractor; clarifying the application of the limitation on amounts paid out of the Recovery Fund;]~~ requiring licensed contractors and applicants for issuance or renewal of a contractor's license to obtain and provide proof of liability insurance; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

~~[Existing law allows an owner of a single family residence to recover from the Recovery Fund administered by the State Contractors' Board when the owner suffers damages for an act or omission by a residential contractor who has contracted to perform qualified services on the residence. (NRS 624.420, 624.430, 624.470, 624.510) This bill expands the circumstances for recovery from the Recovery Fund to allow an owner of any residence to recover from the Recovery Fund when the owner suffers damages for an act or omission by any contractor who performs any services on the residence, regardless of whether the services were performed pursuant to a contract. This bill also clarifies the application of the limitation on the amount of money which the Board or its designee may pay out of the Recovery Fund by stating that the limit applies on a per-unit basis.]~~ Section 1 of this bill requires a contractor licensed pursuant to chapter 624 of NRS or an applicant for an original or renewal license under that chapter to obtain, maintain and provide proof of insurance, with coverage having specified limits of liability for claims for injury to persons or damage to property which may arise from or in connection with the work of the contractor or applicant or his agents, representatives, employees or subcontractors.

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

Section 1. Chapter 624 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Before granting an original or renewal of a contractor's license to an applicant, the Board shall require that the applicant submit to the Board proof of insurance against claims for injury to persons or damage to property which may arise from or in connection with work that is subject to regulation pursuant to this chapter performed by the applicant or his agents, representatives, employees or subcontractors in an amount not less than the amount set forth in subsection 2.

2. To satisfy the requirements of this section, a licensee or an applicant for a contractor's license shall obtain and provide proof of insurance with coverage that has limits of liability not less than:

(a) If the Board places on the license a limit on contracting or bidding to contract in an amount less than \$1,000,000, \$300,000 in the aggregate and \$100,000 for each occurrence;

(b) If the Board places on the license a limit on contracting or bidding to contract in an amount \$1,000,000 or greater but less than \$10,000,000, \$2,000,000 in the aggregate and \$1,000,000 for each occurrence; and

(c) If the Board places on the license a limit on contracting or bidding to contract in an amount that is \$10,000,000 or greater or is unlimited, \$3,000,000 in the aggregate and \$3,000,000 for each occurrence.

3. If a licensee applies to the Board for a temporary increase in the limit on contracting or bidding to contract which the Board has placed on his license, the Board shall require the licensee to submit proof of insurance with coverage that has limits of liability as provided in subsection 2 that correspond to the temporary limit on contracting or bidding to contract. The insurance required pursuant to this subsection may be contingent upon approval by the Board of the temporary increase in the limit on contracting or bidding to contract.

4. A licensee shall maintain the insurance required pursuant to this section at all times during which he holds his license.

5. The Board may impose an administrative fine against a licensee in an amount not greater than \$10,000, in addition to any other penalty authorized by this chapter, if the licensee:

(a) Causes injury to persons or damage to property which arises from or in connection with work that is subject to regulation pursuant to this chapter performed by the licensee or his agents, representatives, employees or subcontractors; and

(b) Has failed to comply with the requirements of subsection 2 or 3.

Sec. 1.3. NRS 624.220 is hereby amended to read as follows:

624.220 1. The Board shall adopt regulations necessary to effect the classification and subclassification of contractors in a manner consistent with established usage and procedure as found in the construction business, and may limit the field and scope of the operations of a licensed contractor to those in which he is classified and qualified to engage as defined by NRS 624.215 and the regulations of the Board.

2. The Board shall limit the field and scope of the operations of a licensed contractor by establishing a monetary limit on a contractor's license, and the limit must be the maximum contract a licensed contractor may undertake on one or more construction contracts on a single construction site or subdivision site for a single

client. The Board may take any other action designed to limit the field and scope of the operations of a contractor as may be necessary to protect the health, safety and general welfare of the public. The limit must be determined after consideration of the factors set forth in NRS 624.260 to 624.265, inclusive ~~and section 1 of this act.~~

3. A licensed contractor may request that the Board increase the monetary limit on his license, either on a permanent basis or for a single construction project. A request submitted to the Board pursuant to this subsection must be in writing on a form prescribed by the Board and accompanied by such supporting documentation as the Board may require. If a request submitted pursuant to this section is for a single construction project, the request must be submitted to the Board at least 2 working days before the date on which the licensed contractor intends to submit his bid for the project.

4. Subject to the provisions of regulations adopted pursuant to subsection 5, nothing contained in this section prohibits a specialty contractor from taking and executing a contract involving the use of two or more crafts or trades, if the performance of the work in the crafts or trades, other than in which he is licensed, is incidental and supplemental to the performance of work in the craft for which the specialty contractor is licensed.

5. The Board shall adopt regulations establishing a specific limit on the amount of asbestos that a licensed contractor with a license that is not classified for the abatement or removal of asbestos may abate or remove pursuant to subsection 4.

~~[Section 1.] Sec. 1.5. [NRS 624.283 is hereby amended to read as follows:~~
~~624.283 1. Each license issued under the provisions of this chapter expires 2~~
~~years after the date on which it is issued, except that the Board may by regulation~~
~~prescribe shorter or longer periods and prorated fees to establish a system of~~
~~staggered biennial renewals. Any license which is not renewed on or before the date~~
~~for renewal is automatically suspended.~~
~~2. A license may be renewed by submitting to the Board:~~
~~(a) An application for renewal;~~
~~(b) The fee for renewal fixed by the Board;~~
~~(c) Any assessment required pursuant to NRS 624.470 ; [if the holder of the~~
~~license is a residential contractor as defined in NRS 624.450.] and~~
~~(d) All information required to complete the renewal.~~
~~3. The Board may require a licensee to demonstrate his financial~~
~~responsibility at any time through the submission of:~~
~~(a) A financial statement that is:~~
~~(1) Prepared by an independent certified public accountant; or~~
~~(2) Submitted on a form or in a format prescribed by the Board, together~~
~~with an affidavit which verifies the accuracy of the financial statement; and~~
~~(b) If the licensee performs residential construction, such additional~~
~~documentation as the Board deems appropriate.~~
~~4. If a license is automatically suspended pursuant to subsection 1, the~~
~~licensee may have his license reinstated upon filing an application for renewal~~
~~within 6 months after the date of suspension and paying, in addition to the fee for~~
~~renewal, a fee for reinstatement fixed by the Board, if he is otherwise in good~~
~~standing and there are no complaints pending against him. If he is otherwise not in~~
~~good standing or there is a complaint pending, the Board shall require him to~~
~~provide a current financial statement prepared by an independent certified public~~
~~accountant or establish other conditions for reinstatement. An application for~~
~~renewal must be accompanied by all information required to complete the renewal.~~
~~A license which is not reinstated within 6 months after it is automatically~~

~~suspended may be cancelled by the Board, and a new license may be issued only upon application for an original contractor's license.] (Deleted by amendment.)~~

Sec. 1.7. NRS 624.3013 is hereby amended to read as follows:

624.3013 The following acts, among others, constitute cause for disciplinary action pursuant to NRS 624.300:

1. Failure to keep records showing all contracts, documents, receipts and disbursements by a licensee of all of his transactions as a contractor and to keep them open for inspection by the Board or Executive Officer for a period of not less than 3 years after the completion of any construction project or operation to which the records refer.

2. Misrepresentation of a material fact by an applicant or licensee in connection with any information or evidence furnished the Board in connection with official matters of the Board.

3. Failure to establish financial responsibility pursuant to NRS 624.220 and 624.260 to 624.265, inclusive, and section 1 of this act at the time of renewal of the license or at any other time when required by the Board.

4. Failure to keep in force the bond or cash deposit pursuant to NRS 624.270 for the full period required by the Board.

5. Failure in any material respect to comply with the provisions of this chapter or the regulations of the Board.

Sec. 2. [NRS 624.420 is hereby amended to read as follows:

~~624.420 "Injured person" means an owner who is damaged by the failure of a [residential] contractor to perform [qualified] services adequately [.] with regard to a residence owned by the owner.] (Deleted by amendment.)~~

Sec. 3. [NRS 624.430 is hereby amended to read as follows:

~~624.430 "Owner" means [a]:~~

~~1. A natural person who owns a [single family residence and who contracts with a residential contractor for the performance of qualified services with respect to the] residence [.] ; or~~

~~2. A representative of a homeowners' association that is responsible for a residence or appurtenance and is acting within the scope of his duties pursuant to chapter 116 or 117 of NRS.~~

~~The term includes a subsequent owner.] (Deleted by amendment.)~~

Sec. 4. [NRS 624.460 is hereby amended to read as follows:

~~624.460 "Subsequent owner" means a natural person who purchases a [single family] residence from the owner of the residence.] (Deleted by amendment.)~~

Sec. 5. [NRS 624.470 is hereby amended to read as follows:

~~624.470 1. Except as otherwise provided in subsection 3, in addition to the fee for a license required pursuant to NRS 624.280, a [residential] contractor shall pay to the Board an assessment not to exceed the following amount, if the monetary limit on his license is:~~

Not more than \$1,000,000	\$200 per biennium
More than \$1,000,000 but limited	500 per biennium
Unlimited	1,000 per biennium

~~2. The Board shall administer and account separately for the money received from the assessments collected pursuant to subsection 1. The Board may refer to the money in the account as the "Recovery Fund."~~

~~3. The Board shall reduce the amount of the assessments collected pursuant to subsection 1 when the balance in the account reaches 150 percent of the largest balance in the account during the previous fiscal year.~~

1 ~~4. Except as otherwise provided in NRS 624.540, the money in the account~~
2 ~~must be used to pay claims made by owners who are damaged by the failure of a~~
3 ~~[residential] contractor to perform [qualified] services adequately, as provided in~~
4 ~~NRS 624.400 to 624.560, inclusive.) (Deleted by amendment.)~~

5 **Sec. 6.** [NRS 624.480 is hereby amended to read as follows:

6 ~~624.480 Except as otherwise provided in NRS 624.490, an injured person~~
7 ~~who wishes to recover from the account must file a complaint with the Board or its~~
8 ~~designee within 4 years after the completion of [qualified] the services [.] that a~~
9 ~~contractor is alleged to have failed to perform adequately.) (Deleted by~~
10 ~~amendment.)~~

11 **Sec. 7.** [NRS 624.490 is hereby amended to read as follows:

12 ~~624.490 Within 2 years after an injured person has obtained a judgment in~~
13 ~~any court of competent jurisdiction for recovery of damages against a [residential]~~
14 ~~contractor for an act or omission of the [residential] contractor that is in violation of~~
15 ~~this chapter or the regulations adopted pursuant thereto, the injured person may~~
16 ~~apply to the Board for satisfaction of the judgment from the account if:~~

17 ~~1. The proceedings in connection with the judgment have terminated,~~
18 ~~including appeals;~~

19 ~~2. He submits an application on a form established for this purpose by the~~
20 ~~Board;~~

21 ~~3. He submits proof satisfactory to the Board of the judgment; and~~

22 ~~4. Upon obtaining payment from the account, he assigns his rights to enforce~~
23 ~~the judgment to the Board.) (Deleted by amendment.)~~

24 **Sec. 8.** [NRS 624.510 is hereby amended to read as follows:

25 ~~624.510 1. Except as otherwise provided in NRS 624.490 and subsection 2,~~
26 ~~an injured person is eligible for recovery from the account if the Board or its~~
27 ~~designee finds that the injured person suffered actual damages as a result of an act~~
28 ~~or omission of a [residential] contractor that is in violation of this chapter or the~~
29 ~~regulations adopted pursuant thereto;~~

30 ~~2. An injured person is not eligible for recovery from the account if:~~

31 ~~(a) The injured person is the spouse of the licensee, or a personal representative~~
32 ~~of the spouse of the licensee;~~

33 ~~(b) The injured person was associated in a business relationship with the~~
34 ~~licensee other than the contract at issue; or~~

35 ~~(c) At the time of [contracting] entering into an agreement for services with~~
36 ~~the [residential] contractor, the license of the [residential] contractor was suspended~~
37 ~~or revoked pursuant to NRS 624.300;~~

38 ~~3. If the Board or its designee determines that an injured person is eligible for~~
39 ~~recovery from the account pursuant to this section or NRS 624.490, the Board or its~~
40 ~~designee may pay out of the account:~~

41 ~~(a) The amount of actual damages suffered, but not to exceed \$35,000 [.] per~~
42 ~~unit; or~~

43 ~~(b) If a judgment was obtained as set forth in NRS 624.490, the amount of~~
44 ~~actual damages included in the judgment and remaining unpaid, but not to exceed~~
45 ~~\$35,000 [.] per unit;~~

46 ~~4. The decision of the Board or its designee regarding eligibility for recovery~~
47 ~~and all related issues is final and not subject to judicial review;~~

48 ~~5. If the injured person has recovered a portion of his loss from sources other~~
49 ~~than the account, the Board shall deduct the amount recovered from the other~~
50 ~~sources from the amount payable upon the claim and direct the difference to be paid~~
51 ~~from the account;~~

52 ~~6. To the extent of payments made from the account, the Board is subrogated~~
53 ~~to the rights of the injured person, including, without limitation, the right to collect~~

1 ~~from a surety bond or a cash bond. The Board and the Attorney General shall~~
2 ~~promptly enforce all subrogation claims.~~

3 ~~7. The amount of recovery from the account based upon claims made against~~
4 ~~any single contractor must not exceed \$400,000.~~

5 ~~8. As used in this section, "actual damages" includes attorney's fees or costs~~
6 ~~in contested cases appealed to the Supreme Court of this State. The term does not~~
7 ~~include any other attorney's fees or costs.~~ **(Deleted by amendment.)**

8 **Sec. 9.** ~~[NRS 624.520 is hereby amended to read as follows:~~

9 ~~624.520 1. A [residential] contractor shall notify an owner with whom he~~
10 ~~{contracts} enters an agreement to perform services of the rights of the owner~~
11 ~~pursuant to NRS 624.400 to 624.560, inclusive, including, without limitation,~~
12 ~~providing a written statement explaining those rights in any agreement or contract~~
13 ~~for [qualified] services. The written statement must be in substantially the following~~
14 ~~form:~~

15 16 **RESIDENTIAL CONSTRUCTION RECOVERY FUND**

17
18 ~~Payment may be available from the Recovery Fund if you are damaged financially~~
19 ~~by a project performed on your residence pursuant to [a] **an agreement or contract,**~~
20 ~~including, **without limitation,** construction, remodeling, repair or other~~
21 ~~improvements, and the damage resulted from certain specified violations of Nevada~~
22 ~~law by a contractor licensed in this State. To obtain information relating to the~~
23 ~~Recovery Fund and filing a claim for recovery from the Recovery Fund, you may~~
24 ~~contact the State Contractors' Board at the following locations:~~

25
26 ~~State Contractors' Board~~ ~~State Contractors' Board~~
27 ~~9670 Gateway Drive, Suite 100~~ ~~2210 Corporate Circle, Suite 200~~
28 ~~Reno, Nevada 89521~~ ~~Henderson, Nevada 89074~~
29 ~~Telephone number: (775) 688-1141~~ ~~Telephone number: (702) 486-1100~~
30

31 ~~2. The Board may impose upon a contractor an administrative fine:~~

32 ~~(a) Of not more than \$100 for the first violation of subsection 1; and~~

33 ~~(b) Of not more than \$250 for a second or subsequent violation of subsection 1.~~

34 ~~3. The Board shall deposit any money received pursuant to this section in the~~
35 ~~account established pursuant to NRS 624.470.] **(Deleted by amendment.)**~~

36 **Sec. 10.** ~~[NRS 624.530 is hereby amended to read as follows:~~

37 ~~624.530 The provisions of NRS 624.400 to 624.560, inclusive, do not limit~~
38 ~~the authority of the Board to take disciplinary action against a [residential]~~
39 ~~contractor.] **(Deleted by amendment.)**~~

40 **Sec. 11.** ~~[NRS 624.622 is hereby amended to read as follows:~~

41 ~~624.622 1. A prime contractor shall provide a copy of any notice given to~~
42 ~~an owner pursuant to subsection 1 or 2 of NRS 624.610 to each lower-tiered~~
43 ~~subcontractor with whom the prime contractor has entered into an agreement. Upon~~
44 ~~receipt of payment pursuant to NRS 624.609, the prime contractor shall notify all~~
45 ~~such lower-tiered subcontractors in writing of his receipt of payment.~~

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

47 ~~(a) Requires a prime contractor to waive any rights provided in [this section,~~
48 ~~NRS 624.609 1, 624.610, 624.620] to **624.622, inclusive,** or 624.630, or which~~
49 ~~limits those rights;~~

50 ~~(b) Relieves an owner of any obligation or liability imposed pursuant to NRS~~
51 ~~624.606 to 624.630, inclusive; or~~

52 ~~(c) Requires a prime contractor to waive, release or extinguish a claim or right~~
53 ~~for damages or an extension of time that the prime contractor may otherwise~~

~~possess or acquire as a result of delay, acceleration, disruption or an impact event that is unreasonable under the circumstances, that was not within the contemplation of the parties at the time the agreement was entered into, or for which the prime contractor is not responsible;~~

~~is against public policy and is void and unenforceable;~~

~~3. All notices required pursuant to [this section,] NRS 624.609 [, 624.610 and 624.620] to 624.622, inclusive, must be:~~

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

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

~~(c) Delivered by certified mail; or~~

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

~~4. [This section,] NRS 624.609 [, 624.610 and 624.620] to 624.622, inclusive, do not apply to an agreement between:~~

~~(a) A prime contractor and a natural person who owns and occupies a single family residence for the performance of [qualified] services with respect to the residence; or~~

~~(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. (Deleted by amendment.)~~

~~Sec. 12. [The amendatory provisions of this act apply only to agreements entered into on or after October 1, 2009, between a contractor and an owner of a residence.] (Deleted by amendment.)~~

~~Sec. 13. [NRS 624.440 and 624.450 are hereby repealed.] (Deleted by amendment.)~~

~~Sec. 14. This act applies to licenses issued or renewed pursuant to chapter 624 of NRS after October 1, 2009.~~

~~†~~

~~TEXT OF REPEALED SECTIONS~~

~~624.440 “Qualified services” defined. “Qualified services” means any construction, remodeling, repair or improvement performed by a residential contractor on a single family residence occupied by the owner of the residence.~~

~~624.450 “Residential contractor” defined. “Residential contractor” means a contractor who is licensed pursuant to this chapter and who contracts with the owner of a single family residence to perform qualified services.]~~