

Amendment No. 43

Assembly Amendment to Assembly Bill No. 39	(BDR 54-265)
Proposed by: Assembly Committee on Commerce and Labor	
Amends: Summary: No Title: No 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.

ASSEMBLY BILL NO. 39—COMMITTEE
ON COMMERCE AND LABOR

(ON BEHALF OF THE STATE CONTRACTORS' BOARD)

PREFILED NOVEMBER 16, 2022

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions relating to contracts for work concerning certain residential improvements. (BDR 54-265)

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; authorizing the State Contractors' Board to adopt regulations establishing mandatory elements to be included in contracts for work concerning certain residential improvements; establishing certain requirements for such contracts and for residential contractors who enter into such contracts; making the failure to comply with those requirements a cause for disciplinary action; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law sets forth certain requirements pertaining to contracts used by a contractor and the owner of a single-family residence for work concerning a residential photovoltaic system used to produce electricity or work concerning a residential pool or spa. (NRS 624.875, 624.940) **Section 1** of this bill imposes similar requirements pertaining to a contract used by a residential contractor and the owner of a completed single-family residence who occupies the single-family residence for any construction, remodeling, repair or improvement performed by a residential contractor to the single-family residence or any activity for the supervision of such work. **Section 1** authorizes the State Contractors' Board to adopt regulations establishing mandatory elements to be included in such a contract. **Section 1** also sets forth certain information that is required to be included in such a contract. **Section 1** further requires a residential contractor to: (1) furnish to the owner with whom the residential contractor has contracted for work concerning a residential improvement a copy of all documents signed and a receipt for any money paid to the residential contractor; and (2) apply for and obtain all necessary permits. If a contract entered into between a residential contractor and the owner for work concerning a residential improvement does not comply with the provisions of **section 1** and any applicable regulations adopted by the Board, **section 1** provides that the contract is voidable by the owner.

Existing law sets forth certain acts and omissions that constitute cause for disciplinary action against a contractor by the Board, including , without limitation, failure to comply with requirements for contracts for work concerning residential pools and spas and for work concerning residential photovoltaic systems used to produce electricity. (NRS 624.3016) **Section 2** of this bill makes a contractor's failure to comply with requirements for contracts

for work concerning a residential improvement or regulations adopted by the Board governing such contracts cause for such disciplinary action. **Section 3** of this bill makes a conforming change as a result of this additional cause for disciplinary action.

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. The Board may adopt by regulation mandatory elements to be included in all contracts to be used by residential contractors for work concerning a residential improvement. Such mandatory elements must not be waived or limited by contract or in any other manner. On and after October 1, 2023, any contract entered into between a residential contractor and the owner of a single-family residence who occupies the single-family residence for work concerning a residential improvement must comply with the provisions of this section and all applicable regulations adopted by the Board. A contract that does not comply with the provisions of this section and all applicable regulations adopted by the Board is voidable by the owner of the single-family residence.

2. Any contract for work concerning a residential improvement must contain in writing at least the following information:

(a) The name of the residential contractor, his or her address and contractor's license number and the monetary limit on that license.

(b) The name and mailing address of the owner of the single-family residence on which the work is being performed and the address or legal description of the property.

(c) The date of execution of the contract.

(d) The estimated date of completion of all work to be performed under the contract.

(e) A description of the work to be performed under the contract.

(f) The total amount to be paid to the residential contractor by the owner for all work to be performed under the contract, including all applicable taxes.

(g) The amount, not to exceed \$1,000 or 10 percent of the aggregate contract price, whichever is less, of any initial down payment or deposit paid or promised to be paid to the residential contractor by the owner before the start of the work. The provisions of this paragraph do not apply if the residential contractor has filed with the Board a bond solely for the protection of consumers in the amount of \$100,000.

(h) A statement that the residential contractor has provided the owner with the notice and informational form required by NRS 624.520 and 624.600.

(i) A statement that any change in the scope or price of the work to be performed under the contract must be agreed to in writing by the parties and incorporated into the original contract as a change order. A change order is not enforceable against the owner who is contracting for work concerning a residential improvement unless the change order sets forth all changes in the scope and price of the work and is accepted by the owner.

(j) For a project of new work concerning a residential improvement, a plan and scale drawing showing the shape, size and dimensions of and the specifications for the construction and equipment for the work specified in the contract, and a description of the work to be done, the materials to be used and

1 the equipment to be installed, and the agreed consideration for the work. For
2 projects which consist exclusively of repairs to existing work concerning a
3 residential improvement, plans, scale drawings, equipment specifications and lists
4 of materials and equipment are not required to be contained in or included with
5 the contract.

6 (k) Except as otherwise provided in this subsection, the dollar amount of any
7 progress payment and the stage of construction at which the residential
8 contractor will be entitled to collect progress payments from the owner during the
9 course of construction under a contract for work concerning a residential
10 improvement. The schedule of payments must show the amount of each payment
11 as a sum in dollars and cents. The schedule of payments must not provide for the
12 residential contractor to receive, nor may the residential contractor actually
13 receive, payments in excess of 100 percent of the value of the work performed on
14 the project at any time, excluding finance charges, except for an initial down
15 payment or deposit. With respect to a contract executed before October 1, 2023, if
16 any schedule of payments set forth in the contract does not comply with the
17 provisions of this chapter or any regulations adopted pursuant thereto:

18 (1) The obligation of the owner to make payments in accordance with the
19 payment schedule is voidable; and

20 (2) The lender, if any, may not initiate proceedings to enforce the
21 payment of any applicable loan unless and until the contract is reformed or
22 otherwise amended to comply with those provisions of law.

23 ➡ The provisions of this paragraph do not apply if the residential contractor has
24 furnished a bond for payment and performance covering full performance and
25 completion of the contract and the cost of the bond is included in the price of the
26 project.

27 (l) If the contract provides for payment of a commission to a salesperson out
28 of the contract price, a statement that the payment must be made on a pro rata
29 basis in proportion to the schedule of payments made to the residential contractor
30 by the disbursing party in accordance with the provisions of paragraph (k).

31 ➡ Except as otherwise provided in subsection 5, the contract may contain such
32 other conditions, stipulations or provisions to which the parties may agree.

33 3. The contract must contain:

34 (a) A method whereby the owner may initial provisions of the contract,
35 thereby indicating that those provisions have been read and are understood.

36 (b) In close proximity to the signatures of the owner and the residential
37 contractor, a notice stating that the owner:

38 (1) May contact the Board if assistance is needed to clarify any of the
39 provisions of the contract that the owner does not fully understand;

40 (2) Has the right to request a bond for payment and performance if such
41 a bond is not otherwise required pursuant to NRS 624.270;

42 (3) May contact an attorney for an explanation of the rights of the owner
43 under the contract; and

44 (4) May, if the contract was explained in a language other than the
45 language in which the contract is written, ask for a contract that is written in the
46 language in which the contract was explained.

47 4. At the time the owner signs the contract, the residential contractor shall
48 furnish to the owner a legible copy of all documents signed and a written and
49 signed receipt for any money paid to the residential contractor by the owner. All
50 written information provided in the contract must be printed in at least 10-point
51 bold type. The contract, receipt and other documents referenced in this
52 subsection may be delivered by electronic means.

5. A condition, stipulation or provision in a contract that requires a person to waive any right provided by this chapter or any regulations adopted pursuant thereto or relieves a person of an obligation or liability imposed by this chapter or those regulations is void. Failure to comply with the requirements of this section renders a contract voidable by the owner.

6. The residential contractor shall apply for and obtain all necessary permits.

7. As used in this section:

(a) "Contract" means any contract or agreement in which a residential contractor agrees to perform work concerning a residential improvement.

(b) "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 work concerning a residential improvement.

(c) "Single-family residence" has the meaning ascribed to it in NRS 624.455.

(d) "Work concerning a residential improvement" or "work" means any construction, remodeling, repair or improvement performed by a residential contractor to a completed, single-family residence or any activity for the supervision concerning such work. The term does not include work concerning a residential photovoltaic system used to produce electricity, as defined in NRS 624.855, or work concerning a residential pool or spa, as defined in NRS 624.915.

Sec. 2. NRS 624.3016 is hereby amended to read as follows:

624.3016 The following acts or omissions, among others, constitute cause for disciplinary action under NRS 624.300:

1. Any fraudulent or deceitful act committed in the capacity of a contractor, including, without limitation, misrepresentation or the omission of a material fact.

2. A conviction of a violation of NRS 624.730, or a conviction in this State or any other jurisdiction of a felony relating to the practice of a contractor or a crime involving moral turpitude.

3. Knowingly making a false statement in or relating to the recording of a notice of lien pursuant to the provisions of NRS 108.226.

4. Failure to give a notice required by NRS 108.227, 108.245, 108.246 or 624.520.

5. Failure to comply with :

(a) NRS 624.920, 624.930, 624.935 or 624.940 or any regulations of the Board governing contracts for work concerning residential pools and spas.

~~{6. Failure to comply with}~~

(b) NRS 624.860 to 624.875, inclusive, or any regulations of the Board governing contracts for work concerning residential photovoltaic systems used to produce electricity.

~~{7.}~~ (c) Section 1 of this act or any regulations of the Board governing contracts for work concerning a residential improvement.

6. Failure to comply with NRS 624.600.

~~{8.}~~ 7. Misrepresentation or the omission of a material fact, or the commission of any other fraudulent or deceitful act, to obtain a license.

~~{9.}~~ 8. Failure to pay an assessment required pursuant to NRS 624.470.

~~{10.}~~ 9. Failure to file a certified payroll report that is required for a contract for a public work.

~~{11.}~~ 10. Knowingly submitting false information in an application for qualification or a certified payroll report that is required for a contract for a public work.

~~{12.}~~ 11. Failure to notify the Board of a conviction or entry of a plea of guilty, guilty but mentally ill or nolo contendere pursuant to NRS 624.266.

~~12.3~~ 12. Failure to provide a builder's warranty as required by NRS 624.602 or to respond reasonably to a claim made under a builder's warranty.

Sec. 3. NRS 624.750 is hereby amended to read as follows:

624.750 1. It is unlawful for a person to commit any act or omission described in subsection 1 of NRS 624.3012, subsection 2 of NRS 624.3013, NRS 624.3014 or subsection 1, 3 or ~~6~~ 7 of NRS 624.3016.

2. Except as otherwise provided in subsection 3 and unless a greater penalty is otherwise provided by a specific statute, any person who violates subsection 1, NRS 624.305, subsection 1 of NRS 624.700 or NRS 624.720 or 624.740:

(a) For a first offense, is guilty of a misdemeanor and shall be punished by a fine of not less than \$1,000 nor more than \$4,000, and may be further punished by imprisonment in the county jail for not more than 6 months.

(b) For the second offense, is guilty of a gross misdemeanor and shall be punished by a fine of not less than \$4,000 nor more than \$10,000, and may be further punished by imprisonment in the county jail for not more than 364 days.

(c) For the third or subsequent offense, is guilty of a category E felony and shall be punished by a fine of not less than \$10,000 nor more than \$20,000, and may be further punished by imprisonment in the state prison for not less than 1 year and not more than 4 years.

3. If a person is guilty of a violation of subsection 1 of NRS 624.700, the maximum fines set forth in subsection 2 may be exceeded by adding thereto a fine enhancement of not more than 10 percent of the value of any contract that the person entered into in violation of subsection 1 of NRS 624.700, if that person commenced any work or received any money relating to the contract.

4. It is unlawful for a person to receive money for the purpose of obtaining or paying for services, labor, materials or equipment if the person:

(a) Willfully fails to use that money for that purpose by failing to complete the improvements for which the person received the money or by failing to pay for any services, labor, materials or equipment provided for that construction; and

(b) Wrongfully diverts that money to a use other than that for which it was received.

5. Unless a greater penalty is otherwise provided by a specific statute, any person who violates subsection 4:

(a) If the amount of money wrongfully diverted is \$1,000 or less, is guilty of a gross misdemeanor and shall be punished by a fine of not less than \$2,000 nor more than \$4,000, and may be further punished by imprisonment in the county jail for not more than 364 days.

(b) If the amount of money wrongfully diverted is more than \$1,000, is guilty of a category E felony and shall be punished by a fine of not less than \$5,000 nor more than \$10,000, and may be further punished by imprisonment in the state prison for not less than 1 year and not more than 4 years.

6. Imposition of a penalty provided for in this section is not precluded by any disciplinary action taken by the Board against a contractor pursuant to the provisions of NRS 624.300 to 624.305, inclusive.