

SENATE BILL NO. 338—SENATOR SETTELMAYER

MARCH 20, 2017

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to contractors.
(BDR 2-518)

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

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

AN ACT relating to contractors; revising provisions governing the statute of limitations to bring an action against an original contractor for the recovery of certain wages and benefits; revising provisions relating to mechanics' and materialmen's lien claimants; creating the notification requirement that a potential claimant to indebtedness for labor must provide to an original contractor or subcontractor; revising provisions relating to the liability of an original contractor for indebtedness incurred by a subcontractor for labor costs; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

The Nevada State Legislature in 2015 enacted Senate Bill No. 223 to remedy and correct problems with the imposition of vicarious liability on general contractors, the enforcement of construction-related liens and the collection of debt that arises from the failure to pay workers' wages or benefits. (Chapter 345, Statutes of Nevada 2015, p. 1930) The United States District Court for the District of Nevada in *Board of Trustees of the Glazing Health and Welfare Trust v. Chambers*, 168 F.Supp.3d 1320 (D. Nev. 2016), ruled that Senate Bill No. 223 was preempted by the Employee Retirement Income Security Act of 1974 (ERISA) as Senate Bill No. 223 attempted to regulate ERISA benefit trusts, which includes a Taft-Hartley trust, a health or welfare fund and an express trust fund. This bill sets forth amendments that would prevent the provisions of law amended in Senate Bill No. 223 from being preempted.

Existing law provides that no action may be commenced against a prime contractor more than 1 year after the employee should have received certain wages or contributions. (NRS 11.209) **Section 1** of this bill replaces the term "prime contractor" with "original contractor." **Section 1** additionally increases the statute of limitations in which to commence a legal action from 1 year to 2 years.



* S B 3 3 8 R 1 *

Existing law defines the term “laborer” for inclusion in the definition of “lien claimant” to include an express trust fund to which any portion of the total compensation of a laborer, including any fringe benefit, must be paid. Existing law lists certain financial items that are not fringe benefits. (NRS 108.2214) **Section 2** of this bill deletes these provisions. **Section 2** additionally provides that a potential claimant under **section 5** of this bill is a lien claimant.

Existing law provides notification requirements that apply to a prime contractor or subcontractor if they participate in a health or welfare fund as it relates to potential lien rights. **Section 3** of this bill removes this preempted language. **Section 3** additionally exempts a potential claimant under **section 5** from the notification requirement for a right to a lien. **Section 4** of this bill creates new notification requirements and penalties that a potential claimant under **section 5** must provide to an original contractor or subcontractor.

Existing law provides that a prime contractor is liable for the indebtedness for labor incurred by a subcontractor or contractor acting under, by or for the prime contractor. Existing law additionally provides that a prime contractor is not liable for any payment to a health or welfare fund or any other plan for the benefit of employees. (NRS 608.150) **Section 5** removes this preempted language and requires an original contractor to be liable for the indebtedness for labor that is incurred by a subcontractor or other contractor.

Existing law imposes the duty on the administrator of a Taft-Hartley trust to provide a notice of delinquency when a benefit payment that is owed to the trust is not received. (NRS 338.700) **Section 8** of this bill repeals this provision of law.

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

Section 1. NRS 11.209 is hereby amended to read as follows:

11.209 1. No action against ~~a prime~~ *an original* contractor for the recovery of wages due an employee of a subcontractor *or other contractor acting under, by or for the original contractor*, or contributions , ~~for~~ premiums *or benefits* required to be made or paid on account of the employee , *or any other indebtedness for labor performed by the employee owed to an employee* may be commenced more than ~~1 year~~ *2 years* after the date the ~~employee should have received those wages from or those contributions or premiums~~ *indebtedness for labor* should have been made or paid by the subcontractor.

2. ~~No action against a prime contractor for the recovery of benefits due an employee of a subcontractor may be commenced more than 1 year after the date the employee should have received those benefits from the subcontractor.~~

~~3.~~ As used in this section, ~~“prime”~~ *“original”* contractor” has the meaning ascribed to it in NRS ~~108.22164~~ *608.150*.

Sec. 2. NRS 108.2214 is hereby amended to read as follows:

108.2214 ~~11.~~ “Lien claimant” means any person who provides work, material or equipment with a value of \$500 or more



1 to be used in or for the construction, alteration or repair of any
2 improvement, property or work of improvement. The term includes,
3 without limitation, every artisan, builder, *potential claimant under*
4 *NRS 608.150*, contractor, laborer, lessor or renter of equipment,
5 materialman, miner, subcontractor or other person who provides
6 work, material or equipment, and any person who performs services
7 as an architect, engineer, land surveyor or geologist, in relation to
8 the improvement, property or work of improvement.

9 ~~{2. As used in this section, "laborer" includes, without~~
10 ~~limitation, an express trust fund to which any portion of the total~~
11 ~~compensation of a laborer, including any fringe benefit, must be~~
12 ~~paid pursuant to an agreement with that laborer or the collective~~
13 ~~bargaining agent of that laborer. For the purposes of this subsection,~~
14 ~~"fringe benefit" does not include any interest, liquidated damages,~~
15 ~~attorney's fees, costs or other penalties that may be incurred by the~~
16 ~~employer of the laborer for failure to pay any such compensation~~
17 ~~under any law or contract.}~~

18 **Sec. 3.** NRS 108.245 is hereby amended to read as
19 follows:

20 108.245 1. Except as otherwise provided in subsection 5,
21 every lien claimant, other than one who performs only labor ~~or is~~ *or is*
22 *a potential claimant under NRS 608.150*, who claims the benefit of
23 NRS 108.221 to 108.246, inclusive, shall, at any time after
24 the first delivery of material or performance of work or services
25 under a contract, deliver in person or by certified mail to the owner
26 of the property a notice of right to lien in substantially the following
27 form:

28
29 NOTICE OF RIGHT TO LIEN

30 To:
31 (Owner's name and address)
32

33 The undersigned notifies you that he or she has supplied
34 materials or equipment or performed work or services as
35 follows:
36

37
38 (General description of materials,
39 equipment, work or services)
40 for improvement of property identified as (property
41 description or street address) under contract with (general
42 contractor or subcontractor). This is not a notice that the
43 undersigned has not been or does not expect to be paid, but a
44 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 the notice to the prime contractor for information only. The failure by a subcontractor to deliver the notice to the prime contractor is a ground for disciplinary proceedings against the subcontractor under chapter 624 of NRS but does not invalidate the notice to the owner.

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

3. No lien for materials or equipment furnished or for work or services performed, except labor, may be perfected or enforced pursuant to NRS 108.221 to 108.246, inclusive, unless the notice has been given.

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

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

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

~~7. Upon commencement of work on a project, any prime contractor or subcontractor participating in a health or welfare fund or any other plan for the benefit of employees is required to notify such fund or plan of the name and location of the project so that the fund or plan may protect potential lien rights under NRS 108.221 to 108.246, inclusive.~~

~~8. As used in this section, "one who performs only labor" does not include an express trust fund to which any portion of the total compensation of a laborer, including, without limitation, any fringe benefit, must be paid pursuant to an agreement with that laborer or the collective bargaining agent of that laborer.~~

Sec. 4. Chapter 608 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Any potential claimant to indebtedness for labor under NRS 608.150 shall, within 90 days after receiving the written



1 request described in subsection 2, provide to the original
2 contractor, subcontractor or other contractor who submitted the
3 written request a written notice that includes, without limitation:

4 (a) Any claim that is asserted under this section;

5 (b) The basis for any such claim; and

6 (c) Either:

7 (1) The amount of any such claim;

8 (2) An explanation of what data is needed to calculate the
9 amount of any such claim; or

10 (3) A statement that no amount is due under any such
11 claim.

12 2. The written request required pursuant to subsection 1
13 must:

14 (a) Be submitted by an original contractor, subcontractor or
15 other contractor;

16 (b) Be directed to the claimant described in subsection 1; and

17 (c) Identify the:

18 (1) Original contractor, subcontractor or other contractor;

19 (2) Dates that work commenced and ended or is expected to
20 end; and

21 (3) Nature and location of any project to which the contract
22 applies.

23 3. If the written notice that the claimant is required to provide
24 pursuant to subsection 1 indicates that no amount is due under
25 any such claim or if the claimant fails to respond within 90 days
26 after receiving the written request described in subsection 2, the
27 claimant shall be prohibited from bringing any substantially
28 similar claim that is related to the project and the original
29 contractor, subcontractor or other contractor that accrued before
30 the claimant's receipt of such written notice.

31 4. As used in this section:

32 (a) "Contractor" has the meaning ascribed to it in
33 NRS 624.020.

34 (b) "Original contractor" includes a contractor or any other
35 person who enters into a contract described in subsection 1 of
36 NRS 608.150.

37 **Sec. 5.** NRS 608.150 is hereby amended to read as follows:

38 608.150 1. Except as otherwise provided in subsections 2 and
39 3, every ~~prime~~ original contractor ~~making or taking~~ entering
40 into any contract in this State for the erection, construction,
41 alteration , maintenance or repair , including, without limitation,
42 repairs made under a warranty, of any building or structure ,
43 including, without limitation, any equipment or fixtures related
44 thereto, or other work of improvement, shall assume and is liable
45 for the indebtedness for labor incurred by any subcontractor or any



1 contractors acting under, by or for the ~~{prime}~~ *original* contractor in
2 performing any labor, construction or other work included in the
3 subject of the ~~{prime}~~ *original* contract, for labor, and for the
4 requirements imposed by chapters 616A to 617, inclusive, of NRS.

5 2. ~~{The}~~ *Except as otherwise provided in subsection 6, the*
6 provisions of subsection 1 do not require ~~{a prime}~~ *an original*
7 contractor to assume or be liable for any liability of a subcontractor
8 or other contractor ~~{for any penalty, including, without limitation,~~
9 ~~interest, liquidated damages, attorney's fees or costs for the failure~~
10 ~~of the subcontractor or other contractor to make any contributions or~~
11 ~~other payments under any other law or agreement, including,~~
12 ~~without limitation, to a health or welfare fund or any other plan for~~
13 ~~the benefit of employees in accordance with a collective bargaining~~
14 ~~agreement.}~~ *in excess of the indebtedness for labor incurred by a*
15 *subcontractor or any other contractor acting under, by or for the*
16 *original contractor if such indebtedness for labor had been paid*
17 *when originally due.*

18 3. The provisions of subsection 1 do not require ~~{a prime}~~ *an*
19 *original* contractor to assume or be liable for any liability of a
20 subcontractor or other contractor for any amount for which the
21 ~~{prime}~~ *original* contractor did not receive proper notice in
22 accordance with ~~{NRS 338.700.}~~ *section 4 of this act.*

23 4. It is unlawful for any ~~{prime}~~ *original* contractor *or any*
24 *other person* to fail to comply with the provisions of subsection 1,
25 or to attempt to evade the responsibility imposed thereby, or to do
26 any other act or thing tending to render nugatory the provisions of
27 this section.

28 5. The district attorney of any county wherein the defendant
29 may reside or be found ~~{shall}~~ *, or any potential claimant pursuant*
30 *to this section may* institute civil proceedings against any such
31 ~~{prime}~~ *original* contractor failing to comply with the provisions of
32 this section in a civil action for the amount of ~~{all wages and~~
33 ~~benefits}~~ *any indebtedness for labor* that may be owing or have
34 accrued as a result of the failure of any subcontractor acting under
35 the ~~{prime}~~ *original* contractor, and any property of the ~~{prime}~~ *original*
36 *contractor*, not exempt by law, is subject to attachment and
37 execution for the payment of any judgment that may be recovered in
38 any action under the provisions of this section.

39 6. *In any court action regarding a claim instituted pursuant*
40 *to this section, the court shall award costs and reasonable*
41 *attorney's fees to the prevailing party. If the claimant is the*
42 *prevailing party, the court shall award to the claimant the*
43 *applicable interest that has accrued after the claimant provided to*
44 *the original contractor, subcontractor or other contractor the*
45 *written notice of such claim pursuant to section 4 of this act or*



1 *otherwise notifies the original contractor of a claim under*
2 *NRS 608.150.*

3 7. As used in this section ~~1, “prime contractor”~~ :

4 (a) *“Contractor”* has the meaning ascribed to it in NRS
5 ~~108.22164.1~~ *624.020.*

6 (b) *“Original contractor” includes a contractor or any other*
7 *person who enters into a contract described in subsection 1.*

8 **Sec. 6.** NRS 608.180 is hereby amended to read as follows:

9 608.180 The Labor Commissioner or the representative of the
10 Labor Commissioner shall cause the provisions of NRS 608.005 to
11 608.195, inclusive, *and section 4 of this act* to be enforced, and
12 upon notice from the Labor Commissioner or the representative:

13 1. The district attorney of any county in which a violation of
14 those sections has occurred;

15 2. The Deputy Labor Commissioner, as provided in
16 NRS 607.050;

17 3. The Attorney General, as provided in NRS 607.160 or
18 607.220; or

19 4. The special counsel, as provided in NRS 607.065,
20 ➤ shall prosecute the action for enforcement according to law.

21 **Sec. 7.** NRS 608.195 is hereby amended to read as follows:

22 608.195 1. Except as otherwise provided in NRS 608.0165,
23 any person who violates any provision of NRS 608.005 to 608.195,
24 inclusive, *and section 4 of this act* or any regulation adopted
25 pursuant thereto, is guilty of a misdemeanor.

26 2. In addition to any other remedy or penalty, the Labor
27 Commissioner may impose against the person an administrative
28 penalty of not more than \$5,000 for each such violation.

29 **Sec. 7.5.** Except as otherwise provided in this section, the
30 provisions of:

31 1. NRS 108.2214, 108.245 and 608.150, as amended by
32 sections 2, 3 and 5 of this act, apply retroactively to October 1,
33 2015, in all actions pending in a court of competent jurisdiction on
34 or before July 1, 2017.

35 2. Subsections 1, 5 and 7 of NRS 608.150, as amended by
36 section 5 of this act, apply retroactively to January 1, 2012.

37 3. Section 4 of this act apply to a claim that arises on or after
38 July 1, 2017.

39 **Sec. 8.** NRS 338.700 is hereby repealed.

40 **Sec. 9.** This act becomes effective on July 1, 2017.



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TEXT OF REPEALED SECTION

338.700 Duty of administrator of Taft-Hartley trust to provide notice of delinquency of benefit payment owed to trust.

1. If an administrator of a Taft-Hartley trust which is formed pursuant to 29 U.S.C. § 186(c)(5) does not receive a benefit payment owed to the trust within 60 days after the date on which the payment is deemed delinquent, the administrator shall provide a notice of the delinquency to the general contractor and, if applicable, the subcontractor, who is responsible for the benefit payment. The notice of delinquency must be provided in the manner set forth in subsections 2, 3 and 4.

2. The notice required pursuant to subsection 1 must be given to the general contractor and, if applicable, the subcontractor, who is responsible for the delinquent benefit payment, within 15 days after the expiration of the 60-day period described in subsection 1.

3. The notice required pursuant to subsection 1 must be given to the general contractor and, if applicable, the subcontractor, who is responsible for the delinquent benefit payment, by electronic mail, telephone and:

(a) Personal delivery; or

(b) Registered or certified mail, return receipt requested, to the last known address of the general contractor and, if applicable, the subcontractor.

4. The notice required pursuant to subsection 1 must include, without limitation:

(a) The amount owed;

(b) The name and address of the general contractor and, if applicable, the subcontractor, who is responsible for the delinquent benefit payment; and

(c) A demand for full payment of the amount not paid.

5. For the purposes of this section, "general contractor" includes a prime contractor.

