

ASSEMBLY BILL NO. 498—ASSEMBLYMAN MANENDO (BY REQUEST)

MARCH 19, 2001

Referred to Committee on Judiciary

SUMMARY—Makes various changes to provisions governing construction of residential dwellings and actions for constructional deficiencies and defects. (BDR 22-926)

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 real property; requiring certain inspections to be made by professional engineers before building permits and certificates of occupancy may be issued for certain residential dwellings; revising the provisions governing the periods of limitation and repose for certain actions involving constructional deficiencies; revising the provisions governing damages in certain actions involving constructional defects; and providing other matters properly relating thereto.

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

- 1     **Section 1.** Chapter 278 of NRS is hereby amended by adding thereto  
2     the provisions set forth as sections 2, 3 and 4 of this act.  
3     **Sec. 2.** *1. No certificate of occupancy for a residential dwelling*  
4     *within a subdivision may be issued by a city or county building*  
5     *department unless there has been filed with the building department a*  
6     *certification that the finish grading of the lot on which the dwelling is*  
7     *situated, including the drainage swales and drainage inlets for the lot, is*  
8     *consistent with the approved plans for the construction of the dwelling.*  
9     *2. The certification required by subsection 1 must be issued by a*  
10    *professional engineer who:*  
11    *(a) Is licensed pursuant to chapter 625 of NRS;*  
12    *(b) Is qualified to practice as a civil engineer; and*  
13    *(c) Carries professional liability insurance of not less than \$1,000,000.*  
14    **Sec. 3.** *1. No building permit for the construction of a residential*  
15    *dwelling within a subdivision may be issued by a city or county building*  
16    *department unless a professional engineer who is licensed pursuant to*  
17    *chapter 625 of NRS and is qualified to practice as a geotechnical*  
18    *engineer has approved the recommendations for soil preparation and*  
19    *foundation design set forth in the soil report prepared for the subdivision*



\* A B 4 9 8 \*

1 *in which the real property on which the residential dwelling will be*  
2 *constructed is located.*

3 2. *The professional engineer must be selected by the city or county*  
4 *building department and his fee must be paid by the developer of the*  
5 *subdivision as part of the application for a grading permit.*

6 3. *The professional engineer may require additional analyses of soil*  
7 *samples and more stringent standards for foundation design than those*  
8 *specified by the engineer of the developer.*

9 **Sec. 4.** 1. *No building permit for the construction of a residential*  
10 *dwelling within a subdivision may be issued by a city or county building*  
11 *department unless a professional engineer who is licensed pursuant to*  
12 *chapter 625 of NRS and is qualified to practice as a structural engineer*  
13 *certifies the structural design of the residential dwelling.*

14 2. *No certificate of occupancy for a residential dwelling within a*  
15 *subdivision may be issued by a city or county building department unless*  
16 *all the major structural components of the residential dwelling have been*  
17 *reviewed and approved by a professional engineer who is licensed*  
18 *pursuant to chapter 625 of NRS and is qualified to practice as a*  
19 *structural engineer.*

20 3. *The professional engineer must be selected by the city or county*  
21 *building department and his fee must be paid by the developer of the*  
22 *subdivision as part of the application for the building permit.*

23 4. *As used in this section, "major structural components" includes,*  
24 *without limitation:*

25 (a) *The foundation, including the placement of reinforcing steel and*  
26 *post-tension reinforcing rods, the dimensions of footings and other*  
27 *components of the foundation, and the compressive strength of the*  
28 *concrete used to pour the foundation;*

29 (b) *The installation of shear walls, including the use of anchor bolts*  
30 *and hold-downs, and the nailing of panels; and*

31 (c) *The installation of roof trusses, including the attachment of the*  
32 *trusses to other parts of the frame of the building.*

33 **Sec. 5.** NRS 278.010 is hereby amended to read as follows:

34 278.010 As used in NRS 278.010 to 278.630, inclusive, *and sections*  
35 *2, 3 and 4 of this act*, unless the context otherwise requires, the words and  
36 terms defined in NRS 278.0105 to 278.0195, inclusive, have the meanings  
37 ascribed to them in those sections.

38 **Sec. 6.** NRS 11.202 is hereby amended to read as follows:

39 11.202 1. An action may be commenced against the owner, occupier  
40 or any person performing or furnishing the design, planning, supervision or  
41 observation of *the* construction ~~††~~ *of*, or *performing or furnishing* the  
42 construction of , an improvement to real property at any time after the  
43 substantial completion of ~~†such an†~~ *the* improvement, for the recovery of  
44 damages for:

45 (a) Any deficiency in the design, planning, supervision or observation  
46 of *the* construction *of*, or *in* the construction of ~~†such an†~~ , *the*  
47 improvement which is the result of his willful misconduct or which he  
48 fraudulently concealed;



1 (b) Injury to real or personal property caused by ~~{any-such}~~ *the*  
2 deficiency; or

3 (c) Injury to or the wrongful death of a person caused by ~~{any-such}~~ *the*  
4 deficiency.

5 2. The provisions of this section do not apply in an action brought  
6 against:

7 (a) The owner or keeper of any hotel, inn, motel, motor court,  
8 boardinghouse or lodginghouse in this state on account of his liability as an  
9 innkeeper.

10 (b) Any person on account of a defect in a product.

11 **Sec. 7.** NRS 11.203 is hereby amended to read as follows:

12 11.203 1. Except as otherwise provided in *this section and* NRS  
13 ~~{11.202 and}~~ 11.206, no action may be commenced against the owner,  
14 occupier or any person performing or furnishing the design, planning,  
15 supervision or observation of *the* construction ~~{ of, or performing or~~  
16 *furnishing* the construction of, an improvement to real property more than  
17 10 years after the substantial completion of ~~{such-an}~~ *the* improvement, for  
18 the recovery of damages for:

19 (a) Any deficiency in the design, planning, supervision or observation  
20 of *the* construction *of, or in* the construction of ~~{such-an}~~ , *the*  
21 improvement which is known or through the use of reasonable diligence  
22 should have been known to him;

23 (b) Injury to real or personal property caused by ~~{any-such}~~ *the*  
24 deficiency; or

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

27 2. ~~{Notwithstanding the provisions of NRS 11.190 and subsection 1 of~~  
28 ~~this section, if}~~ *If* an injury occurs in the 10th year after the substantial  
29 completion of ~~{such-an}~~ *the* improvement, an action for damages for injury  
30 to property or person, damages for wrongful death resulting from ~~{such}~~  
31 *the* injury or damages for breach of contract may be commenced within 2  
32 years after the date of ~~{such}~~ *the* injury, irrespective of the date of death,  
33 but in no event may an action be commenced more than 12 years after the  
34 substantial completion of the improvement.

35 3. *If the provisions of this section apply to an action:*

36 (a) *The action is subject only to the period of repose set forth in this*  
37 *section; and*

38 (b) *No other period of limitation or repose set forth in this chapter*  
39 *applies to the action.*

40 4. The provisions of this section do not apply to ~~{a}~~ :

41 (a) *An action that is based upon any deficiency described in*  
42 *subsection 1 if the provisions of NRS 11.202 otherwise apply to the*  
43 *deficiency; or*

44 (b) *A claim for indemnity or contribution.*

45 **Sec. 8.** NRS 11.204 is hereby amended to read as follows:

46 11.204 1. Except as otherwise provided in *this section and* NRS  
47 ~~{11.202, 11.203 and}~~ 11.206, no action may be commenced against the  
48 owner, occupier or any person performing or furnishing the design,  
49 planning, supervision or observation of *the* construction ~~{ of, or~~



1 *performing or furnishing* the construction ~~{+}~~ of , an improvement to real  
2 property more than 8 years after the substantial completion of ~~{such an}~~ *the*  
3 improvement, for the recovery of damages for:  
4 (a) Any latent deficiency in the design, planning, supervision or  
5 observation of *the* construction *of*, or *in* the construction of ~~{such an}~~ , *the*  
6 improvement;  
7 (b) Injury to real or personal property caused by ~~{any such}~~ *the*  
8 deficiency; or  
9 (c) Injury to or the wrongful death of a person caused by ~~{any such}~~ *the*  
10 deficiency.  
11 2. ~~{Notwithstanding the provisions of NRS 11.190 and subsection 1 of~~  
12 ~~this section, if~~ *If* an injury occurs in the eighth year after the substantial  
13 completion of ~~{such an}~~ *the* improvement, an action for damages for injury  
14 to property or person, damages for wrongful death resulting from ~~{such}~~  
15 *the* injury or damages for breach of contract may be commenced within 2  
16 years after the date of ~~{such}~~ *the* injury, irrespective of the date of death,  
17 but in no event may an action be commenced more than 10 years after the  
18 substantial completion of the improvement.  
19 3. *If the provisions of this section apply to an action:*  
20 (a) *The action is subject only to the period of repose set forth in this*  
21 *section; and*  
22 (b) *No other period of limitation or repose set forth in this chapter*  
23 *applies to the action.*  
24 4. The provisions of this section do not apply to ~~{+}~~ :  
25 (a) *An action that is based upon any latent deficiency described in*  
26 *subsection 1 if the provisions of NRS 11.202 or 11.203 otherwise apply to*  
27 *the latent deficiency; or*  
28 (b) *A claim for indemnity or contribution.*  
29 ~~{+}~~ 5. For the purposes of this section, "latent deficiency" means a  
30 deficiency which is not apparent by reasonable inspection.  
31 **Sec. 9.** NRS 11.205 is hereby amended to read as follows:  
32 11.205 1. Except as otherwise provided in *this section and* NRS  
33 ~~{11.202, 11.203 and}~~ 11.206, no action may be commenced against the  
34 owner, occupier or any person performing or furnishing the design,  
35 planning, supervision or observation of *the* construction ~~{+}~~ *of*, or  
36 *performing or furnishing* the construction of , an improvement to real  
37 property more than 6 years after the substantial completion of ~~{such an}~~ *the*  
38 improvement, for the recovery of damages for:  
39 (a) Any latent deficiency in the design, planning, supervision or  
40 observation of *the* construction *of*, or *in* the construction of ~~{such an}~~ , *the*  
41 improvement;  
42 (b) Injury to real or personal property caused by ~~{any such}~~ *the*  
43 deficiency; or  
44 (c) Injury to or the wrongful death of a person caused by ~~{any such}~~ *the*  
45 deficiency.  
46 2. ~~{Notwithstanding the provisions of NRS 11.190 and subsection 1 of~~  
47 ~~this section, if~~ *If* an injury occurs in the sixth year after the substantial  
48 completion of ~~{such an}~~ *the* improvement, an action for damages for injury  
49 to property or person, damages for wrongful death resulting from ~~{such}~~



1 *the* injury or damages for breach of contract may be commenced within 2  
2 years after the date of ~~such~~ *the* injury, irrespective of the date of death,  
3 but in no event may an action be commenced more than 8 years after the  
4 substantial completion of the improvement.

5 3. *If the provisions of this section apply to an action:*

6 (a) *The action is subject only to the period of repose set forth in this*  
7 *section; and*

8 (b) *No other period of limitation or repose set forth in this chapter*  
9 *applies to the action.*

10 4. The provisions of this section do not apply to ~~it~~ :

11 (a) *An action that is based upon any patent deficiency described in*  
12 *subsection 1 if the provisions of NRS 11.202 or 11.203 otherwise apply to*  
13 *the patent deficiency; or*

14 (b) *A claim for indemnity or contribution.*

15 ~~4~~ 5. For the purposes of this section, "patent deficiency" means a  
16 deficiency which is apparent by reasonable inspection.

17 **Sec. 10.** NRS 11.206 is hereby amended to read as follows:

18 11.206 The ~~limitations respectively prescribed by~~ *periods of repose*  
19 *set forth in* NRS 11.203, 11.204 and 11.205 are not a defense in an action  
20 brought against:

21 1. The owner or keeper of any hotel, inn, motel, motor court,  
22 boardinghouse or lodginghouse in this state on account of his liability as an  
23 innkeeper.

24 2. Any person on account of a defect in a product.

25 **Sec. 11.** NRS 40.670 is hereby amended to read as follows:

26 40.670 1. A contractor who receives written notice of a  
27 constructional defect resulting from work performed by the contractor or  
28 his agent, employee or subcontractor which creates an imminent threat to  
29 the health or safety of the inhabitants of the residence shall take reasonable  
30 steps to cure the defect as soon as practicable. The contractor shall not cure  
31 the defect by making any repairs for which he is not licensed or by causing  
32 any repairs to be made by a person who is not licensed to make those  
33 repairs. ~~HH~~

34 2. *Except as otherwise provided in subsection 3 or 4, if* the contractor  
35 fails to cure the defect in a reasonable time, the owner of the residence may  
36 have the defect cured and may recover from the contractor the reasonable  
37 cost of the repairs plus reasonable attorney's fees and costs in addition to  
38 any other damages recoverable under any other law.

39 ~~2. A~~

40 3. *Except as otherwise provided in subsection 4, a* contractor who  
41 does not cure a defect pursuant to this section because he has determined,  
42 in good faith and after a reasonable inspection, that there is not an  
43 imminent threat to the health or safety of the inhabitants is not liable for  
44 *the cost of repairs, attorney's fees and costs, or other damages relating to*  
45 *the defect* pursuant to ~~this section, except that if a building inspector~~  
46 ~~employed by a governmental body with jurisdiction certifies that there is~~  
47 ~~an imminent threat to the health and safety of the inhabitants of the~~  
48 ~~residence, the contractor is subject to the provisions of subsection 1.~~  
49 *subsection 2.*



1     4. *If an architect or residential designer registered pursuant to*  
2 *chapter 623 of NRS, or a professional engineer licensed pursuant to*  
3 *chapter 625 of NRS, certifies that the defect creates an imminent threat*  
4 *to the health or safety of the inhabitants of the residence, and if the trier*  
5 *of fact determines that the contractor refused to correct the defect in a*  
6 *timely manner and was not acting in good faith, the owner of the*  
7 *residence is entitled to recover from the contractor, in addition to*  
8 *reasonable attorney's fees and costs, treble the reasonable cost of the*  
9 *repairs and other damages.*

10    **Sec. 12.** 1. The amendatory provisions of section 11 of this act do  
11 not apply to an action that was commenced before October 1, 2001.

12    2. The amendatory provisions of sections 7, 8 and 9 of this act do not  
13 apply to an action if any period of limitation set forth in chapter 11 of NRS  
14 that was applicable to the action, other than a period of repose set forth in  
15 NRS 11.203, 11.204 or 11.205, commenced to run before October 1, 2001.

