

SENATE BILL NO. 337—COMMITTEE ON JUDICIARY

MARCH 23, 2009

Referred to Committee on Judiciary

SUMMARY—Revises the statutes of repose relating to certain actions concerning construction defects. (BDR 2-1149)

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 civil actions; revising the statutes of repose relating to certain actions concerning construction defects; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

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 2 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. (NRS 11.203)

Section 3 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. (NRS 11.204)

Section 4 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. (NRS 11.205)

Sections 2-4 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



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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 eighth year after the substantial completion of such an improvement for a latent defect; and (3) in the sixth year after the substantial completion of such an improvement for a patent defect. (NRS 11.203, 11.204, 11.205)

Section 5 of this bill provides that the decreased periods for bringing an action as set forth in **sections 2-4** of this bill may apply retroactively under certain circumstances. **Section 5** 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.

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

Section 1. (Deleted by amendment.)

Sec. 2. 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 ~~four~~ 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. 3. 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,



1 planning, supervision or observation of construction, or the
2 construction, of an improvement to real property more than ~~18~~ 4
3 years after the substantial completion of such an improvement, for
4 the recovery of damages for:

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

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

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

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

21 ~~—3.1~~ The provisions of this section do not apply to a claim for
22 indemnity or contribution.

23 ~~4.1~~ 3. For the purposes of this section, "latent deficiency"
24 means a deficiency which is not apparent by reasonable inspection.

25 **Sec. 4.** NRS 11.205 is hereby amended to read as follows:

26 11.205 1. Except as otherwise provided in NRS 11.202 ~~1~~
27 ~~11.203~~ and 11.206, no action may be commenced against the
28 owner, occupier or any person performing or furnishing the design,
29 planning, supervision or observation of construction, or the
30 construction of an improvement to real property more than ~~16~~ 3
31 years after the substantial completion of such an improvement, for
32 the recovery of damages for:

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

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

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

40 2. ~~Notwithstanding the provisions of NRS 11.190 and~~
41 ~~subsection 1 of this section, if an injury occurs in the sixth year~~
42 ~~after the substantial completion of such an improvement, an action~~
43 ~~for damages for injury to property or person, damages for wrongful~~
44 ~~death resulting from such injury or damages for breach of contract~~
45 ~~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. 5. 1. Except as otherwise provided in subsection 2, the period of limitations on actions set forth in NRS 11.203, 11.204 and 11.205, as amended by sections 2, 3 and 4 of this act, apply retroactively to actions in which the substantial completion of the improvement to the real property occurred before October 1, 2009.

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

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

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

