Senate Bill No. 327–Senator Cruz-Crawford

CHAPTER.....

AN ACT relating to contractors; revising certain bond requirements for certain licensed contractors and certain applicants for a contractor's license; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, an applicant for a contractor's license and a licensed contractor are required to obtain certain bonds in certain circumstances. Existing law requires such bonds to be provided by a person whose long-term debt obligations are rated "A" or better by a nationally recognized rating agency. (NRS 624.270, 624.276) **Sections 1 and 2** of this bill revise this requirement to require that such bonds must be provided by a person who is identified in certain publications issued by the United States Department of the Treasury as holding certain certificates.

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

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

Section 1. NRS 624.270 is hereby amended to read as follows:

624.270 1. Before issuing a contractor's license to any applicant, the Board shall require that the applicant:

(a) File with the Board a surety bond in a form acceptable to the Board executed by the contractor as principal with a corporation authorized to transact surety business in the State of Nevada as surety; or

(b) In lieu of such a bond, establish with the Board a cash deposit as provided in this section.

2. Before granting renewal of a contractor's license to any applicant, the Board shall require that the applicant file with the Board satisfactory evidence that the applicant's surety bond or cash deposit is in full force, unless the applicant has been relieved of the requirement as provided in this section.

3. Failure of an applicant or licensee to file or maintain in full force the required bond or to establish the required cash deposit constitutes cause for the Board to deny, revoke, suspend or refuse to renew a license.

4. Except as otherwise provided in subsection 6, the amount of each bond or cash deposit required by this section must be fixed by the Board with reference to the contractor's financial and professional responsibility and the magnitude of the contractor's operations, but must be not less than $1,000 or more than $500,000.

The bond must be continuous in form and must be conditioned that the total aggregate liability of the surety for all claims is limited to the face amount of the bond irrespective of the number of years the bond is in force. A bond required by this section must be provided by a person ~~[whose long-term debt obligations are rated "A" or better by a nationally recognized rating agency.]~~ ***who is, at the time of the execution of the bond, listed as a certificate holding company in the United States Department of the Treasury Circular No. 570 published pursuant to 31 C.F.R. § 223.16.*** The Board may increase or reduce the amount of any bond or cash deposit if evidence supporting such a change in the amount is presented to the Board at the time application is made for renewal of a license or at any hearing conducted pursuant to NRS 624.2545 or 624.291. Unless released earlier pursuant to subsection 5, any cash deposit may be withdrawn 2 years after termination of the license in connection with which it was established, or 2 years after completion of all work authorized by the Board after termination of the license, whichever occurs later, if there is no outstanding claim against it.

5. After a licensee has acted in the capacity of a licensed contractor in the State of Nevada for not less than 5 consecutive years, the Board may relieve the licensee of the requirement of filing a bond or establishing a cash deposit if evidence supporting such relief is presented to the Board. The Board may at any time thereafter require the licensee to file a new bond or establish a new cash deposit as provided in subsection 4:

(a) If evidence is presented to the Board supporting this requirement;

(b) Pursuant to subsection 6, after notification of a final written decision by the Labor Commissioner; or

(c) Pursuant to subsection 7.

➥ If a licensee is relieved of the requirement of establishing a cash deposit, the deposit may be withdrawn 2 years after such relief is granted, if there is no outstanding claim against it.

6. If the Board is notified by the Labor Commissioner pursuant to NRS 607.165 or otherwise receives notification that three substantiated claims for wages have been filed against a contractor within a 2-year period, the Board shall require the contractor to file a bond or establish a cash deposit in an amount fixed by the Board. The contractor shall maintain the bond or cash deposit for the period required by the Board.

7. If a contractor who performs work concerning a residential pool or spa or work concerning a residential photovoltaic system used to produce electricity:

(a) Is determined by the Board to have violated one or more of the provisions of NRS 624.301 to 624.305, inclusive;

(b) Enters into a contract that is later found to be void and unenforceable against the owner pursuant to subsection 5 of NRS 624.940 or pursuant to any regulation adopted by the Board with respect to contracts for work concerning a residential pool or spa;

(c) Enters into a contract on or after October 1, 2021, that is later voided by the owner of the single-family residence pursuant to subsection 6 of NRS 624.875 or pursuant to any regulation adopted by the Board with respect to contracts for work concerning a residential photovoltaic system used to produce electricity; or

(d) Has five valid complaints filed against him or her with the Board within any 15-day period,

➥ the Board may require the contractor to comply with the provisions of subsection 8.

8. If the Board requires a contractor described in subsection 7 to comply with the provisions of this subsection, the contractor shall, before commencing work concerning a residential pool or spa or work concerning a residential photovoltaic system used to produce electricity, obtain:

(a) Except as otherwise provided in this subsection, a performance bond in an amount equal to not less than 50 percent of the amount of the contract, conditioned upon the faithful performance of the contract in accordance with the plans, specifications and conditions set forth in the contract. The performance bond must be solely for the protection of the owner of the property to be improved.

(b) Except as otherwise provided in this subsection, a payment bond in an amount equal to not less than 50 percent of the amount of the contract. The payment bond must be solely for the protection of persons supplying labor or materials to the contractor, or to any of his or her subcontractors, in carrying out the provisions of the contract.

➥ A bond required pursuant to this subsection must be provided by a person ~~[whose long-term debt obligations are rated "A" or better by a nationally recognized rating agency.]~~ ***who is, at the time of the execution of the bond, listed as a certificate holding company in the United States Department of the Treasury Circular No. 570 published pursuant to 31 C.F.R. § 223.16.*** The contractor shall maintain the bond for the period required by the Board. The

contractor shall furnish to the building department of the city or county, as applicable, in which the work will be carried out, a copy of any bond. In lieu of a performance or payment bond, the contractor may obtain an equivalent form of security approved by the Board.

9. As used in this section, "substantiated claim for wages" has the meaning ascribed to it in NRS 607.165.

Sec. 2. NRS 624.276 is hereby amended to read as follows:

624.276 1. Before granting an original contractor's license to, or renewing the contractor's license of, an applicant who performs or will perform work concerning residential pools or spas, the Board shall, in addition to any other conditions for the issuance or renewal of a license, require the applicant to:

(a) File with the Board a bond solely for the protection of consumers in an amount fixed by the Board; or

(b) In lieu of filing a bond, establish with the Board a cash deposit as provided in this section.

2. A bond required pursuant to subsection 1 is in addition to, may not be combined with and does not replace any other bond required pursuant to the provisions of this chapter. A contractor required to file a bond pursuant to subsection 1 shall maintain the bond for 5 years or for such longer period as the Board may require.

3. After a contractor who performs work concerning a residential pool or spa has acted in the capacity of a licensed contractor in the State of Nevada for not less than 5 consecutive years, the Board may relieve the contractor of the requirements of subsection 1 if evidence supporting such relief is presented to the Board. The Board may at any time thereafter require the contractor to comply with subsection 1 if evidence is presented to the Board supporting this requirement.

4. If a licensee is relieved of the requirement of establishing a cash deposit pursuant to this section, the deposit may be withdrawn 2 years after such relief is granted, if there is no outstanding claim against it.

5. Failure of an applicant or licensee to file or maintain in full force the required bond or to establish the required cash deposit constitutes cause for the Board to deny, revoke, suspend or refuse to renew a license.

6. The amount of each bond or cash deposit required by this section must be fixed by the Board with reference to the contractor's financial and professional responsibility and the magnitude of the contractor's operations, but must be not less than $10,000 or more than $400,000. The bond must be continuous in form and must be

conditioned that the total aggregate liability of the surety for all claims is limited to the face amount of the bond irrespective of the number of years the bond is in force.

7. A bond required pursuant to subsection 1 must be provided by a person ~~[whose long-term debt obligations are rated "A" or better by a nationally recognized rating agency.]~~ ***who is, at the time of the execution of the bond, listed as a certificate holding company in the United States Department of the Treasury Circular No. 570 published pursuant to 31 C.F.R. § 223.16.*** The Board may increase or reduce the amount of any bond or cash deposit if evidence supporting such a change in the amount is presented to the Board at the time application is made for renewal of a license or at any hearing conducted pursuant to NRS 624.2545 or 624.291.

8. Unless released earlier pursuant to subsection 3, any cash deposit may be withdrawn 2 years after termination of the license in connection with which it was established or 2 years after completion of all work authorized by the Board after termination of the license, whichever occurs later, if there is no outstanding claim against it.

9. Each bond or deposit required pursuant to this section must be in favor of the State of Nevada solely for the benefit of any consumer who entered into a contract with the contractor to perform work concerning a residential pool or spa and:

(a) Is damaged by failure of the contractor to perform the contract or to remove liens filed against the property; or

(b) Is injured by any unlawful act or omission of the contractor in the performance of a contract.

10. Any consumer claiming against the bond or deposit may bring an action in a court of competent jurisdiction on the bond or against the Board on the deposit for the amount of damage the consumer has suffered to the extent covered by the bond or deposit.

11. If an action is commenced on the bond, the surety that executed the bond shall notify the Board of the action within 30 days after the date that:

(a) The surety is served with a complaint and summons; or

(b) The action is commenced,

➥ whichever occurs first.

12. A claim or action pursuant to this section must proceed and be administered in the manner provided pursuant to NRS 624.273 for a claim or action.

13. The Board shall adopt regulations necessary to carry out the provisions of this section, including, without limitation, regulations concerning:

(a) The determination of the amount of a bond pursuant to this section;

(b) The form of bond required pursuant to this section;

(c) The time within which an applicant or licensee must comply with the provisions of this section; and

(d) Procedures to contest the amount of a bond required pursuant to this section.

14. The Board shall immediately suspend the license of a contractor who fails to post the bond or provide the deposit required pursuant to this section. Failure by a licensee for 6 months to post the bond or provide the deposit required pursuant to this section constitutes grounds for disciplinary action.

15. As used in this section:

(a) "Consumer" means a natural person who:

(1) Owns a single-family residence; and

(2) Enters into a contract with a licensee to perform work concerning a residential pool or spa.

(b) "Work concerning a residential pool or spa" has the meaning ascribed to it in NRS 624.915.

20 ~~~~~ **25**