

Amendment No. 505

Assembly Amendment to Assembly Bill No. 27	(BDR 54-240)
Proposed by: Assembly Committee on Commerce and Labor	
Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes	

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) variations of green bold underlining is language proposed to be added 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 proposed to be retained in this amendment.

JRS/KCR



Date: 4/22/2019

A.B. No. 27—Revises provisions governing cease and desist orders issued by the State Contractors’ Board. (BDR 54-240)



ASSEMBLY BILL NO. 27—COMMITTEE
ON COMMERCE AND LABOR

(ON BEHALF OF THE STATE CONTRACTORS' BOARD)

PREFILED NOVEMBER 16, 2018

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions governing cease and desist orders issued by the State Contractors' Board. (BDR 54-240)

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

~

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 cease and desist orders issued by the State Contractors' Board for acting as a contractor or submitting a bid on a job in this State without a license as a contractor; prescribing certain actions that the Board is required or authorized to take after issuance of such a cease and desist order; authorizing a person who is issued a cease and desist order by the ~~{State Contractors'}~~ Board to contest the order within a certain period; setting forth the circumstances under which the order shall be deemed a final order of the Board; authorizing the Board to extend the time to contest the order for good cause shown; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, if the State Contractors' Board has reason to believe that a person has committed certain violations, the Board is required to issue, or authorize the issuance of, a written administrative citation to the person. If the citation includes any corrective action that must be taken, the citation must specifically describe that action. A person to whom the Board issues a citation may contest the citation within 15 business days after the citation is served upon the person. If a person does not contest a citation within that period, or if the Board does not extend that period, the citation shall be deemed a final order of the Board and not subject to review by any court or agency. (NRS 624.341, 624.345) Existing law also ~~{authorizes}~~ requires the Board to issue a cease and desist order to a person for ~~{certain violations committed by the person.}~~ acting as a contractor or submitting a bid on a job in this State without a license as a contractor. (NRS 624.212) **Section 1** of this bill revises provisions governing such cease and desist orders and sets forth the actions that the Board is required or authorized to take after issuing such an order. Such actions may include, without limitation: (1) confirming that a violation of the cease and desist order has occurred; (2) imposing written administrative citations and administrative fines; (3) requiring the person against whom a cease and desist order is issued to take certain actions to remedy the violation; and (4) vacating or clarifying the terms of a cease and

desist order. Section 1.5 of this bill amends the provisions of existing law which authorize a person to contest a written citation issued by the Board to include any cease and desist order issued by the Board.

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

Section 1. NRS 624.212 is hereby amended to read as follows:

624.212 1. The Executive Officer, on behalf of the Board, shall issue an order to cease and desist to any person:

(a) Acting as a contractor, including, without limitation, commencing work as a contractor; or

(b) Submitting a bid on a job situated in this State,

↳ without ~~an active~~ **a valid** license ~~[of the proper classification]~~ issued pursuant to this chapter. The order must be served personally or by certified mail and is effective upon receipt.

~~2. [If it appears that any person has engaged in acts or practices which constitute a violation of this chapter or the violation of an order issued pursuant to subsection 1, the Board may request the Attorney General, the district attorney of the county in which the alleged violation occurred or the district attorney of any other county in which that person maintains a place of business or resides to apply on behalf of the Board to the district court for an injunction restraining the person from acting in violation of this chapter. Upon a proper showing, a temporary restraining order, a preliminary injunction or a permanent injunction may be granted. The Board as plaintiff in the action is not required to prove any irreparable injury.]~~

~~3. In seeking injunctive relief against any person for an alleged violation of NRS 624.700, it is sufficient to allege that the person did, upon a certain day and in a certain county of this State:~~

~~(a) Act as a contractor, including, without limitation, commence work as a contractor; or~~

~~(b) Submit a bid on a job situated in this State,~~

~~↳ without having an active license of the proper classification issued pursuant to this chapter, without alleging any further or more particular facts concerning the matter.~~

~~4. The issuance of a restraining order or an injunction does not relieve the person against whom the restraining order or injunction is issued from criminal prosecution for practicing without a license.~~

5.] After confirming that the cease and desist order has been received by the person to whom it was issued, the Board shall return to the job site or take any other action required to confirm that the terms of the cease and desist order have been complied with. The person to whom the cease and desist order was issued may, while in the course of stopping work on the job, take any necessary action within 48 hours after receiving the cease and desist order to protect the public, the project, any other contractors, laborers and equipment on the site and to limit the loss of any perishable goods.

3. If the Board determines that any term of a cease and desist order has not been complied with and no exception applies:

(a) The person to whom the cease and desist order was issued shall be deemed noncompliant with the cease and desist order and the person may not complete the project, except for taking any necessary action to protect the public,

1 the project, any other contractors, laborers and equipment and to limit the loss of
2 any perishable goods.

3 (b) Except as otherwise provided in paragraph (c), for a first violation, the
4 Board shall issue a written administrative citation pursuant to NRS 624.341,
5 which may include any reasonable investigatory fees and costs, conditioned upon
6 the submission by the person of a bona fide application for the issuance of a
7 license pursuant to this chapter within a reasonable period established by the
8 Board.

9 (c) For a second or subsequent violation, or for any first violation for which
10 the reasonable value of the unlicensed work exceeds \$50,000, the Board shall:

11 (1) Report the violation of the cease and desist order to the appropriate
12 district attorney for possible criminal prosecution pursuant to NRS 624.700; and

13 (2) Provide any reasonable assistance in the prosecution.

14 (d) The Board may apply for an injunctive relief pursuant to the Nevada
15 Rules of Civil Procedure to enjoin the person to whom the cease and desist order
16 was issued from continuing to violate the cease and desist order in any county in
17 which the person may be found. If such an action is filed, irreparable injury is
18 presumed and the likelihood of success on the merits may be established by a
19 showing that, on the date the cease and desist order was issued, the person did
20 not hold a valid license issued pursuant to this chapter and had bid for or
21 undertaken work for which such a license is required.

22 4. If the Board determines that the person to whom the cease and desist
23 order was issued has complied with the order, the Board:

24 (a) Shall issue an administrative citation pursuant to NRS 624.341 and
25 impose an administrative fine against the person in accordance with NRS
26 624.710, in addition to any reasonable investigatory fees and costs; and

27 (b) May require the person to submit a bona fide application for the issuance
28 of a license pursuant to this chapter within a reasonable period established by the
29 Board.

30 5. When assessing an administrative fine pursuant to this section, the Board
31 may:

32 (a) Require the person to whom the cease and desist order was issued to
33 remedy any loss or damage caused by the unlicensed activity for which the order
34 was issued, including, without limitation, the disgorgement of any amount of
35 money collected from the owner of the project that was not for material delivered
36 to the job site and that has not been damaged or altered by the person;

37 (b) Reduce or stay any administrative fine imposed pursuant to subsection 4
38 pending completion by the person of a program of training or an examination
39 required by the Board; or

40 (c) Reduce or stay any administrative fine imposed pursuant to subsection 4
41 if the person obtains a valid license issued pursuant to this chapter.

42 6. When imposing an administrative fine pursuant to this section, the Board
43 shall impose the maximum administrative fine established pursuant to this
44 chapter for the unlicensed activity if more than one of the following
45 circumstances exist:

46 (a) The person has previously committed the same or a similar violation as
47 the violation for which the administrative fine is imposed;

48 (b) The unlicensed activity involves more than one trade or craft;

49 (c) The unlicensed activity resulted in harm to any person or property;

50 (d) The unlicensed activity involved an elderly person or a person with a
51 diagnosed physical or mental disability; or

52 (e) The unlicensed activity was for a project having a contract value in
53 excess of \$50,000.

7. Within 15 business days after receiving a cease and desist order, the person against whom the order was issued may petition the Board in writing to lift or alter the order. The petition may assert:

(a) As an absolute defense:

(1) Licensure of the person pursuant to chapter 624 of NRS;

(2) Any applicable exception to licensure set forth in NRS 624.031; or

(3) Misidentification of the person.

(b) As a partial defense:

(1) Overbreadth of any term of the cease and desist order;

(2) Vagueness or ambiguity of any term of the cease and desist order;

(3) Consideration of any necessary action taken by the person to protect the public, the project, any other contractors, laborers and any equipment on the job site and to limit any loss of perishable goods; or

(4) Any other defect in the terms of the cease and desist order.

8. After considering any assertion made in a petition pursuant to:

(a) Paragraph (a) of subsection 7, the Board shall, if facts are established to the satisfaction of the Board to support the absolute defense asserted in the petition, vacate the cease and desist order or any portion thereof.

(b) Paragraph (b) of subsection 7, the Board shall, if facts are established to the satisfaction of the Board to support the partial defense asserted in the petition, reasonably clarify any terms of the cease and desist order requested by the petitioner.

9. When considering an application for the issuance of a license pursuant to this chapter, the Board may consider:

(a) Any cease and desist order issued against the applicant;

(b) Compliance by the applicant with any cease and desist order issued against him or her;

(c) Any criminal conviction of the applicant for failure to comply with any cease and desist order; or

(d) The payment by the applicant of any criminal or administrative fine and any administrative fee or cost imposed against the applicant.

10. If the court finds that a person ~~willfully~~ violated an order issued pursuant to subsection 1 ~~(a)~~ without an established absolute defense set forth in paragraph (a) of subsection 7, it shall impose a fine of not less than \$250 nor more than \$1,000 for each violation of the order.

~~[Section 1.]~~ Sec. 1.5. NRS 624.345 is hereby amended to read as follows:

624.345 1. A person who is issued a written citation pursuant to NRS 624.341 *or an order to cease and desist pursuant to NRS 624.212* may contest the citation *or order* within 15 business days after the date on which the citation *or order* is served on the person.

2. A person may contest, without limitation:

(a) The facts forming the basis for the determination that the person has committed an act which constitutes a violation of this chapter or the regulations of the Board;

(b) The time allowed to take any corrective action ordered;

(c) The amount of any administrative fine ordered;

(d) The amount of any order to reimburse the Board for the expenses incurred to investigate the person; and

(e) Whether any corrective action described in the citation *or order* is reasonable.

3. If a person does not contest a citation issued pursuant to NRS 624.341 *or an order to cease and desist issued pursuant to NRS 624.212* within 15 business days after the date on which the citation *or order* is served on the person, or on or

1 before such later date as specified by the Board pursuant to subsection 4, the
2 citation *or order* shall be deemed a final order of the Board and not subject to
3 review by any court or agency.

4 4. The Board may, for good cause shown, extend the time to contest a citation
5 issued pursuant to NRS 624.341 ~~or an order to cease and desist issued pursuant~~
6 ~~to NRS 624.212.~~

7 5. For the purposes of this section ~~1-a~~:

8 (a) *An order to cease and desist must be served in accordance with NRS*
9 *624.212.*

10 (b) A citation shall be deemed to have been served on a person on:

11 ~~1-a~~ (1) The date on which the citation is personally delivered to the person; or

12 ~~1-b~~ (2) If the citation is mailed, the date on which the citation is mailed by
13 certified mail to the last known business or residential address of the person.

14 **Sec. 2.** This act becomes effective upon passage and approval.