

Amendment No. 245

Assembly Amendment to Assembly Bill No. 137 (BDR 54-513)

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.

DHR/MSM



Date: 4/3/2015

A.B. No. 137—Revises provisions governing contractors. (BDR 54-513)



ASSEMBLY BILL NO. 137—ASSEMBLYMEN ELLISON, WHEELER, HAMBRICK, FIORE, HANSEN; ARMSTRONG, DICKMAN, GARDNER, HICKEY, KIRNER, MUNFORD, O'NEILL, OSCARSON, SEAMAN, SILBERKRAUS, STEWART AND TROWBRIDGE

FEBRUARY 11, 2015

JOINT SPONSORS: SENATORS GOICOECHEA; AND SETTELMAYER

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions governing contractors. (BDR 54-513)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.
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; revising provisions regarding the advertising of construction services and the soliciting of construction bids; increasing penalties for certain violations of provisions governing contractors; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires persons engaged in certain construction work to be licensed contractors, regulates the activities of licensed contractors, prohibits persons from making certain advertising claims about themselves as contractors, and provides criminal and monetary penalties for violations of the preceding provisions. (Chapter 624 of NRS)

Under existing law, it is unlawful for a licensed contractor or an applicant to become a licensed contractor to misrepresent a material fact in connection with any information or evidence furnished officially to the State Contractors' Board. (NRS 624.3013) **Section 2** of this bill expands the prohibition to include omissions of material facts as well as misrepresentations.

Section 3 of this bill adds the solicitation of a bid or estimate from ~~a [an unlicensed] person known by a licensed contractor to be unlicensed~~ to the list of acts for which a licensed contractor may be subject to disciplinary action. ~~[In addition, section 2 mandates the suspension or revocation of the license of any contractor who engages in certain acts.]~~

Existing law prohibits licensed contractors and other persons from engaging in certain acts of advertising that are false or misleading. (NRS 624.720) **Section 5** of this bill: (1) requires any person who advertises to perform or complete construction work or a work of improvement, and who is not a licensed contractor, to affirmatively state in the advertisement that they are not licensed; and (2) makes it unlawful for any person to advertise to perform or complete construction work or a work of improvement using a license number not assigned to that person.

Section 6 of this bill increases the monetary fines that may be imposed for violations of certain provisions of chapter 624 of NRS. ~~[Sections 1 and]~~ In addition, section 6 provides for an enhancement of such monetary fines under certain circumstances.

Section 4 of this bill ~~makes~~ makes conforming changes.

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

Section 1. ~~NRS 624.200 is hereby amended to read as follows:~~

~~624.200 1. Except as otherwise provided in subsections 3 and 5, the Board may:~~

~~(a) Suspend or revoke licenses already issued;~~
~~(b) Refuse renewals of licenses;~~
~~(c) Impose limits on the field, scope and monetary limit of the license;~~
~~(d) Impose an administrative fine of not more than \$10,000;~~
~~(e) Order a licensee to repay to the account established pursuant to NRS 624.470, any amount paid out of the account pursuant to NRS 624.510 as a result of an act or omission of that licensee;~~

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

~~(1) Perform the corrective work himself or herself;~~
~~(2) Hire and pay another licensee to perform the corrective work; or~~
~~(3) Pay to the owner of the construction project a specified sum to correct the condition; or~~

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

~~if the licensee commits any act which constitutes a cause for 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 subsection 1 of NRS 624.204, subsection 2 or 3 of NRS 624.205, subsection 1 of NRS 624.202 or subsection 1 of NRS 624.205, 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 624.205:~~

~~(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 2. 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 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. 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. 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. The Board shall not issue a private reprimand to a licensee.~~

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

~~11. 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. 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.] (Deleted by amendment.)~~

Sec. 2. NRS 624.3013 is hereby amended to read as follows:

624.3013 The following acts, among others, constitute cause for disciplinary action pursuant to NRS 624.300:

1. Failure to keep records showing all contracts, documents, receipts and disbursements by a licensee of all of the licensee's transactions as a contractor and to keep them open for inspection by the Board or Executive Officer for a period of not less than 3 years after the completion of any construction project or operation to which the records refer.

2. Misrepresentation *or omission* of a material fact by an applicant or licensee in connection with any information or evidence furnished the Board in connection with official matters of the Board.

3. Failure to establish financial responsibility pursuant to NRS 624.220 and 624.260 to 624.265, inclusive, at the time of renewal of the license or at any other time when required by the Board.

4. Failure to keep in force the bond or cash deposit pursuant to NRS 624.270 for the full period required by the Board.

5. Failure in any material respect to comply with the provisions of this chapter or the regulations of the Board.

Sec. 3. NRS 624.3014 is hereby amended to read as follows:

624.3014 ~~HH~~ The following acts, among others, constitute cause for disciplinary action under NRS 624.300:

1. ~~(a)~~ Acting in the capacity of a contractor under any license issued hereunder except:

(a) ~~(1)~~ In the name of the licensee as set forth upon the license.

(b) ~~(2)~~ As an employee of the licensee as set forth in the application for such license or as later changed pursuant to this chapter and the rules and regulations of the Board.

2. ~~(b)~~ With the intent to evade the provisions of this chapter:

(a) ~~(1)~~ Aiding or abetting an unlicensed person to evade the provisions of this chapter.

(b) ~~(2)~~ Combining or conspiring with an unlicensed person to perform an unauthorized act.

(c) ~~(3)~~ Allowing a license to be used by an unlicensed person.

(d) ~~(4)~~ Acting as agent, partner or associate of an unlicensed person.

(e) ~~(5)~~ Furnishing estimates or bids to an unlicensed person.

~~3. (6) (f) Soliciting a bid or estimate from an unlicensed person known by the licensee to be unlicensed pursuant to this chapter.~~

3. Any attempt by a licensee to assign, transfer or otherwise dispose of a license or permit the unauthorized use thereof.

~~2. Any person licensed pursuant to this chapter who violates any provision of this section shall, in addition to any other penalties provided for in this chapter, be subject to:~~

~~(a) For a first offense, suspension of that person's license for a period of not less than 6 months.~~

~~(b) For any subsequent offense, revocation of that person's license.~~

Sec. 4. NRS 624.710 is hereby amended to read as follows:

624.710 1. If any person violates the provisions of subsection 1 of NRS 624.700, ~~subsection 1, 2 or 3~~ subsections 1 to 5, inclusive, of NRS 624.720, or NRS 624.740, the Board may impose for each violation an administrative fine in an amount that is not less than \$1,000 and not more than \$50,000.

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

(a) The gravity of the violation;

(b) The good faith of the person; and

(c) Any history of previous violations of the provisions of this chapter or the regulations of the Board committed by the person.

3. An administrative fine imposed pursuant to this section is in addition to any other penalty imposed pursuant to this chapter.

4. If the administrative fine and any interest imposed pursuant to NRS 624.300 is not paid when due, the fine and interest, if any, must be recovered in a civil action brought by the Attorney General on behalf of the Board.

5. All administrative 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.

1 **Sec. 5.** NRS 624.720 is hereby amended to read as follows:

2 624.720 1. It is unlawful for any person, including a person exempt under
3 the provisions of NRS 624.031, to advertise as a contractor unless the person has a
4 license in the appropriate classification established by the provisions of NRS
5 624.215 and 624.220.

6 2. *Notwithstanding any other provision of this chapter, any person not*
7 *licensed pursuant to the provisions of this chapter who advertises to perform or*
8 *complete construction work or a work of improvement must state in the*
9 *advertisement that he or she is not licensed pursuant to this chapter.*

10 3. It is unlawful for a licensed contractor to disseminate, as part of any
11 advertising by the contractor, any false or misleading statement or representation of
12 material fact that is intended, directly or indirectly, to induce another person to use
13 the services of the contractor or to enter into any contract with the contractor or any
14 obligation relating to such a contract.

15 ~~3-4~~ 4. All advertising by a licensed contractor must include the name of the
16 contractor's company and the number of the contractor's license.

17 ~~4-4~~ 5. *It is unlawful for any person, whether or not licensed pursuant to*
18 *this chapter, to advertise to perform or complete construction work or a work of*
19 *improvement using a license number that does not correspond to a valid license*
20 *issued to that person under this chapter.*

21 6. If, after giving notice and holding a hearing pursuant to NRS 624.291, the
22 Board determines that a person has engaged in advertising in a manner that violates
23 the provisions of this section, the Board may, in addition to any penalty,
24 punishment or disciplinary action authorized by the provisions of this chapter, issue
25 an order to the person to cease and desist the unlawful advertising and to:

26 (a) Cause any telephone number included in the advertising, other than a
27 telephone number to a provider of paging services, to be disconnected.

28 (b) Request the provider of paging services to change the number of any
29 beeper which is included in the advertising or disconnect the paging services to
30 such a beeper, and to inform the provider of paging services that the request is
31 made pursuant to this section.

32 ~~5-4~~ 7. If a person fails to comply with paragraph (a) of subsection ~~4-4~~ 6
33 within 5 days after receiving an order pursuant to subsection ~~4-4~~ 6, the Board may
34 request the Public Utilities Commission of Nevada to order the appropriate provider
35 of telephone service to disconnect any telephone number included in the
36 advertisement, except for a telephone number to a provider of paging services. If a
37 person fails to comply with paragraph (b) of subsection ~~4-4~~ 6 within 5 days after
38 receiving an order pursuant to subsection ~~4-4~~ 6, the Board may request the provider
39 of paging services to switch the beeper number or disconnect the paging services
40 provided to the person, whichever the provider deems appropriate.

41 ~~6-4~~ 8. If the provider of paging services receives a request from a person
42 pursuant to subsection ~~4-4~~ 6 or a request from the Board pursuant to subsection ~~5-4~~
43 7, it shall:

44 (a) Disconnect the paging service to the person; or

45 (b) Switch the beeper number of the paging service provided to the person.

46 ➤ If the provider of paging services elects to switch the number pursuant to
47 paragraph (b), it shall not forward or offer to forward the paging calls from the
48 previous number, or provide or offer to provide a recorded message that includes
49 the new beeper number.

50 ~~7-4~~ 9. As used in this section:

51 (a) "Advertising" includes, but is not limited to, the issuance of any sign, card
52 or device, or the permitting or allowing of any sign or marking on a motor vehicle,
53 in any building, structure, newspaper, magazine or airway transmission, on the

Internet or in any directory under the listing of "contractor" with or without any limiting qualifications.

(b) "Beeper" means a portable electronic device which is used to page the person carrying it by emitting an audible or a vibrating signal when the device receives a special radio signal.

(c) "Provider of paging services" means an entity, other than a public utility, that provides paging service to a beeper.

(d) "Provider of telephone service" has the meaning ascribed to it in NRS 707.355.

Sec. 6. 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, ~~subsection 1 of~~ NRS 624.3014 or subsection 1, 3 or 7 of NRS 624.3016.

2. ~~Unless~~ 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 ~~more~~ 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 ~~\$2,000~~ \$4,000 nor more than ~~\$4,000~~ \$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 ~~\$5,000~~ \$10,000 nor more than ~~\$10,000~~ \$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.

~~4.5.~~ 5. Unless a greater penalty is otherwise provided by a specific statute, any person who violates subsection ~~4.5.~~ 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.

~~5.6.~~ 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.