

CHAPTER.....

AN ACT relating to contractors; requiring an applicant for a contractor's license to establish his financial responsibility under certain circumstances; providing for the confidentiality of certain information compiled as a result of an investigation conducted by the State Contractors' Board; authorizing the Board to require a criminal investigator employed by the Board to conduct a background investigation of an applicant for employment with the Board; prohibiting the Board from issuing a private reprimand to a licensee; prohibiting a person from receiving money for the purpose of obtaining or paying for services, labor, materials or equipment under certain circumstances; authorizing a district court in a proceeding for a judicial review of a final decision of the Board to dismiss an agency or person from the proceeding under certain circumstances; expanding the circumstances under which a criminal investigator employed by the Board may exercise the powers of a peace officer; providing penalties; and providing other matters properly relating thereto.

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 the provisions set forth as sections 2 to 6, inclusive, of this act.

Sec. 2. *As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 624.010, 624.020 and section 3 of this act have the meanings ascribed to them in those sections.*

Sec. 3. *“Construction control” has the meaning ascribed to it in NRS 627.050.*

Sec. 4. 1. *In addition to any other requirements set forth in this chapter, if an applicant will engage in residential construction and the applicant or the natural person qualifying on behalf of the applicant pursuant to NRS 624.260 has not held a contractor's license issued pursuant to this chapter within the 2 years immediately preceding the date that the application is submitted to the Board, the Board shall require the applicant to establish his financial responsibility by submitting to the Board:*

(a) A financial statement that is prepared by an independent certified public accountant; and

(b) Any other information required by the Board.

2. *Before the Board may issue a contractor's license to the applicant, the Board must determine whether, based on the*

financial information concerning the applicant, it would be in the public interest to do any or all of the following:

(a) Require the applicant to obtain the services of a construction control with respect to any money that the applicant requires a purchaser of a new residence to pay in advance to make upgrades to the new residence. If the Board imposes such a requirement, the applicant may not:

(1) Be related to the construction control or to an employee or agent of the construction control; or

(2) Hold, directly or indirectly, a financial interest in the business of the construction control.

(b) Establish an aggregate monetary limit on the contractor's license, which must be the maximum combined monetary limit on all contracts that the applicant may undertake or perform as a licensed contractor at any one time, regardless of the number of contracts, construction sites, subdivision sites or clients. If the Board establishes such a limit, the Board:

(1) Shall determine the period that the limit is in effect; and

(2) During that period, may increase or decrease the limit as the Board deems appropriate.

3. If the Board issues a contractor's license to an applicant described in subsection 1, for the first 2 years after the issuance of the license, the licensee must submit to the Board, with each application for renewal of the license:

(a) A financial statement that is prepared by an independent certified public accountant; and

(b) A statement setting forth the number of building permits issued to and construction projects completed by the licensee during the immediately preceding year and any other information required by the Board. The statement submitted pursuant to this paragraph must be provided on a form approved by the Board.

4. Before the Board may renew the contractor's license of the licensee, the Board must determine whether, based on the financial information concerning the licensee, it would be in the public interest to do any or all of the following:

(a) Require the licensee to obtain the services of a construction control with respect to any money that the licensee requires a purchaser of a new residence to pay in advance to make upgrades to the new residence. If the Board imposes such a requirement, the licensee may not:

(1) Be related to the construction control or to an employee or agent of the construction control; or

(2) Hold, directly or indirectly, a financial interest in the business of the construction control.

(b) Establish an aggregate monetary limit on the contractor's license, which must be the maximum combined monetary limit on

all contracts that the licensee may undertake or perform as a licensed contractor at any one time, regardless of the number of contracts, construction sites, subdivision sites or clients. If the Board establishes such a limit, the Board:

- (1) Shall determine the period that the limit is in effect; and*
- (2) During that period, may increase or decrease the limit as the Board deems appropriate.*

Sec. 5. 1. *In addition to any other requirements set forth in this chapter, if an investigation is conducted against a licensee and the Board determines that there is cause to proceed with a formal disciplinary proceeding against the licensee, the Board shall require the licensee to submit to the Board:*

(a) A financial statement that is prepared by an independent certified public accountant; and

(b) A statement setting forth the number of building permits issued to and construction projects completed by the licensee during the immediately preceding year and any other information required by the Board. The statement submitted pursuant to this paragraph must be provided on a form approved by the Board.

2. *After providing the licensee with notice and an opportunity to be heard, the Board must determine whether, based on the financial information concerning the licensee, it would be in the public interest to do any or all of the following:*

(a) Require the licensee to obtain the services of a construction control with respect to any money that the licensee requires a purchaser of a new residence to pay in advance to make upgrades to the new residence. If the Board imposes such a requirement, the licensee may not:

(1) Be related to the construction control or to an employee or agent of the construction control; or

(2) Hold, directly or indirectly, a financial interest in the business of the construction control.

(b) Establish an aggregate monetary limit on the contractor's license, which must be the maximum combined monetary limit on all contracts that the licensee may undertake or perform as a licensed contractor at any one time, regardless of the number of contracts, construction sites, subdivision sites or clients. If the Board establishes such a limit, the Board:

(1) Shall determine the period that the limit is in effect; and

(2) During that period, may increase or decrease the limit as the Board deems appropriate.

3. *The provisions of this section do not limit the authority of the Board to take disciplinary action against the licensee.*

Sec. 6. 1. *Except as otherwise provided in this section, a complaint filed with the Board, all documents and other information filed with the complaint and all documents and other*

information compiled as a result of the investigation conducted to determine whether to initiate disciplinary action are confidential.

2. The complaint or other document filed by the Board to initiate disciplinary action and all documents and information considered by the Board when determining whether to impose discipline are public records.

Sec. 7. NRS 624.010 is hereby amended to read as follows:

624.010 ~~[As used in this chapter,]~~ "Board" means the State Contractors' Board.

Sec. 8. NRS 624.020 is hereby amended to read as follows:

624.020 ~~[For the purposes of this chapter, unless the context otherwise requires:]~~

1. "Contractor" is synonymous with "builder."

2. A contractor is any person, except a registered architect or a licensed professional engineer, acting solely in his professional capacity, who in any capacity other than as the employee of another with wages as the sole compensation, undertakes to, offers to undertake to, purports to have the capacity to undertake to, or submits a bid to, or does himself or by or through others, construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, road, railroad, excavation or other structure, project, development or improvement, or to do any part thereof, including the erection of scaffolding or other structures or works in connection therewith. Evidence of the securing of any permit from a governmental agency or the employment of any person on a construction project must be accepted by the Board or any court of this state as prima facie evidence that the person securing that permit or employing any person on a construction project is acting in the capacity of a contractor pursuant to the provisions of this chapter.

3. A contractor includes a subcontractor or specialty contractor, but does not include anyone who merely furnishes materials or supplies without fabricating them into, or consuming them in the performance of, the work of a contractor.

4. A contractor includes a construction manager who performs management and counseling services on a construction project for a professional fee.

Sec. 9. NRS 624.110 is hereby amended to read as follows:

624.110 1. The Board may maintain offices in as many localities in the State as it finds necessary to carry out the provisions of this chapter, but it shall maintain one office in which there must be at all times open to public inspection a complete record of applications, licenses issued, licenses renewed and all revocations, cancellations and suspensions of licenses.

2. ~~[Credit]~~ *Except as otherwise required in section 6 of this act, credit* reports, references, ~~[investigative memoranda,]~~ financial

information and data pertaining to a licensee's net worth are confidential and not open to public inspection.

Sec. 10. NRS 624.115 is hereby amended to read as follows:

624.115 1. The Board may employ attorneys, investigators and other professional consultants and clerical personnel necessary to the discharge of its duties.

2. The Board may require criminal investigators who are employed by the Board pursuant to NRS 624.112 to:

(a) Conduct a background investigation of ~~an~~:

(1) A license or an applicant for a contractor's license; *or*

(2) *An applicant for employment with the Board;*

(b) Locate and identify persons who:

(1) Engage in the business or act in the capacity of a contractor within this state in violation of the provisions of this chapter;

(2) Submit bids on jobs situated within this state in violation of the provisions of this chapter; or

(3) Otherwise violate the provisions of this chapter or the regulations adopted pursuant to this chapter; ~~and~~

(c) *Investigate any alleged occurrence of constructional fraud; and*

(d) Issue a misdemeanor citation prepared manually or electronically pursuant to NRS 171.1773 to a person who violates a provision of this chapter that is punishable as a misdemeanor. A criminal investigator may request any constable, sheriff or other peace officer to assist him in the issuance of such a citation.

Sec. 11. NRS 624.165 is hereby amended to read as follows:

624.165 1. The Board shall:

(a) Designate one or more of its employees for the investigation of constructional fraud;

(b) Cooperate with other local, state or federal investigative and law enforcement agencies, and the Attorney General;

(c) Assist the Attorney General or any official of an investigative or a law enforcement agency of this state, any other state or the Federal Government who requests assistance in investigating any act of constructional fraud; and

(d) Furnish to those officials any information concerning its investigation or report on any act of constructional fraud.

2. The Board may obtain records of a law enforcement agency or any other agency that maintains records of criminal history, including, without limitation, records of:

(a) Arrests;

(b) Guilty pleas;

(c) Sentencing;

(d) Probation;

(e) Parole;

(f) Bail;
(g) Complaints; and
(h) Final dispositions,
for the investigation of constructional fraud.

3. For the purposes of this section, constructional fraud occurs if a person engaged in construction knowingly:

(a) Misapplies money under the circumstances described in NRS 205.310;

(b) Obtains money, property or labor by false pretense as described in NRS 205.380;

(c) Receives payments and fails to state his own true name, or states a false name, contractor's license number, address or telephone number of the person offering a service;

(d) ~~Commits~~ *Diverts money or commits* any act of theft, forgery, fraud or embezzlement, in connection with a construction project, that violates a criminal statute of this state;

(e) Acts as a contractor without:

(1) Possessing a contractor's license issued pursuant to this chapter; or

(2) Possessing any other license required by this state or a political subdivision of this state; or

(f) Otherwise fails to disclose a material fact.

Sec. 12. NRS 624.300 is hereby amended to read as follows:

624.300 1. Except as otherwise provided in subsection 3, 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;

(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) ~~Reprimand~~ *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 the provisions of NRS 624.3014 or subsection 3 of NRS 624.3015, the Board may impose an administrative fine of not more than \$20,000.

4. 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.

5. 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.

6. 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.

7. If discipline is imposed pursuant to this section, including any discipline imposed pursuant to a stipulated settlement, the costs of the proceeding, including investigative costs and attorney's fees, may be recovered by the Board.

8. *The Board shall not issue a private reprimand to a licensee.*

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

10. All fines 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.

Sec. 13. NRS 624.335 is hereby amended to read as follows:

624.335 1. The Investigations Office of the Board shall:

(a) Upon the receipt of a complaint against a licensee, initiate an investigation of the complaint.

(b) Within 10 days after receiving such a complaint, notify the licensee and, if known, the person making the complaint of the initiation of the investigation, and provide a copy of the complaint to the licensee.

(c) Upon the completion of its investigation of a complaint, provide the licensee and, if known, the person making the complaint with written notification of any action taken on the complaint and the reasons for taking that action.

2. The Investigations Office of the Board may attempt to resolve the complaint by:

- (a) Meeting and conferring with the licensee and the person making the complaint; and
- (b) Requesting the licensee to provide appropriate relief.

3. If the subject matter of the complaint is not within the jurisdiction of the Board, ~~for if the Board or the Investigations Office is unable to resolve the complaint after exhausting all reasonable remedies and methods of resolution,~~ the Board or its designee ~~shall:~~ *may:*

(a) Forward the complaint, together with any evidence or other information in the possession of the Board concerning the complaint, to any public or private agency which, in the opinion of the Board, would be effective in resolving the complaint; and

(b) Notify the person making the complaint of its action pursuant to paragraph (a) and of any other procedures which may be available to resolve the complaint.

Sec. 14. NRS 624.470 is hereby amended to read as follows:

624.470 1. Except as otherwise provided in subsection 3, in addition to the annual fee for a license required pursuant to NRS 624.280, a residential contractor shall pay to the Board an annual assessment ~~that~~ *not to exceed* the following amount, if the monetary limit on his license is:

Not more than \$1,000,000.....	\$100
More than \$1,000,000 but limited.....	250
Unlimited.....	500

2. The Board shall administer and account separately for the money received from the annual assessments collected pursuant to subsection 1. The Board may refer to the money in the account as the "Recovery Fund."

3. The Board shall ~~suspend the collection of~~ *reduce the amount of the* assessments *collected* pursuant to subsection 1 when the balance in the account reaches 150 percent of the largest balance in the account during the previous fiscal year.

4. Except as otherwise provided in NRS 624.540, the money in the account must be used to pay claims made by owners who are damaged by the failure of a residential contractor to perform qualified services adequately, as provided in NRS 624.400 to 624.560, inclusive.

Sec. 15. 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 7 of NRS 624.3016.*

2. 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 than \$1,000, 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 nor more than \$4,000, and may be further punished by imprisonment in the county jail for not more than 1 year.

(c) For the third or subsequent offense, is guilty of a ~~felony~~ *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.

3. *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. *Unless a greater penalty is otherwise provided by a specific statute, any person who violates subsection 3:*

(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 more than \$2,000 nor more than \$4,000, and may be further punished by imprisonment in the county jail for not more than 1 year.

(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. 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.

Sec. 16. NRS 627.175 is hereby amended to read as follows:

627.175 1. Except as otherwise provided in subsection 2, the following shall not be a construction control or subject to the provisions of this chapter:

(a) A contractor licensed under the laws of the State of Nevada, paying a subcontractor, supplier of material, laborer or other person for bills incurred in the construction, repair, alteration or improvement of any premises.

(b) A subcontractor licensed to do business under the laws of the State of Nevada, paying a subcontractor, supplier of material, laborer or other person for bills incurred in the construction, repair, alteration or improvement of any premises.

(c) An owner-contractor paying a contractor, subcontractor, supplier of material, laborer or other person for bills incurred in the construction, repair, alteration or improvement of any premises.

(d) A lender of construction loan money, provided that he disburses the money directly to a contractor authorized by the borrower to do the work, or disburses the money directly to the owner of the premises.

(e) A lender of construction loan money, to an owner of a residential property or to an owner of not more than four units if the loan is made to repair or improve such property and the construction costs are \$10,000 or less, or 35 percent of the appraised value of the improvements and repairs, whichever is greater.

2. The provisions of this chapter apply to a contractor who is required to obtain the services of a construction control pursuant to the provisions of NRS 597.7196 ~~§~~ *or section 4 or 5 of this act.*

Sec. 17. NRS 233B.130 is hereby amended to read as follows:

233B.130 1. Any party who is:

(a) Identified as a party of record by an agency in an administrative proceeding; and

(b) Aggrieved by a final decision in a contested case, is entitled to judicial review of the decision. Where appeal is provided within an agency, only the decision at the highest level is reviewable unless a decision made at a lower level in the agency is made final by statute. Any preliminary, procedural or intermediate act or ruling by an agency in a contested case is reviewable if review of the final decision of the agency would not provide an adequate remedy.

2. Petitions for judicial review must:

(a) Name as respondents the agency and all parties of record to the administrative proceeding;

(b) Be instituted by filing a petition in the district court in and for Carson City, in and for the county in which the aggrieved party resides or in and for the county where the agency proceeding occurred; and

(c) Be filed within 30 days after service of the final decision of the agency.

Cross-petitions for judicial review must be filed within 10 days after service of a petition for judicial review.

3. The agency and any party desiring to participate in the judicial review must file a statement of intent to participate in the petition for judicial review and serve the statement upon the agency and every party within 20 days after service of the petition.

4. A petition for rehearing or reconsideration must be filed within 15 days after the date of service of the final decision. An order granting or denying the petition must be served on all parties at least 5 days before the expiration of the time for filing the petition for judicial review. If the petition is granted, the subsequent order shall be deemed the final order for the purpose of judicial review.

5. The petition for judicial review and any cross-petitions for judicial review must be served upon the agency and every party within 45 days after the filing of the petition, unless, upon a showing of good cause, the *district* court extends the time for such service. *If the proceeding involves a petition for judicial review or cross-petition for judicial review of a final decision of the State Contractors' Board, the district court may, on its own motion or the motion of a party, dismiss from the proceeding any agency or person who:*

(a) Is named as a party in the petition for judicial review or cross-petition for judicial review; and

(b) Was not a party to the administrative proceeding for which the petition for judicial review or cross-petition for judicial review was filed.

6. The provisions of this chapter are the exclusive means of judicial review of, or judicial action concerning, a final decision in a contested case involving an agency to which this chapter applies.

Sec. 18. NRS 289.300 is hereby amended to read as follows:

289.300 1. A person employed as an investigator by the Private Investigator's Licensing Board pursuant to NRS 648.025 has the powers of a peace officer.

2. A person employed as a criminal investigator by the State Contractors' Board pursuant to NRS 624.112 has the powers of a peace officer to carry out his duties pursuant to subsection 2 of NRS 624.115 . ~~[, for the limited purpose of obtaining and exchanging information on persons who hold a contractor's license or are applying for a contractor's license.]~~

Sec. 19. This act becomes effective upon passage and approval.