

Amendment No. 706

Senate Amendment to Assembly Bill No. 22 First Reprint (BDR 54-267)
Proposed by: Senate Committee on Commerce and Labor
Amendment Box: Replaces Amendment No. 541.
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.

BJF



Date: 5/22/2023

A.B. No. 22—Revises provisions governing the issuance of cease and desist orders for unlicensed activity by the State Contractors’ Board.
(BDR 54-267)



ASSEMBLY BILL NO. 22—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 governing the issuance of cease and desist orders for unlicensed activity by the State Contractors’ Board. (BDR 54-267)

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; revising provisions governing the actions that the State Contractors’ Board is authorized or required to take after the issuance of a cease and desist order for unlicensed activity; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law requires the State Contractors’ Board to issue a cease and desist order to a person for acting as a contractor or submitting a bid on a job in this State without a license as a contractor and sets forth the actions that the Board is authorized or required to take after the issuance of the order. If the Board determines that the person to whom the cease and desist order was issued has not complied with the order, existing law requires the Board to: (1) for a first violation for which the value of the unlicensed work is \$50,000 or less, issue a written administrative citation, conditioned upon the submission by the person of an application for a license as a contractor; and (2) for a second or subsequent violation, or a first violation for which the value of the unlicensed work exceeds \$50,000, report the violation for possible criminal prosecution. If the Board determines that the person has complied with the cease and desist order, existing law: (1) requires the Board to issue an administrative citation and impose an administrative fine; and (2) authorizes the Board to require the person to submit an application for a license as a contractor. (NRS 624.212)

This bill replaces the separate procedures in existing law that the Board is required to follow after the issuance of a cease and desist order, depending upon whether the person to whom the order was issued complied with the order. Under the procedures set forth in this bill, the Board, regardless of the person’s compliance with the order, is required to issue an administrative citation and impose an administrative fine for a first violation which does not involve theft or fraud. For a second or subsequent violation, or for any first violation involving theft or fraud, this bill requires the Board to ~~;~~ (1) issue an administrative citation and impose an administrative fine; ~~;~~ (2) report the violation for possible criminal prosecution ~~;~~ **or (3) take both of those actions.** This bill retains the authority of the Board in existing law to, after the issuance of a cease and desist order: (1) require the person to submit an application for a license as a contractor; and (2) apply for injunctive relief.

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

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

2 624.212 1. The Executive Officer, on behalf of the Board, shall issue an
3 order to cease and desist to any person:

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

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

7 ↳ without a valid license issued pursuant to this chapter. The order must be served
8 personally or by certified mail and is effective upon receipt. For the purposes of this
9 section, a person shall be deemed to have a valid license if the person has an active
10 license and is performing work in conformity with the requirements of subsection 4
11 of NRS 624.220.

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

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

22 ~~—(a) The person to whom the cease and desist order was issued shall be deemed
23 noncompliant with the cease and desist order and the person may not complete the
24 project, except for taking any necessary action to protect the public, the project, any
25 other contractors, laborers and equipment and to limit the loss of any perishable
26 goods.~~

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

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

34 ~~—(1) Report the violation of the cease and desist order to the appropriate
35 district attorney for possible criminal prosecution pursuant to NRS 624.700; and~~

36 ~~—(2) Provide any reasonable assistance in the prosecution.~~

37 ~~—(d) The Board may apply for injunctive relief pursuant to the Nevada Rules of
38 Civil Procedure to enjoin the person to whom the cease and desist order was issued
39 from continuing to violate the cease and desist order in any county in which the
40 person may be found. If such an action is filed, irreparable injury is presumed and
41 the likelihood of success on the merits may be established by a showing that, on the
42 date the cease and desist order was issued, the person did not hold a valid license
43 issued pursuant to this chapter and had bid for or undertaken work for which such a
44 license is required.~~

45 ~~4. If the Board determines that the person to whom the~~ *After issuing a* cease
46 and desist order, ~~[was issued has complied with the order,]~~ the Board ~~[:] shall:~~

47 (a) ~~[Shall]~~ *For a first violation which does not involve theft or fraud,* issue an
48 administrative citation pursuant to NRS 624.341 and impose an administrative fine

1 against the person in accordance with NRS 624.710, in addition to any reasonable
2 investigatory fees and costs. ~~[-and]~~

3 (b) ~~[-May require]~~ *For a second or subsequent violation, or for any first*
4 *violation involving theft or fraud, ~~[-either-]~~ take any or all of the following*
5 *actions:*

6 (1) *Issue an administrative citation pursuant to NRS 624.341 and impose*
7 *an administrative fine against the person in accordance with NRS 624.710, in*
8 *addition to any reasonable investigatory fees and costs. ~~[-or-]~~*

9 (2) *Report the violation of the provisions of this chapter for possible*
10 *criminal prosecution pursuant to NRS 624.700. If the violation is prosecuted, the*
11 *Board shall provide any reasonable assistance in the prosecution.*

12 4. *After issuing a cease and desist order, in addition to the actions required*
13 *by subsection 3, the Board may:*

14 (a) *Require* the person to submit a bona fide application for the issuance of a
15 license pursuant to this chapter within a reasonable period established by the Board.

16 (b) *If the Board determines that any term of the cease and desist order has*
17 *not been complied with and no exception applies, apply for injunctive relief*
18 *pursuant to the Nevada Rules of Civil Procedure to enjoin the person to whom*
19 *the cease and desist order was issued from continuing to violate the cease and*
20 *desist order in any county in which the person may be found. If such an action is*
21 *filed, irreparable injury is presumed and the likelihood of success on the merits*
22 *may be established by a showing that, on the date the cease and desist order was*
23 *issued, the person did not hold a valid license issued pursuant to this chapter and*
24 *had bid for or undertaken work for which such a license is required.*

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

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

32 (b) Reduce or stay any administrative fine imposed pursuant to subsection ~~[-4]~~ 3
33 pending completion by the person of a program of training or an examination
34 required by the Board; or

35 (c) Reduce or stay any administrative fine imposed pursuant to subsection ~~[-4]~~ 3
36 if the person obtains a valid license issued pursuant to this chapter.

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

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

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

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

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

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

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

51 (a) As an absolute defense:

52 (1) Licensure of the person pursuant to this chapter;

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

- 1 (3) Misidentification of the person.
- 2 (b) As a partial defense:
- 3 (1) Overbreadth of any term of the cease and desist order;
- 4 (2) Vagueness or ambiguity of any term of the cease and desist order;
- 5 (3) Consideration of any necessary action taken by the person to protect the
- 6 public, the project, any other contractors, laborers and any equipment on the job site
- 7 and to limit any loss of perishable goods; or
- 8 (4) Any other ~~defect~~ *deficiency* in the terms of the cease and desist order.
- 9 8. After considering any assertion made in a petition pursuant to:
- 10 (a) Paragraph (a) of subsection 7, the Board shall, if facts are established to the
- 11 satisfaction of the Board to support the absolute defense asserted in the petition,
- 12 vacate the cease and desist order or any portion thereof.
- 13 (b) Paragraph (b) of subsection 7, the Board shall, if facts are established to the
- 14 satisfaction of the Board to support the partial defense asserted in the petition,
- 15 reasonably clarify any terms of the cease and desist order requested by the
- 16 petitioner.
- 17 9. When considering an application for the issuance of a license pursuant to
- 18 this chapter, the Board may consider:
- 19 (a) Any cease and desist order issued against the applicant;
- 20 (b) Compliance by the applicant with any cease and desist order issued against
- 21 him or her;
- 22 (c) Any criminal conviction of the applicant for failure to comply with any
- 23 cease and desist order; or
- 24 (d) The payment by the applicant of any criminal or administrative fine and
- 25 any administrative fee or cost imposed against the applicant.
- 26 10. If the court finds that a person violated an order issued pursuant to
- 27 subsection 1 without an established absolute defense set forth in paragraph (a) of
- 28 subsection 7, it shall impose a fine of not less than \$250 nor more than \$1,000 for
- 29 each violation of the order.