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STATE CONTRACTORS' BOARD

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NOTICE OF INTENT TO ACT UPON A REGULATION

Notice of Workshop and Hearing for the Adoption, Amendment or Repeal of Regulations
Of
The State of Nevada Contractors' Board

The State of Nevada Contractors' Board ("Board") will hold a workshop and public hearing at the Board's Las Vegas Office located at 4220 South Maryland Parkway, Bldg. D, Las Vegas, Nevada 89118 on Wednesday, October 24, 2001. The workshop will begin at 10:00 a.m. The hearing will begin at 1:00 p.m. The purpose of the workshop and hearing is to receive comments from all interested persons regarding the adoption, amendment or repeal of regulations that pertain to Chapter 624 of the Nevada Administrative Code.

The following information is provided pursuant to the requirements of NRS 233B.060 and 233B.0603:

1. The need for and purpose of the proposed regulation or amendment.

Pursuant to Senate Bill No. 216 enacted by the 2001 session of the Nevada Legislature, the Board shall adopt by regulation standards for advertisements used by contractors in connection with the sale of contracts for the repair, restoration, improvement or construction of residential pools or spas and the mandatory elements that must be included in a contract for the repair, restoration, improvement or construction of a residential pool or spa.

2. Either the terms or the substance of the regulations to be adopted, amended or repealed or a description of the subjects and issues involved.

The proposed regulation sets forth the standards contractors must adhere to when advertising the sale of contracts for the repair, restoration, improvement or construction of residential pools or spas and the mandatory elements that must be included in the contract. A copy of the proposed regulation may be obtained by writing to the Board's offices at 9670 Gateway Drive, Reno, Nevada 89511.

3. The estimated economic effect of this proposed regulation on the business which it is to regulate and on the public.

(a) Adverse and beneficial effects.

Beneficial effects include providing potential purchasers of pools or spas with accurate and complete information about the repair, restoration, improvement or construction of a pool or spa. Beneficial effects for contractors engaging in repair, restoration, improvement or construction of pools and spas include greater consumer confidence by providing the consumer with clear, concise, and accurate advertising.

(b) Both immediate and long-term effects.

Immediate and long-term effects include the ability of a homeowner to make reasoned decisions concerning the hiring of a contractor to perform repairs, restoration, improvement or construction of pools and spas knowing that the advertising is not misleading or inaccurate. The citizens of the state will be protected from "bait and switch" advertising or other intentional misleading advertising.

4. The estimated cost to the Agency for enforcement of the proposed regulation.

The enforcement of the proposed regulation will be minimal since the current investigative staff of the Board will perform the function.

5. A description of and citation to any regulations of other state or local governmental agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary.

The proposed regulation does not overlap or duplicate any regulation of other state or local governmental entities.

6. If the regulation is required pursuant to federal law, a citation and description of the federal law.

Does not apply.

7. If the regulation includes provisions which are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.

Does not apply.

8. Whether proposed regulation establishes a new fee or increases an existing fee.

Does not apply.

Persons wishing to comment upon the proposed action of the Board may appear at the scheduled public hearings or may address their comments, data, views or arguments, in written form to the Executive Officer of the Nevada State Contractors' Board, 4220 South Maryland Parkway, Building D, Suite 800, Las Vegas, Nevada 89119 or in Reno at 9670 Gateway Drive, Suite 100, Reno, Nevada 89511. Written submissions must be received by the Board on or before Friday, October 19, 2001. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Board may proceed immediately to act upon any written submissions.

A copy of this notice and the regulations to be adopted, amended or repealed will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notices and the regulation to be adopted will be available at the State Contractors' Board, 4220 South Maryland Parkway, Building D, Suite 800, Las Vegas, Nevada 89119 and 9670 Gateway Drive, Suite 100, Reno, Nevada 89511. In all counties in which an office of the Board is not maintained, a copy of this notice and the text of the proposed regulation will also be available for public inspection and copying at the main public library during business hours. This notice and the text of the proposed regulation will be available in the State of Nevada Register of Administrative Regulations which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653, and on the Internet at <http://www.leg.state.nv.us>. Copies of this notice and the proposed regulation will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Upon adoption of any regulation, the Board, if requested to do so by an interested person, either before adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption.

This notice has been mailed to all persons on the agency's mailing list of administrative regulations and posted at the following locations:

Washoe County Court House
Washoe County Library
Reno City Hall
Las Vegas City Hall
Sawyer State Building
Clark County Library
Offices of the State Contractors' Board in Reno and Las Vegas

Dated: September 12, 2001

POOL & SPA ADVERTISEMENTS/CONTRACTS

PROPOSED Amendment to NAC 624

The State Legislature enacted SB 216 which stated:

Chapter 597 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 6 inclusive, of this act.

Section 2.1. The Board shall adopt by regulation standards for advertisements used by contractors in connection with the sale of contracts for the repair, restoration, improvement or construction of residential pools or spas.

2. The regulations adopted pursuant to subsection 1 must prohibit a contractor from employing "bait and switch" advertising or otherwise intentionally publishing, displaying or circulating any advertisement which is misleading or inaccurate in any material particular or which misrepresents any of the goods or services sold or furnished by the contractor to members of the public.

3. The board shall, in adopting the standards required by subsection 1, give consideration to the provisions of chapter 598 of NRS relating to advertisements that constitute deceptive trade practices and, to the extent practicable, adopt standards that are at least as stringent as those provisions.

4. A contractor shall not cause to be published or display or circulate any advertisement that does not comply with the standards adopted by the board pursuant to subsection 1.

5. As used in this section, "bait and switch" advertising has the meaning ascribed to it in NRS 482.351.

1. "Advertisement" defined.

a. *e attempt by publication, dissemination, solicitation or circulation to induce, directly or indirectly, any person to enter into any obligation for the repair, restoration,*

b. As used in this section, "bait and switch" advertising consists of an offer for the repair, restoration, improvement or construction of residential pools or spas, which the seller in truth may not intend or desire to sell, accompanied by one or more of the following practices:

- (1) Refusal to show the goods advertised.
- (2) Disparagement in any material respect of the advertised goods or services or the terms of sale.
- (3) Requiring other sales or other undisclosed conditions to be met before entering a contract for the repair, restoration, improvement or construction of residential pools or spas.
- (4) Refusal to take orders for the repair, restoration, improvement or construction of residential pools or spas advertised for delivery within a reasonable time.
- (5) Accepting a deposit for the repair, restoration, improvement or construction of residential pools or spas and subsequently switching the purchase order to a higher priced item without having a signed change order from the consumer.

A residential pool or spa contractor, as that term is defined in NRS 597.713, engages in a "deceptive advertising" if, in the course of his business or occupation, he:

1. Knowingly makes a false representation as to the source, sponsorship, approval or certification of goods or services for the repair, restoration, improvement or construction of a residential pool or spa.
2. Knowingly makes a false representation as to affiliation, connection, association with or certification by another.
3. Represents that goods or services for the repair, restoration, improvement or construction of residential pools or spas are of a particular standard, quality or grade, or that such goods are of a particular style or model, if he knows or should know that they are of another.
4. Disparages the goods, services or business of another by false or misleading representation of fact.
5. Advertises goods or services with intent not to sell them as advertised.

6. *Advertises goods or services for the repair, restoration, improvement or construction of residential pools or spas with intent not to supply reasonably expected public demand, unless the advertisement discloses a limitation of quantity.*

7. *Makes false or misleading statements of fact concerning the price of goods or services for the repair, restoration, improvement or construction of residential pools or spas or the reasons for, existence of or amounts of price reductions.*

8. *Fraudulently alters any contract, written estimate of repair, written statement of charges or other document in connection with the repair, restoration, improvement or construction of residential pools or spas, or*

9. *Knowingly makes any other false representation in a transaction for the repair, restoration, improvement or construction of residential pools or spas.*

A person engages in a "deceptive advertising" when, in the course of his business or occupation, he employs "bait and switch" advertising, which consists of an offer to sell or lease goods or services which the seller or lessor in truth may not intend or desire to sell or lease, accompanied by one or more of the following practices:

1. *Refusal to show the goods advertised.*

2. *Disparagement in any material respect of the advertised goods or services or the terms of sale or lease.*

3. *Requiring other sales or other undisclosed conditions to be met before selling or leasing the advertised goods or services.*

4. *Refusal to take orders for the repair, restoration, improvement or construction of residential pools or spas or services advertised for delivery within a reasonable time.*

5. *Advertises a residential pool or spa can be completed within a certain number of days, unless 51% of the contractor's pools or spas are actually completed within the advertised number of days.*

6. *Showing, displaying or advertising of pools or spas for an advertised price that is not accurate for the pool or spa advertised.*

7. *Accepting a deposit for the repair, restoration, improvement or construction of residential pools or spas and subsequently switching the purchase price or contract amount to a higher price without first obtaining signed change orders from the owner.*
8. *Tendering a contract for the repair, restoration, improvement or construction of residential pools or spas less favorable than the terms advertised.*
9. *All advertising for residential pools or spas, which display financing, must identify the finance company and the annual percentage rate (APR) to be charged.*
10. *Advertised for the repair, restoration, improvement or construction of residential pools or spas within a stated time frame and fails to complete the project within the stated time frame.*
11. *Makes any untrue statement of a material fact in the advertisement for the repair, restoration, improvement or construction of residential pools or spas.*
12. *Notifies any person, by any means, as a part of an advertising plan or scheme, that he has won a prize and that as a condition of receiving the prize he must enter a contract for the repair, restoration, improvement or construction of residential pools or spas.*
13. *Fails to disclose a material fact in connection with advertisement for the repair, restoration, improvement or construction of residential pools or spas.*
14. *A residential pool or spa contract must not employ "bait and switch" advertising or otherwise intentionally publish, display or circulate any advertising which is misleading or inaccurate in any material particular or which misrepresents any of the products sold or furnished to the homeowner.*
15. *A residential pool or spa contractor shall not advertise using a pool or spa scene, with a stated price, unless that price accurately reflects the completed pool and spa, as depicted in the picture.*
16. *A residential pool or spa contractor shall not advertise the repair, restoration, improvement or construction of a residential pool or spa as an "Owner Builder" without a full description of the "Owner Builder" exemption as defined in NRS 624.031(4) and adherence to the statutory requirements of NRS 278.573.*

Section 9 NRS 597.719 is hereby amended to read as follows:

597.719 1. The Board shall adopt by regulation mandatory elements to be included in all contracts to be used by contractors for the repair, restoration, improvement or construction of a residential pool or spa. Such mandatory elements must not be waived or limited by contract or in any other manner.. On or after October 1, 2001, any contract entered into between a contractor and the owner of a single family residence for the repair, restoration, improvement or construction of a residential pool or spa must comply with the standard elements adopted bvy the board. A contract that does not comply with the standard elements adopted by the board is void and unenforceable against the owner.

All residential pool or spa contracts must comply with the provisions of NAC 624.695 to 624.697 inclusive

Section 694.6966 is amended to include section 7 as follows:

7. All contracts for a residential pool or spa must be approved and signed by the licensee or other person listed on the license.