

ASSEMBLY BILL NO. 133—ASSEMBLYMAN HANSEN

FEBRUARY 9, 2015

Referred to Committee on Commerce and Labor

SUMMARY—Prohibits a licensed contractor from knowingly employing an unauthorized alien. (BDR 54-517)

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

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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; prohibiting a licensee from knowingly employing an unauthorized alien; requiring the State Contractors' Board to investigate and take certain action against a licensee who knowingly employs an unauthorized alien; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing federal law, it is unlawful for an employer to knowingly hire an alien who is unauthorized to work in the United States. (8 U.S.C. § 1324a(a)) Federal law also prohibits any state or local law imposing civil or criminal sanctions against an employer who hires an unauthorized alien, but does allow states to impose licensing sanctions. (8 U.S.C. § 1324a(h)(2)) **Section 1** of this bill prohibits a contractor licensed by the State Contractors' Board from knowingly employing an unauthorized alien. **Section 2** of this bill authorizes investigators of the Board to investigate complaints alleging the employment of an unauthorized alien by a licensed contractor. **Sections 1 and 3** of this bill provide that a licensed contractor who is found to knowingly employ an unauthorized alien must have his or her license placed on probationary status for 3 years, during which the licensed contractor must file certain reports with the Board. If during this period the licensed contractor fails to file such a report or is found to knowingly employ an unauthorized alien, the Board must revoke the license of that contractor.



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. A licensee shall not knowingly employ an unauthorized alien.

2. The Board shall investigate each complaint submitted to the Board alleging a violation of subsection 1, except a complaint which the Board determines is based solely on race, color or national origin.

3. The Board shall verify the work authorization or ascertain the citizenship or immigration status of an alleged unauthorized alien with the Federal Government pursuant to 8 U.S.C. § 1373(c). The Board shall not attempt to determine independently whether a person is authorized to work in the United States.

4. In addition to any action taken against a licensee pursuant to NRS 360.796, if, after giving notice and holding a hearing pursuant to NRS 624.291, the Board determines that a licensee has violated subsection 1, the Board shall:

(a) Order the licensee to terminate the employment of each unauthorized alien employed by the licensee; and

(b) Order that the licensee is subject to a 3-year probationary period during which the licensee must file quarterly reports with the Board concerning each new person who is employed by the licensee.

5. If a licensee fails to comply with the orders of the Board specified in subsection 4, or commits a second violation of subsection 1 during the probationary period, the Board shall, after giving notice and holding a hearing pursuant to NRS 624.291, revoke the license of the licensee pursuant to NRS 624.300.

6. For the purposes of this section, a rebuttable presumption that the licensee did not knowingly employ an unauthorized alien is created if the licensee:

(a) Verified the employment eligibility of the person through the E-Verify program of the United States Citizenship and Immigration Services of the Department of Homeland Security, or its successor program; or

(b) Complied in good faith with the requirements of 8 U.S.C. § 1324a(b).

7. As used in this section, unless the context otherwise requires:

(a) "Employ" means to obtain the labor of a person directly by agreeing to compensate the person for his or her labor, or



indirectly by contracting with a third party who contracts with that person to provide his or her labor.

(b) "Unauthorized alien" has the meaning ascribed to it in 8 U.S.C. § 1324a(h)(3).

Sec. 2. NRS 624.115 is hereby amended to read as follows:

624.115 1. The Board may employ attorneys, investigators and other professional consultants and clerical personnel necessary to the discharge of its duties.

2. The Board may require criminal investigators who are employed by the Board pursuant to NRS 624.112 to:

(a) Conduct a background investigation of:

(1) A licensee or an applicant for a contractor's license; or

(2) An applicant for employment with the Board;

(b) Locate and identify persons who:

(1) Engage in the business or act in the capacity of a contractor within this State in violation of the provisions of this chapter;

(2) Submit bids on jobs situated within this State in violation of the provisions of this chapter; or

(3) Otherwise violate the provisions of this chapter or the regulations adopted pursuant to this chapter;

(c) Investigate any alleged occurrence of constructional fraud; ~~and~~

(d) Investigate pursuant to section 1 of this act any complaint concerning a licensee employing an unauthorized alien; and

(e) Issue a misdemeanor citation prepared manually or electronically pursuant to NRS 171.1773 to a person who violates a provision of this chapter that is punishable as a misdemeanor. A criminal investigator may request any constable, sheriff or other peace officer to assist in the issuance of such a citation.

3. The Board may require compliance investigators who are employed by the Board pursuant to NRS 624.112 to locate and identify persons who:

(a) Engage in the business or act in the capacity of a contractor within this State in violation of the provisions of this chapter;

(b) Submit bids on jobs situated within this State in violation of the provisions of this chapter; or

(c) Otherwise violate the provisions of this chapter or the regulations adopted pursuant thereto.

Sec. 3. NRS 624.291 is hereby amended to read as follows:

624.291 1. Except as otherwise provided in subsection 4, if the Board suspends or revokes a license, has probable cause to believe that a person has violated NRS 624.720 or *section 1 of this act or* imposes an administrative fine pursuant to NRS 624.710, the Board shall hold a hearing. The time and place for the hearing must



1 be fixed by the Board, and notice of the time and place of the
2 hearing must be personally served on the applicant or accused or
3 mailed to the last known address of the applicant or accused at least
4 21 days before the date fixed for the hearing.

5 2. The testimony taken pursuant to NRS 624.170 to 624.210,
6 inclusive, must be considered a part of the record of the hearing
7 before the Board.

8 3. Except as otherwise provided in NRS 622.320, the hearing
9 must be public if a request is made therefor.

10 4. The Board may suspend the license of a contractor without a
11 hearing if the Board finds, based upon evidence in its possession,
12 that the public health, safety or welfare imperatively requires
13 summary suspension of the license of the contractor and
14 incorporates that finding in its order. If the Board summarily
15 suspends the license of the contractor, the Board must notify the
16 contractor by certified mail. A hearing must be held within 60 days
17 after the suspension if the contractor submits a written request for a
18 hearing to the Board within 20 days after the Board summarily
19 suspends the license.

20 **Sec. 4.** NRS 624.300 is hereby amended to read as follows:

21 624.300 1. Except as otherwise provided in subsections 3
22 ~~and 5,~~ 5 and 6, the Board may:

23 (a) Suspend or revoke licenses already issued;

24 (b) Refuse renewals of licenses;

25 (c) Impose limits on the field, scope and monetary limit of the
26 license;

27 (d) Impose an administrative fine of not more than \$10,000;

28 (e) Order a licensee to repay to the account established pursuant
29 to NRS 624.470, any amount paid out of the account pursuant to
30 NRS 624.510 as a result of an act or omission of that licensee;

31 (f) Order the licensee to take action to correct a condition
32 resulting from an act which constitutes a cause for disciplinary
33 action, at the licensee's cost, that may consist of requiring the
34 licensee to:

35 (1) Perform the corrective work himself or herself;

36 (2) Hire and pay another licensee to perform the corrective
37 work; or

38 (3) Pay to the owner of the construction project a specified
39 sum to correct the condition; or

40 (g) Issue a public reprimand or take other less severe
41 disciplinary action, including, without limitation, increasing the
42 amount of the surety bond or cash deposit of the licensee,

43 ➤ if the licensee commits any act which constitutes a cause for
44 disciplinary action.



2. If the Board suspends or revokes the license of a contractor for failure to establish financial responsibility, the Board may, in addition to any other conditions for reinstating or renewing the license, require that each contract undertaken by the licensee for a period to be designated by the Board, not to exceed 12 months, be separately covered by a bond or bonds approved by the Board and conditioned upon the performance of and the payment of labor and materials required by the contract.

3. If a licensee violates:

(a) The provisions of NRS 624.3014, subsection 2 or 3 of NRS 624.3015, subsection 1 of NRS 624.302 or subsection 1 of NRS 624.305, the Board may impose for each violation an administrative fine in an amount that is not more than \$50,000.

(b) The provisions of subsection 4 of NRS 624.3015:

(1) For a first offense, the Board shall impose an administrative fine of not less than \$1,000 and not more than \$50,000, and may suspend the license of the licensee for 6 months;

(2) For a second offense, the Board shall impose an administrative fine of not less than \$5,000 and not more than \$50,000, and may suspend the license of the licensee for 1 year; and

(3) For a third or subsequent offense, the Board shall impose an administrative fine of not less than \$10,000 and not more than \$50,000, and may revoke the license of the licensee.

(c) The provisions of subsection 7 of NRS 624.302, the Board shall, in addition to any other disciplinary action taken pursuant to this section, impose an administrative fine of \$1,000.

4. The Board shall, by regulation, establish standards for use by the Board in determining the amount of an administrative fine imposed pursuant to subsection 3. The standards must include, without limitation, provisions requiring the Board to consider:

(a) The gravity of the violation;

(b) The good faith of the licensee; and

(c) Any history of previous violations of the provisions of this chapter committed by the licensee.

5. If a licensee is prohibited from being awarded a contract for a public work pursuant to NRS 338.017, the Board may suspend the license of the licensee for the period of the prohibition.

6. If a licensee violates section 1 of this act while the licensee is subject to a probationary period ordered by the Board pursuant to subsection 4 of section 1 of this act or fails to comply with the conditions of that probation, the Board shall revoke the license of that licensee. The Board may not impose an administrative fine for a violation of section 1 of this act.

7. If a licensee commits a fraudulent act which is a cause for disciplinary action under NRS 624.3016, the correction of any



condition resulting from the act does not preclude the Board from taking disciplinary action.

~~{7-}~~ 8. If the Board finds that a licensee has engaged in repeated acts that would be cause for disciplinary action, the correction of any resulting conditions does not preclude the Board from taking disciplinary action pursuant to this section.

~~{8-}~~ 9. The expiration of a license by operation of law or by order or decision of the Board or a court, or the voluntary surrender of a license by a licensee, does not deprive the Board of jurisdiction to proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license.

~~{9-}~~ 10. The Board shall not issue a private reprimand to a licensee.

~~{10-}~~ 11. An order that imposes discipline and the findings of fact and conclusions of law supporting that order are public records.

~~{11-}~~ 12. An administrative fine imposed pursuant to this section or NRS 624.341 or 624.710 plus interest at a rate that is equal to the prime rate at the largest bank in this State, as determined by the Commissioner of Financial Institutions on January 1 or July 1, as appropriate, immediately preceding the date of the order imposing the administrative fine, plus 4 percent, must be paid to the Board before the issuance or renewal of a license to engage in the business of contracting in this State. The interest must be collected from the date of the order until the date the administrative fine is paid.

~~{12-}~~ 13. All fines and interest collected pursuant to this section must be deposited with the State Treasurer for credit to the Construction Education Account created pursuant to NRS 624.580.

Sec. 5. NRS 624.335 is hereby amended to read as follows:

624.335 1. ~~{The}~~ *Except as otherwise provided in section 1 of this act, the* Investigations Office of the Board shall:

(a) Upon the receipt of a complaint against a licensee, initiate an investigation of the complaint.

(b) Within 10 days after receiving such a complaint, notify the licensee and, if known, the person making the complaint of the initiation of the investigation, and provide a copy of the complaint to the licensee.

(c) Upon the completion of its investigation of a complaint, provide the licensee and, if known, the person making the complaint with written notification of any action taken on the complaint and the reasons for taking that action.

2. The Investigations Office of the Board may attempt to resolve the complaint by:



1 (a) Meeting and conferring with the licensee and the person
2 making the complaint; and

3 (b) Requesting the licensee to provide appropriate relief.

4 3. If the subject matter of the complaint is not within the
5 jurisdiction of the Board, the Board or its designee may:

6 (a) Forward the complaint, together with any evidence or other
7 information in the possession of the Board concerning the
8 complaint, to any public or private agency which, in the opinion of
9 the Board, would be effective in resolving the complaint; and

10 (b) Notify the person making the complaint of its action
11 pursuant to paragraph (a) and of any other procedures which may be
12 available to resolve the complaint.

13 **Sec. 6.** This act becomes effective on July 1, 2015.

