

HOUSE BILL 456

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

Dayan Hochman-Vigil

Pursuant to House Rule 24-1, this document incorporates amendments that have been adopted prior to consideration of this measure by the House. It is a tool to show the amendments in context and is not to be used for the purpose of amendments.

AN ACT

RELATING TO CONSTRUCTION INDUSTRIES; CLARIFYING LANGUAGE;

HJC → ~~PROHIBITING A NON-LICENSEE FROM FILING A MECHANIC'S LIEN;~~

~~PROHIBITING MISREPRESENTATION OF AN EMPLOYEE AS AN INDEPENDENT~~

~~CONTRACTOR;~~ ← HJC ESTABLISHING, CLARIFYING AND INCREASING

PENALTIES; ESTABLISHING TIME LIMITATION FOR COMMENCING

PROSECUTION; GRANTING PEACE OFFICER POWERS TO CERTAIN

EMPLOYEES; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 60-13-52 NMSA 1978 (being Laws 1977,

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Chapter 377, Section 6, as amended) is amended to read:

"60-13-52. PENALTY--MISDEMEANOR--PROHIBITING MECHANIC'S LIEN--TIME LIMITATION FOR COMMENCING PROSECUTIONS--PEACE OFFICER AUTHORITY.--

A. [~~Any~~] A person who acts in the capacity [as] of a contractor within the meaning of the Construction Industries Licensing Act without a license [required by that act] issued by the division and classified to perform work authorized by the particular trade bureau, and any person who [holds himself out as] represents that the person is able to contract or act in the capacity of a sales representative of or consultant to a [contractor] contracting entity, which [contractor] contracting entity is without a license as required by that act, is strictly liable and guilty of a misdemeanor as defined in Subsection B of Section 30-1-6 NMSA 1978, not a petty misdemeanor, and upon conviction, [therefor] the court shall:

(1) where the dollar value of the contracting work is [~~five thousand dollars (\$5,000)] ten thousand dollars (\$10,000) or less, sentence the person pursuant to Subsection A of Section 31-19-1 NMSA 1978 to be imprisoned [in the county jail for a term of ninety days] for a definite term of less than one year or to the payment of a fine of not [less] more than [three hundred dollars (\$300) nor more than five hundred dollars (\$500)] one thousand dollars (\$1,000) or to both [such] imprisonment and fine in the discretion of the court; and~~

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(2) where the dollar value of the contracting work exceeds [~~five thousand dollars (\$5,000)~~] ten thousand dollars (\$10,000), sentence the person to be imprisoned [~~in the county jail for a term of six months~~] for a definite term of less than one year or to the payment of a fine of ten percent of the dollar value of the contracting work or to both [~~such~~] imprisonment and fine in the discretion of the court.

B. [~~Any~~] A person who acts in the capacity [~~as~~] of a journeyman within the meaning of the Construction Industries Licensing Act without holding a valid journeyman certificate [~~of competence issued by the division~~] for the classification for which the journeyman acts is strictly liable and guilty of a misdemeanor as defined in Subsection B of Section 30-1-6 NMSA 1978, not a petty misdemeanor, and upon conviction [therefor], the court shall sentence the person pursuant to Subsection A of Section 31-19-1 NMSA 1978 to be imprisoned [in the county jail for a term of ninety days] for a definite term of less than one year or to payment of a fine of not [~~less~~] more than [~~one hundred dollars (\$100) nor more than three hundred dollars (\$300)~~] one thousand dollars (\$1,000) or to both [~~such~~] imprisonment and fine in the discretion of the court.

C. [~~Any~~] A person who, after having been convicted and sentenced in accordance with the provisions of either Subsection A or [~~Subsection~~] B of this section, is again convicted pursuant to the provisions of this section shall be

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sentenced to twice the applicable penalty imposed by the provisions of this section.

~~HJC→D. A person who provides a service without a license as required by the Construction Industries Licensing Act shall have no right to file or claim a mechanic's lien for that service.~~

~~E. A contractor who reports to a state agency or other client that an employee is an independent contractor or who, for the purposes of a program administered by a state agency, intentionally and fully treats or otherwise lists an employee as an independent contractor when the employee's status does not meet the standards indicative of an independent contractor is guilty of a misdemeanor as defined in Subsection B of Section 30-1-6 NMSA 1978, not a petty misdemeanor, and upon conviction shall be punished by a fine of not more than five thousand dollars (\$5,000) or by imprisonment for a definite term of less than one year or both; provided that this subsection shall not apply to recovery in a tort action or change the common law interpretation of the term "independent contractor" as it relates to tort liability.~~ ←HJC

[D-] HJC→F. D. ←HJC In the case of a first conviction under this section, the court may impose a deferred sentence on the condition that the person comply with the provisions for licensure pursuant to Subsection D of Section 60-13-14 NMSA 1978.

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HJC→~~G.~~ E.←HJC A person shall not be prosecuted, tried or punished in any court of this state for a violation of a provision of this section unless the complaint is filed within three years from the time the crime was committed.

HJC→~~H.~~ F.←HJC Division employees who are currently certified by the New Mexico law enforcement academy and who have the principal duty to investigate criminal violations of the Construction Industries Licensing Act shall:

(1) have the power of a peace officer with respect to arrests and enforcement of the Construction Industries Licensing Act; and

(2) not be convicted or held liable for any act performed pursuant to the Construction Industries Licensing Act if a peace officer could lawfully have performed the same act in the same circumstances."

SECTION 2. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.