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SENATE BILL 523

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

INTRODUCED BY

Joseph Cervantes

AN ACT

RELATING TO CONSTRUCTION INDUSTRIES; CLARIFYING LANGUAGE;
PROHIBITING A NON-LICENSEE FROM FILING A MECHANIC'S LIEN;
PROHIBITING MISREPRESENTATION OF AN EMPLOYEE AS AN INDEPENDENT
CONTRACTOR; 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,
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

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

12 (1) where the dollar value of the contracting
13 work is [~~five thousand dollars (\$5,000)~~] ten thousand dollars
14 (\$10,000) or less, sentence the person pursuant to Subsection A
15 of Section 31-19-1 NMSA 1978 to be imprisoned [~~in the county~~
16 ~~jail for a term of ninety days~~] for a definite term of less
17 than one year or to the payment of a fine of not [~~less~~] more
18 than [~~three hundred dollars (\$300) nor more than five hundred~~
19 ~~dollars (\$500)~~] one thousand dollars (\$1,000) or to both [~~such~~]
20 imprisonment and fine in the discretion of the court; and

21 (2) where the dollar value of the contracting
22 work exceeds [~~five thousand dollars (\$5,000)~~] ten thousand
23 dollars (\$10,000), sentence the person to be imprisoned [~~in the~~
24 ~~county jail for a term of six months~~] for a definite term of
25 less than one year or to the payment of a fine of ten percent

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1 of the dollar value of the contracting work or to both [~~such~~]
2 imprisonment and fine in the discretion of the court.

3 B. [~~Any~~] A person who acts in the capacity [~~as~~] of
4 a journeyman within the meaning of the Construction Industries
5 Licensing Act without holding a valid journeyman certificate
6 [~~of competence issued by the division~~] for the classification
7 for which the journeyman acts is strictly liable and guilty of
8 a misdemeanor as defined in Subsection B of Section 30-1-6 NMSA
9 1978, not a petty misdemeanor, and upon conviction [~~therefor~~],
10 the court shall sentence the person pursuant to Subsection A of
11 Section 31-19-1 NMSA 1978 to be imprisoned [~~in the county jail~~
12 ~~for a term of ninety days~~] for a definite term of less than one
13 year or to payment of a fine of not [~~less~~] more than [~~one~~
14 ~~hundred dollars (\$100) nor more than three hundred dollars~~
15 ~~(\$300)~~] one thousand dollars (\$1,000) or to both [~~such~~]
16 imprisonment and fine in the discretion of the court.

17 C. [~~Any~~] A person who, after having been convicted
18 and sentenced in accordance with the provisions of either
19 Subsection A or [~~Subsection~~] B of this section, is again
20 convicted pursuant to the provisions of this section shall be
21 sentenced to twice the applicable penalty imposed by the
22 provisions of this section.

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

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1 that service.

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

16 [~~D-~~] F. In the case of a first conviction under
17 this section, the court may impose a deferred sentence on the
18 condition that the person comply with the provisions for
19 licensure pursuant to Subsection D of Section 60-13-14 NMSA
20 1978.

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

25 H. Division employees who are currently certified

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1 by the New Mexico law enforcement academy and who have the
2 principal duty to investigate criminal violations of the
3 Construction Industries Licensing Act shall:

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

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

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