

Amendment No. 817

Senate Amendment to Assembly Bill No. 215 First Reprint (BDR 54-893)

Proposed by: Senator Care

Amendment Box: Consistent with Amendment No. 767.

Amends: Summary: Yes Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date	
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____		Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____		Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____		Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) green bold dashed underlining is newly added transitory language.

DP/WLK



Date: 5/21/2009

A.B. No. 215—Requires a contractor or an applicant for an original or a renewal of a contractor’s license to obtain and maintain certain liability insurance. (BDR 54-893)



ASSEMBLY BILL NO. 215—ASSEMBLYMAN OCEGUERA

FEBRUARY 26, 2009

Referred to Committee on Commerce and Labor

SUMMARY—~~[Requires a contractor or an applicant for an original or a renewal of a contractor's license to obtain and maintain certain liability insurance.]~~ Makes various changes relating to construction.
(BDR 54-893)

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 ~~[contractors,]~~ construction; requiring licensed contractors and applicants for issuance or renewal of a contractor's license to obtain and provide proof of liability insurance; revising the statutes of repose relating to certain actions concerning constructional defects; making various changes relating to constructional defects; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 1 of this bill requires a contractor licensed pursuant to chapter 624 of NRS or an applicant for an original or renewal license under that chapter to obtain, maintain and provide proof of insurance, with coverage having specified limits of liability for claims for injury to persons or damage to property which may arise from or in connection with the work of the contractor or applicant or his agents, representatives, employees or subcontractors.

~~Existing law generally authorizes an action for damages for injury to property or a person or for wrongful death caused by a defect in construction of improvements to real property to be commenced at any time after substantial completion of the improvement if the defect is a result of willful misconduct or was fraudulently concealed. (NRS 11.202)~~

~~Section 14.5 of this bill generally prohibits an action for damages for such injury or wrongful death caused by a known defect in construction of improvements to real property from being commenced more than 3 years after substantial completion of the improvement rather than more than 10 years after substantial completion of the improvement. Section 15 of this bill generally prohibits an action for damages for such injury or wrongful death caused by a latent defect, a defect that is not apparent by reasonable inspection, in construction of improvements to real property from being commenced more than 4 years after substantial completion of the improvement rather than more than 8 years after substantial completion of the improvement. Section 16 of this bill generally prohibits an action for damages for such injury or wrongful death caused by a patent defect, a defect that is apparent by reasonable inspection, in construction of improvements to real property from being commenced more than 3 years after substantial completion of the improvement rather than more than 6 years after substantial completion of the improvement.~~

~~Sections 14.5-16 of this bill also eliminate the provisions that authorize an action for damages for such injury or wrongful death caused by a defect in construction of~~

improvements to real property to be commenced within 2 years after the date of such an injury which occurs: (1) in the 10th year after the substantial completion of such an improvement for a known defect; (2) in the 8th year after the substantial completion of such an improvement for a latent defect; and (3) in the 6th year after the substantial completion of such an improvement for a patent defect. Section 21 of this bill provides that the decreased periods for bringing an action as set forth in sections 14.5-16 may apply retroactively under certain circumstances. Section 21 also provides a 1-year grace period for persons to commence an action pursuant to NRS 11.203, 11.204 or 11.205 if the action accrued before October 1, 2009.

Section 17 of this bill amends the existing definition of "constructional defect" to provide that a constructional defect is a defect: (1) which presents an unreasonable risk of injury to a person or property; or (2) which violates the law, unless the workmanship exceeds the standards set forth in any applicable codes and ordinances, which causes physical damages and which is not completed in a good and workmanlike manner.

Section 18 of this bill removes from existing law the provision that allows a claimant to recover reasonable attorney's fees for a claim for a constructional defect.

Section 19 of this bill provides that an attorney must obtain from a claimant a signed affidavit stating that the claimant has been notified of certain provisions relating to constructional defects. If the claimant is a representative of a homeowners' association, section 19 requires that the affidavit also attest that the claimant has notified the units' owners on whose behalf the claim is brought of the provisions of this section. Section 19 also provides that in a subsequent action, the attorney must file the affidavit with the court or the action will be dismissed.

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

Section 1. Chapter 624 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Before granting an original or renewal of a contractor's license to an applicant, the Board shall require that the applicant submit to the Board proof of insurance against claims for injury to persons or damage to property which may arise from or in connection with work that is subject to regulation pursuant to this chapter performed by the applicant or his agents, representatives, employees or subcontractors in an amount not less than the amount set forth in subsection 2.

2. To satisfy the requirements of this section, a licensee or an applicant for a contractor's license shall obtain and provide proof of insurance with coverage that has limits of liability not less than:

(a) If the Board places on the license a limit on contracting or bidding to contract in an amount less than \$1,000,000, \$300,000 in the aggregate and \$100,000 for each occurrence;

(b) If the Board places on the license a limit on contracting or bidding to contract in an amount \$1,000,000 or greater but less than \$10,000,000, \$2,000,000 in the aggregate and \$1,000,000 for each occurrence; and

(c) If the Board places on the license a limit on contracting or bidding to contract in an amount that is \$10,000,000 or greater or is unlimited, \$3,000,000 in the aggregate and \$3,000,000 for each occurrence.

3. If a licensee applies to the Board for a temporary increase in the limit on contracting or bidding to contract which the Board has placed on his license, the Board shall require the licensee to submit proof of insurance with coverage that has limits of liability as provided in subsection 2 that correspond to the temporary limit on contracting or bidding to contract. The insurance required pursuant to

this subsection may be contingent upon approval by the Board of the temporary increase in the limit on contracting or bidding to contract.

4. A licensee shall maintain the insurance required pursuant to this section at all times during which he holds his license.

5. The Board may impose an administrative fine against a licensee in an amount not greater than \$10,000, in addition to any other penalty authorized by this chapter, if the licensee:

(a) Causes injury to persons or damage to property which arises from or in connection with work that is subject to regulation pursuant to this chapter performed by the licensee or his agents, representatives, employees or subcontractors; and

(b) Has failed to comply with the requirements of subsection 2 or 3.

Sec. 1.3. NRS 624.220 is hereby amended to read as follows:

624.220 1. The Board shall adopt regulations necessary to effect the classification and subclassification of contractors in a manner consistent with established usage and procedure as found in the construction business, and may limit the field and scope of the operations of a licensed contractor to those in which he is classified and qualified to engage as defined by NRS 624.215 and the regulations of the Board.

2. The Board shall limit the field and scope of the operations of a licensed contractor by establishing a monetary limit on a contractor's license, and the limit must be the maximum contract a licensed contractor may undertake on one or more construction contracts on a single construction site or subdivision site for a single client. The Board may take any other action designed to limit the field and scope of the operations of a contractor as may be necessary to protect the health, safety and general welfare of the public. The limit must be determined after consideration of the factors set forth in NRS 624.260 to 624.265, inclusive ~~and~~ *and section 1 of this act.*

3. A licensed contractor may request that the Board increase the monetary limit on his license, either on a permanent basis or for a single construction project. A request submitted to the Board pursuant to this subsection must be in writing on a form prescribed by the Board and accompanied by such supporting documentation as the Board may require. If a request submitted pursuant to this section is for a single construction project, the request must be submitted to the Board at least 2 working days before the date on which the licensed contractor intends to submit his bid for the project.

4. Subject to the provisions of regulations adopted pursuant to subsection 5, nothing contained in this section prohibits a specialty contractor from taking and executing a contract involving the use of two or more crafts or trades, if the performance of the work in the crafts or trades, other than in which he is licensed, is incidental and supplemental to the performance of work in the craft for which the specialty contractor is licensed.

5. The Board shall adopt regulations establishing a specific limit on the amount of asbestos that a licensed contractor with a license that is not classified for the abatement or removal of asbestos may abate or remove pursuant to subsection 4.

Sec. 1.5. (Deleted by amendment.)

Sec. 1.7. NRS 624.3013 is hereby amended to read as follows:

624.3013 The following acts, among others, constitute cause for disciplinary action pursuant to NRS 624.300:

1. Failure to keep records showing all contracts, documents, receipts and disbursements by a licensee of all of his transactions as a contractor and to keep them open for inspection by the Board or Executive Officer for a period of not less

than 3 years after the completion of any construction project or operation to which the records refer.

2. Misrepresentation of a material fact by an applicant or licensee in connection with any information or evidence furnished the Board in connection with official matters of the Board.

3. Failure to establish financial responsibility pursuant to NRS 624.220 and 624.260 to 624.265, inclusive, *and section 1 of this act* at the time of renewal of the license or at any other time when required by the Board.

4. Failure to keep in force the bond or cash deposit pursuant to NRS 624.270 for the full period required by the Board.

5. Failure in any material respect to comply with the provisions of this chapter or the regulations of the Board.

Sec. 2. (Deleted by amendment.)

Sec. 3. (Deleted by amendment.)

Sec. 4. (Deleted by amendment.)

Sec. 5. (Deleted by amendment.)

Sec. 6. (Deleted by amendment.)

Sec. 7. (Deleted by amendment.)

Sec. 8. (Deleted by amendment.)

Sec. 9. (Deleted by amendment.)

Sec. 10. (Deleted by amendment.)

Sec. 11. (Deleted by amendment.)

Sec. 12. (Deleted by amendment.)

Sec. 13. (Deleted by amendment.)

Sec. 14.5. NRS 11.203 is hereby amended to read as follows:

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

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

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

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

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

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

Sec. 15. NRS 11.204 is hereby amended to read as follows:

11.204 1. Except as otherwise provided in NRS 11.202, ~~11.203~~ and 11.206, no action may be commenced against the owner, occupier or any person performing or furnishing the design, planning, supervision or observation of construction, or the construction, of an improvement to real property more than ~~8~~ 4 years after the substantial completion of such an improvement, for the recovery of damages for:

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

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

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

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

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

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

Sec. 16. NRS 11.205 is hereby amended to read as follows:

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

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

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

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

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

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

~~4.~~ 3. For the purposes of this section, "patent deficiency" means a deficiency which is apparent by reasonable inspection.

Sec. 17. NRS 40.615 is hereby amended to read as follows:

40.615 "Constructional defect" means a defect in the design, construction, manufacture, repair or landscaping of a new residence, of an alteration of or addition to an existing residence, or of an appurtenance and includes, without limitation, the design, construction, manufacture, repair or landscaping of a new residence, of an alteration of or addition to an existing residence, or of an appurtenance. ~~4.~~, which presents an unreasonable risk of injury to a person or property or;

1. Which is done in violation of law, including, without limitation, in violation of local codes or ordinances ~~4.~~, unless the workmanship of the design, construction, manufacture, repair or landscaping exceeds the standards set forth in any applicable codes and ordinances;

2. Which proximately causes physical damage to the residence, an appurtenance or the real property to which the residence or appurtenance is affixed; and

3. Which is not completed in a good and workmanlike manner in accordance with the generally accepted standard of care in the industry for that type of design, construction, manufacture, repair or landscaping. ~~4. 4.~~

~~4. Which presents an unreasonable risk of injury to a person or property.]~~

Sec. 18. NRS 40.655 is hereby amended to read as follows:

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

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

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

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

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

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

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

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

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

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

~~(g)]~~ (f) Any interest provided by statute.

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

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

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

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

Sec. 19. NRS 40.688 is hereby amended to read as follows:

40.688 1. If a claimant attempts to sell a residence that is or has been the subject of a claim governed by NRS 40.600 to 40.695, inclusive, he shall disclose, in writing, to any prospective purchaser of the residence, not less than 30 days before the close of escrow for the sale of the residence or, if escrow is to close less than 30 days after the execution of the sales agreement, then immediately upon the execution of the sales agreement or, if a claim is initiated less than 30 days before the close of escrow, within 24 hours after giving written notice to the contractor pursuant to NRS 40.645:

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

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

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

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

2. Before taking any action on a claim pursuant to NRS 40.600 to 40.695, inclusive, the attorney for a claimant shall ~~notify~~ obtain a signed affidavit from

1 the claimant ~~(in writing)~~ stating that the claimant has been notified of the
2 provisions of this section. If the claimant is a representative of a homeowners'
3 association, the affidavit must attest that the claimant has notified the units'
4 owners on whose behalf the claim is brought of the provisions of this section. At
5 the time of commencing an action or amending a complaint to add a cause of
6 action for a constructional defect, the attorney shall file the affidavit with the
7 court. The court shall dismiss the action or cause of action if the attorney fails to
8 file the required affidavit.

9 ~~[Sec. 14.]~~ Sec. 20. [This] Sections 1 to 1.7, inclusive, of this act [applies]
10 apply to licenses issued or renewed pursuant to chapter 624 of NRS after
11 October 1, 2009.

12 Sec. 21. 1. Except as otherwise provided in subsection 2, the period of
13 limitations on actions set forth in NRS 11.203, 11.204 and 11.205, as amended
14 by sections 14.5, 15 and 16 of this act, respectively, apply retroactively to
15 actions in which the substantial completion of the improvement to the real
16 property occurred before October 1, 2009.

17 2. The provisions of subsection 1 do not limit an action:

18 (a) That accrued before October 1, 2009, and was commenced before
19 October 1, 2010; or

20 (b) If doing so would constitute an impairment of the obligation of
21 contracts under the Constitution of the United States or the Constitution of the
22 State of Nevada.

23 Sec. 22. The amendatory provisions of sections 17, 18 and 19 of this act
24 apply to any claim that arises on or after October 1, 2009.