

SENATE BILL NO. 161—SENATORS ROBERSON,
KIECKHEFER AND HARDY

FEBRUARY 18, 2013

Referred to Committee on Judiciary

SUMMARY—Revises various provisions relating to constructional defects. (BDR 3-480)

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 constructional defects; revising the definition of “constructional defect”; providing that a claimant may not recover attorney’s fees as damages; requiring an attorney to obtain an affidavit from a claimant and file the affidavit with the court under certain circumstances; revising the statutes of repose regarding actions for damages resulting from certain deficiencies in construction; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 **Section 1** of this bill amends the existing definition of “constructional defect”
2 to provide that a constructional defect is a defect: (1) which presents an
3 unreasonable risk of injury to a person or property; or (2) which violates the law,
4 unless the workmanship exceeds the standards set forth in any applicable codes and
5 ordinances, which causes physical damages and which is not completed in a good
6 and workmanlike manner.
7 Existing law authorizes a claimant to recover reasonable attorney’s fees for a
8 claim for a constructional defect in certain circumstances. (NRS 40.655) **Section 2**
9 of this bill removes this provision. Existing law also requires an attorney for a
10 claimant to notify the claimant in writing of certain provisions of law relating to
11 constructional defects before the attorney takes any action on a claim for a
12 constructional defect. (NRS 40.688) **Section 3** of this bill revises this requirement
13 and instead provides that an attorney must obtain from a claimant a signed affidavit
14 stating that the claimant has been notified of certain provisions relating to
15 constructional defects. If the claimant is a representative of a homeowners’
16 association, **section 3** requires that the affidavit also attest that the claimant has
17 notified the units’ owners on whose behalf the claim is brought of the provisions of
18 this section. **Section 3** also provides that in a subsequent action, the attorney must
19 file the affidavit with the court or the action will be dismissed.



* S B 1 6 1 *

20 Existing law generally limits the period in which an action for damages caused
 21 by a deficiency in construction of improvements to real property may be
 22 commenced after substantial completion of the improvement, unless the deficiency
 23 is a result of willful misconduct or was fraudulently concealed. (NRS 11.202-
 24 11.205) These periods of limitation are known as statutes of repose, and the period
 25 set forth in each statute of repose during which an action must be commenced after
 26 substantial completion of the improvement depends on the particular type of
 27 deficiency in construction. **Section 4** of this bill reduces the period in the existing
 28 statute of repose for a known deficiency in construction from 10 years after
 29 substantial completion of the improvement to 3 years. **Section 5** of this bill reduces
 30 the period in the existing statute of repose for a latent deficiency from 8 years after
 31 substantial completion of the improvement to 4 years. **Section 6** of this bill reduces
 32 the period in the existing statute of repose for a patent deficiency from 6 years after
 33 substantial completion of the improvement to 3 years.

34 **Sections 4-6** also eliminate the existing provisions that allow such actions to be
 commenced within 2 years after the date of an injury which occurs during the final
 36 year of the particular period of limitation. **Section 7** of this bill provides that the
 37 revised statutes of repose set forth in **sections 4-6** apply retroactively under certain
 38 circumstances. **Section 7** also establishes a 1-year grace period during which a
 39 person may commence an action pursuant to NRS 11.203, 11.204 or 11.205 if the
 40 action accrued before October 1, 2013.

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

1 **Section 1.** NRS 40.615 is hereby amended to read as follows:
 2 40.615 "Constructional defect" means a defect in the design,
 3 construction, manufacture, repair or landscaping of a new residence,
 4 of an alteration of or addition to an existing residence, or of an
 5 appurtenance and includes, without limitation, the design,
 6 construction, manufacture, repair or landscaping of a new residence,
 7 of an alteration of or addition to an existing residence, or of an
 8 appurtenance ~~†~~, *which presents an unreasonable risk of injury to*
 9 *a person or property or:*
 10 1. Which is done in violation of law, including, without
 11 limitation, in violation of local codes or ordinances ~~†~~, *unless the*
 12 *workmanship of the design, construction, manufacture, repair or*
 13 *landscaping exceeds the standards set forth in any applicable*
 14 *codes and ordinances;*
 15 2. Which proximately causes physical damage to the residence,
 16 an appurtenance or the real property to which the residence or
 17 appurtenance is affixed; *and*
 18 3. Which is not completed in a good and workmanlike manner
 19 in accordance with the generally accepted standard of care in the
 20 industry for that type of design, construction, manufacture, repair or
 21 landscaping. ~~†; or~~
 22 ~~—4.— Which presents an unreasonable risk of injury to a person or~~
 23 ~~property.†~~



1 **Sec. 2.** NRS 40.655 is hereby amended to read as follows:

2 40.655 1. Except as otherwise provided in NRS 40.650, in a
3 claim governed by NRS 40.600 to 40.695, inclusive, the claimant
4 may recover only the following damages to the extent proximately
5 caused by a constructional defect:

6 (a) ~~Any reasonable attorney's fees;~~

7 ~~—(b)~~ The reasonable cost of any repairs already made that were
8 necessary and of any repairs yet to be made that are necessary to
9 cure any constructional defect that the contractor failed to cure and
10 the reasonable expenses of temporary housing reasonably necessary
11 during the repair;

12 ~~[(e)]~~ (b) The reduction in market value of the residence or
13 accessory structure, if any, to the extent the reduction is because of
14 structural failure;

15 ~~[(d)]~~ (c) The loss of the use of all or any part of the residence;

16 ~~[(e)]~~ (d) The reasonable value of any other property damaged
17 by the constructional defect;

18 ~~[(f)]~~ (e) Any additional costs reasonably incurred by the
19 claimant, including, but not limited to, any costs and fees incurred
20 for the retention of experts to:

21 (1) Ascertain the nature and extent of the constructional
22 defects;

23 (2) Evaluate appropriate corrective measures to estimate the
24 value of loss of use; and

25 (3) Estimate the value of loss of use, the cost of temporary
26 housing and the reduction of market value of the residence; and

27 ~~[(e)]~~ (f) Any interest provided by statute.

28 2. ~~The amount of any attorney's fees awarded pursuant to this~~
29 ~~section must be approved by the court.~~

30 ~~—3.~~ If a contractor complies with the provisions of NRS 40.600
31 to 40.695, inclusive, the claimant may not recover from the
32 contractor, as a result of the constructional defect, anything other
33 than that which is provided pursuant to NRS 40.600 to 40.695,
34 inclusive.

35 ~~[(4)]~~ 3. This section must not be construed as impairing any
36 contractual rights between a contractor and a subcontractor, supplier
37 or design professional.

38 ~~[(5)]~~ 4. As used in this section, "structural failure" means
39 physical damage to the load-bearing portion of a residence or
40 appurtenance caused by a failure of the load-bearing portion of the
41 residence or appurtenance.

42 **Sec. 3.** NRS 40.688 is hereby amended to read as follows:

43 40.688 1. If a claimant attempts to sell a residence that is or
44 has been the subject of a claim governed by NRS 40.600 to 40.695,
45 inclusive, the claimant shall disclose, in writing, to any prospective



1 purchaser of the residence, not less than 30 days before the close of
2 escrow for the sale of the residence or, if escrow is to close less than
3 30 days after the execution of the sales agreement, then immediately
4 upon the execution of the sales agreement or, if a claim is initiated
5 less than 30 days before the close of escrow, within 24 hours after
6 giving written notice to the contractor pursuant to NRS 40.645:

7 (a) All notices given by the claimant to the contractor pursuant
8 to NRS 40.600 to 40.695, inclusive, that are related to the residence;

9 (b) All opinions the claimant has obtained from experts
10 regarding a constructional defect that is or has been the subject of
11 the claim;

12 (c) The terms of any settlement, order or judgment relating to
13 the claim; and

14 (d) A detailed report of all repairs made to the residence by or
15 on behalf of the claimant as a result of a constructional defect that is
16 or has been the subject of the claim.

17 2. Before taking any action on a claim pursuant to NRS 40.600
18 to 40.695, inclusive, the attorney for a claimant shall ~~notify~~ **obtain**
19 **a signed affidavit from** the claimant ~~in writing~~ **stating that the**
20 **claimant has been notified** of the provisions of this section. **If the**
21 **claimant is a representative of a homeowners' association,**
22 **the affidavit must attest that the claimant has notified the units'**
23 **owners on whose behalf the claim is brought of the provisions of**
24 **this section. At the time of commencing an action or amending a**
25 **complaint to add a cause of action for a constructional defect, the**
26 **attorney shall file the affidavit with the court. The action or cause**
27 **of action will be dismissed by the court if the attorney fails to file**
28 **the required affidavit.**

29 **Sec. 4.** NRS 11.203 is hereby amended to read as follows:

30 11.203 1. Except as otherwise provided in NRS 11.202 ,
31 **11.204** and 11.206, no action may be commenced against the owner,
32 occupier or any person performing or furnishing the design,
33 planning, supervision or observation of construction, or the
34 construction of an improvement to real property more than ~~10~~ **3**
35 years after the substantial completion of such an improvement, for
36 the recovery of damages for:

37 (a) Any deficiency in the design, planning, supervision or
38 observation of construction or the construction of such an
39 improvement which is known or through the use of reasonable
40 diligence should have been known to him or her;

41 (b) Injury to real or personal property caused by any such
42 deficiency; or

43 (c) Injury to or the wrongful death of a person caused by any
44 such deficiency.



1 2. ~~Notwithstanding the provisions of NRS 11.190 and~~
2 ~~subsection 1 of this section, if an injury occurs in the 10th year after~~
3 ~~the substantial completion of such an improvement, an action for~~
4 ~~damages for injury to property or person, damages for wrongful~~
5 ~~death resulting from such injury or damages for breach of contract~~
6 ~~may be commenced within 2 years after the date of such injury,~~
7 ~~irrespective of the date of death, but in no event may an action be~~
8 ~~commenced more than 12 years after the substantial completion of~~
9 ~~the improvement.~~

10 ~~3.~~ The provisions of this section do not apply to a claim for
11 indemnity or contribution.

12 **Sec. 5.** NRS 11.204 is hereby amended to read as follows:

13 11.204 1. Except as otherwise provided in NRS 11.202 ~~;~~
14 ~~11.203~~ and 11.206, no action may be commenced against the
15 owner, occupier or any person performing or furnishing the design,
16 planning, supervision or observation of construction, or the
17 construction ~~;~~ of an improvement to real property more than ~~18~~ 4
18 years after the substantial completion of such an improvement, for
19 the recovery of damages for:

20 (a) Any latent deficiency in the design, planning, supervision or
21 observation of construction or the construction of such an
22 improvement;

23 (b) Injury to real or personal property caused by any such
24 deficiency; or

25 (c) Injury to or the wrongful death of a person caused by any
26 such deficiency.

27 2. ~~Notwithstanding the provisions of NRS 11.190 and~~
28 ~~subsection 1 of this section, if an injury occurs in the eighth year~~
29 ~~after the substantial completion of such an improvement, an action~~
30 ~~for damages for injury to property or person, damages for wrongful~~
31 ~~death resulting from such injury or damages for breach of contract~~
32 ~~may be commenced within 2 years after the date of such injury,~~
33 ~~irrespective of the date of death, but in no event may an action be~~
34 ~~commenced more than 10 years after the substantial completion of~~
35 ~~the improvement.~~

36 ~~3.~~ The provisions of this section do not apply to a claim for
37 indemnity or contribution.

38 ~~4.~~ 3. For the purposes of this section, "latent deficiency"
39 means a deficiency which is not apparent by reasonable inspection.

40 **Sec. 6.** NRS 11.205 is hereby amended to read as follows:

41 11.205 1. Except as otherwise provided in NRS 11.202 ~~;~~
42 ~~11.203~~ and 11.206, no action may be commenced against the
43 owner, occupier or any person performing or furnishing the design,
44 planning, supervision or observation of construction, or the
45 construction of an improvement to real property more than ~~16~~ 3



1 years after the substantial completion of such an improvement, for
2 the recovery of damages for:

3 (a) Any patent deficiency in the design, planning, supervision or
4 observation of construction or the construction of such an
5 improvement;

6 (b) Injury to real or personal property caused by any such
7 deficiency; or

8 (c) Injury to or the wrongful death of a person caused by any
9 such deficiency.

10 2. ~~Notwithstanding the provisions of NRS 11.190 and~~
11 ~~subsection 1 of this section, if an injury occurs in the sixth year after~~
12 ~~the substantial completion of such an improvement, an action for~~
13 ~~damages for injury to property or person, damages for wrongful~~
14 ~~death resulting from such injury or damages for breach of contract~~
15 ~~may be commenced within 2 years after the date of such injury,~~
16 ~~irrespective of the date of death, but in no event may an action be~~
17 ~~commenced more than 8 years after the substantial completion of~~
18 ~~the improvement.~~

19 ~~3.1~~ The provisions of this section do not apply to a claim for
20 indemnity or contribution.

21 ~~4.1~~ 3. For the purposes of this section, "patent deficiency"
22 means a deficiency which is apparent by reasonable inspection.

23 **Sec. 7.** 1. The amendatory provisions of sections 1, 2 and 3
24 of this act apply to any claim that arises on or after October 1, 2013.

25 2. Except as otherwise provided in subsection 3, the period of
26 limitations on actions set forth in NRS 11.203, 11.204 and 11.205,
27 as amended by sections 4, 5 and 6 of this act, apply retroactively to
28 actions in which the substantial completion of the improvement to
29 real property occurred before October 1, 2013.

30 3. The provisions of subsection 2 do not limit an action:

31 (a) That accrued before October 1, 2013, and is commenced
32 before October 1, 2014; or

33 (b) If doing so would constitute an impairment of the obligation
34 of contracts under the United States Constitution or the Nevada
35 Constitution.

