

HOUSE BILL 344

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

INTRODUCED BY

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AN ACT

RELATING TO CONSTRUCTION INDUSTRIES; MAKING IT A FELONY FOR A CONTRACTOR TO FAIL TO PAY A SUBCONTRACTOR.

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

SECTION 1. Section 60-13-52 NMSA 1978 (being Laws 1977, Chapter 377, Section 6, as amended) is amended to read:

"60-13-52. [~~PENALTY--MISDEMEANOR~~] PENALTIES--CRIMINAL ENFORCEMENT.--

A. Any person who acts in the capacity as a contractor within the meaning of the Construction Industries Licensing Act without a license required by that act and any person who [~~holds himself out as~~] makes any representation as being a sales representative of a contractor, which contractor is without a license as required by that act, is guilty of a misdemeanor and upon conviction [~~therefor~~] the court shall:

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1 (1) where the dollar value of the contracting  
2 work is five thousand dollars (\$5,000) or less, sentence the  
3 person to be imprisoned in the county jail for a term of ninety  
4 days or to the payment of a fine of not less than three hundred  
5 dollars (\$300) [~~not~~] or more than five hundred dollars (\$500)  
6 or to both [~~such~~] imprisonment and fine in the discretion of  
7 the court; and

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

14 B. [~~Any~~] A person who acts in the capacity as a  
15 journeyman within the meaning of the Construction Industries  
16 Licensing Act without holding a valid certificate of competence  
17 issued by the division is guilty of a misdemeanor and upon  
18 conviction [~~therefor~~] the court shall sentence the person to be  
19 imprisoned in the county jail for a term of ninety days or to  
20 payment of a fine of not less than one hundred dollars (\$100)  
21 [~~not~~] or more than three hundred dollars (\$300) or to both  
22 [~~such~~] imprisonment and fine.

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

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underscored material = new  
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1 convicted pursuant to the provisions of this section shall be  
2 sentenced to twice the applicable penalty imposed by the  
3 provisions of this section.

4 D. In the case of a first conviction under Subsection  
5 A or B of this section, the court may impose a deferred  
6 sentence on the condition that the person comply with the  
7 provisions for licensure pursuant to Subsection D of Section  
8 60-13-14 NMSA 1978.

9 E. It is unlawful for a contractor to knowingly fail  
10 to compensate a validly licensed subcontractor for work  
11 performed pursuant to a contract or fail to pay, as required by  
12 contract, for materials or supplies furnished for use in the  
13 construction, alteration or repair of a building or other  
14 improvement.

15 F. A contractor who violates Subsection E of this  
16 section when the unpaid amount:

17 (1) is not more than two thousand five hundred  
18 dollars (\$2,500), is guilty of a fourth degree felony;

19 (2) is over two thousand five hundred dollars  
20 (\$2,500) but not more than twenty thousand dollars (\$20,000),  
21 is guilty of a third degree felony; or

22 (3) is more than twenty thousand dollars  
23 (\$20,000), is guilty of a second degree felony."