

ASSEMBLY BILL NO. 401—ASSEMBLYMAN OCEGUERA

MARCH 21, 2011

Referred to Committee on Judiciary

SUMMARY—Makes various changes concerning constructional defects. (BDR 3-382)

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”; revising provisions governing attorney’s fees in claims concerning constructional defects; revising the statutes of limitation and repose relating to certain actions concerning constructional defects; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

Existing law provides that 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, which is done in violation of law, including in violation of local codes or ordinances, is a constructional defect. (NRS 40.615) **Section 1** of this bill provides that there is a rebuttable presumption that workmanship which exceeds the standards set forth in the applicable law, including any applicable local codes or ordinances, is not a constructional defect.

Existing law provides that in a claim for damages as the result of a constructional defect, reasonable attorney’s fees may be recovered as damages. (NRS 40.655) **Section 2** of this bill provides that: (1) the court shall award to the prevailing party reasonable attorney’s fees, which must be an element of costs and awarded as costs; and (2) the amount of any attorney’s fees awarded must be determined by and approved by the court. Additionally, **section 2** authorizes any party to petition the court to determine the reasonableness of attorney’s fees to be reimbursed to the claimant if: (1) the contractor has made repairs in response to a notice of constructional defect; and (2) the only issue remaining is the amount of the reasonable attorney’s fees to be reimbursed to the claimant.

Existing law sets forth the statute of limitations for various actions. (NRS 11.190) **Section 4** of this bill provides for a statute of limitations of 3 years for an action for damages for certain deficiencies, injury or wrongful death caused by a defect in construction if the defect is a result of willful misconduct or was fraudulently concealed.



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Existing law contains certain periods of limitation, known as statutes of repose, in which certain actions for damages for certain deficiencies, injury or wrongful death caused by a defect in construction must be commenced. These statutes of repose apply to both commercial and residential construction. (NRS 11.202-11.206) Sections 3 and 5-8 of this bill exclude residential construction from the existing statutes of repose and provide a new statute of repose relating specifically to residential construction.

Section 9 of this bill provides that the amendatory provisions of the bill relating to claims for constructional defects governed by NRS 40.600 to 40.695, inclusive, apply to actions commenced or notice of such claims given on or after October 1, 2011, and the amendatory provisions of the remaining sections of the bill apply to any residence or appurtenance or any improvement to a residence or appurtenance substantially completed on or after October 1, 2011.

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

**Section 1.** NRS 40.615 is hereby amended to read as follows:

40.615 **1.** "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]~~

**2.** *The term* 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:

~~[1.]~~ **(a)** Which is done in violation of law, including, without limitation, in violation of local codes or ordinances ~~[;~~  
~~—2.]~~ *, except as otherwise provided in subsection 3;*

**(b)** Which proximately causes physical damage to the residence, an appurtenance or the real property to which the residence or appurtenance is affixed;

~~[3.]~~ **(c)** 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; or

~~[4.]~~ **(d)** Which presents an unreasonable risk of injury to a person or property.

**3.** *There exists a rebuttable presumption that the term does not include 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 which is done in violation of law, including, without limitation, in violation of local codes or ordinances, if the workmanship of the design, construction, manufacture, repair or landscaping exceeds the standards set forth in the applicable law, including, without limitation, the applicable local codes or ordinances.*



**Sec. 2.** 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 *costs and* 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) The reduction in market value of the residence or accessory structure, if any, to the extent the reduction is because of structural failure;

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

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

(f) 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) Any interest provided by statute.

2. *The court shall award to the prevailing party reasonable attorney's fees, which must be an element of costs and awarded as costs.* The amount of any attorney's fees awarded pursuant to this section must be *determined by and* 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. *If a contractor makes repairs in response to a notice of a constructional defect pursuant to NRS 40.600 to 40.695, inclusive, and the only issue remaining is the amount of reasonable attorney's fees to be reimbursed to the claimant, any party may petition the court to determine the reasonableness of the fees.*

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

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



1 caused by a failure of the load-bearing portion of the residence or  
2 appurtenance.

3 **Sec. 3.** Chapter 11 of NRS is hereby amended by adding  
4 thereto a new section to read as follows:

5 *1. Except as otherwise provided in subsections 2 and 3, no*  
6 *action may be commenced against the owner, occupier or any*  
7 *person performing or furnishing the design, planning, supervision*  
8 *or observation of construction of a residence or appurtenance, or*  
9 *the construction of or improvement to a residence or*  
10 *appurtenance more than 6 years after the substantial completion*  
11 *of or improvement to the residence or appurtenance, for the*  
12 *recovery of damages for:*

13 *(a) Any deficiency in the design, planning, supervision or*  
14 *observation of construction of the residence or appurtenance,*  
15 *or the construction of or improvement to the residence or*  
16 *appurtenance;*

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

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

21 *2. An action may be commenced against the owner, occupier*  
22 *or any person performing or furnishing the design, planning,*  
23 *supervision or observation of construction of a residence or*  
24 *appurtenance, or the construction of or improvement to a*  
25 *residence or appurtenance at any time after the substantial*  
26 *completion of or improvement to the residence or appurtenance,*  
27 *for the recovery of damages for:*

28 *(a) Any deficiency in the design, planning, supervision or*  
29 *observation of construction of the residence or appurtenance, or*  
30 *construction of or improvement to the residence or appurtenance*  
31 *which is the result of his or her willful misconduct or which he or*  
32 *she fraudulently concealed;*

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

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

37 *3. If a deficiency in the design, planning, supervision or*  
38 *observation of construction of a residence or appurtenance, or the*  
39 *construction of or improvement to a residence or appurtenance is*  
40 *discovered during the sixth year after the substantial completion*  
41 *of or improvement to the residence or appurtenance, the period set*  
42 *forth in subsection 1 is extended 2 years after the discovery of the*  
43 *deficiency.*

44 *4. Except as otherwise provided in subsection 5, for the*  
45 *purposes of this section, the date of substantial completion of or*



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1 *improvement to a residence or appurtenance shall be deemed to be*  
2 *the date on which:*

3 *(a) The final building inspection of the residence or*  
4 *appurtenance is conducted;*

5 *(b) A notice of completion is issued for the residence or*  
6 *appurtenance; or*

7 *(c) A certificate of occupancy is issued for the residence or*  
8 *appurtenance,*

9 *↳ whichever occurs later.*

10 *5. If none of the events described in subsection 4 occurs, the*  
11 *date of substantial completion of or improvement to a residence or*  
12 *appurtenance must be determined by the rules of the common law.*

13 *6. The provisions of this section do not apply to:*

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

15 *(b) An action brought against any person on account of a*  
16 *defect in a product.*

17 *7. As used in this section:*

18 *(a) "Appurtenance" has the meaning ascribed to it in*  
19 *NRS 40.605.*

20 *(b) "Residence" has the meaning ascribed to it in NRS 40.630.*

21 **Sec. 4.** NRS 11.190 is hereby amended to read as follows:

22 11.190 **1.** Except as otherwise provided in NRS 125B.050  
23 and 217.007, actions other than those for the recovery of real  
24 property, unless further limited by specific statute, may only be  
25 commenced as follows:

26 ~~[(1)]~~ **(a)** Within 6 years:

27 ~~[(a)]~~ **(1)** An action upon a judgment or decree of any court of  
28 the United States, or of any state or territory within the United  
29 States, or the renewal thereof.

30 ~~[(b)]~~ **(2)** An action upon a contract, obligation or liability  
31 founded upon an instrument in writing, except those mentioned in  
32 the preceding sections of this chapter.

33 ~~[(2)]~~ **(b)** Within 4 years:

34 ~~[(a)]~~ **(1)** An action on an open account for goods, wares and  
35 merchandise sold and delivered.

36 ~~[(b)]~~ **(2)** An action for any article charged on an account in a  
37 store.

38 ~~[(c)]~~ **(3)** An action upon a contract, obligation or liability not  
39 founded upon an instrument in writing.

40 ~~[(d)]~~ **(4)** An action against a person alleged to have committed a  
41 deceptive trade practice in violation of NRS 598.0903 to 598.0999,  
42 inclusive, but the cause of action shall be deemed to accrue when  
43 the aggrieved party discovers, or by the exercise of due diligence  
44 should have discovered, the facts constituting the deceptive trade  
45 practice.



1 ~~[3-]~~ (c) Within 3 years:

2 ~~[a-]~~ (I) An action upon a liability created by statute, other than  
3 a penalty or forfeiture.

4 ~~[b-]~~ (2) An action for waste or trespass of real property, but  
5 when the waste or trespass is committed by means of underground  
6 works upon any mining claim, the cause of action shall be deemed  
7 to accrue upon the discovery by the aggrieved party of the facts  
8 constituting the waste or trespass.

9 ~~[c-]~~ (3) An action for taking, detaining or injuring personal  
10 property, including actions for specific recovery thereof, but in all  
11 cases where the subject of the action is a domestic animal usually  
12 included in the term "livestock," which has a recorded mark or  
13 brand upon it at the time of its loss, and which strays or is stolen  
14 from the true owner without the owner's fault, the statute does not  
15 begin to run against an action for the recovery of the animal until the  
16 owner has actual knowledge of such facts as would put a reasonable  
17 person upon inquiry as to the possession thereof by the defendant.

18 ~~[d-]~~ (4) Except as otherwise provided in NRS 112.230 and  
19 166.170, an action for relief on the ground of fraud or mistake, but  
20 the cause of action in such a case shall be deemed to accrue upon  
21 the discovery by the aggrieved party of the facts constituting the  
22 fraud or mistake.

23 ~~[e-]~~ (5) An action pursuant to NRS 40.750 for damages  
24 sustained by a financial institution or other lender because of its  
25 reliance on certain fraudulent conduct of a borrower, but the cause  
26 of action in such a case shall be deemed to accrue upon the  
27 discovery by the financial institution or other lender of the facts  
28 constituting the concealment or false statement.

29 (6) *An action against the owner, occupier or any person*  
30 *performing or furnishing the design, planning, supervision or*  
31 *observation of construction of a residence or appurtenance, or the*  
32 *construction of or improvement to a residence or appurtenance,*  
33 *for the recovery of damages for:*

34 (I) *Any deficiency in the design, planning, supervision*  
35 *or observation of construction of the residence or appurtenance,*  
36 *or the construction of or improvement to the residence or*  
37 *appurtenance;*

38 (II) *Injury to real or personal property caused by any*  
39 *such deficiency; or*

40 (III) *Injury to or the wrongful death of a person caused*  
41 *by any such deficiency.*

42 *↪ The cause of action in such a case shall be deemed to accrue*  
43 *upon the discovery by the aggrieved party of the deficiency.*

44 ~~[4-]~~ (d) Within 2 years:



~~[(a)]~~ (1) An action against a sheriff, coroner or constable upon liability incurred by acting in his or her official capacity and in virtue of his or her office, or by the omission of an official duty, including the nonpayment of money collected upon an execution.

~~[(b)]~~ (2) An action upon a statute for a penalty or forfeiture, where the action is given to a person or the State, or both, except when the statute imposing it prescribes a different limitation.

~~[(c)]~~ (3) An action for libel, slander, assault, battery, false imprisonment or seduction.

~~[(d)]~~ (4) An action against a sheriff or other officer for the escape of a prisoner arrested or imprisoned on civil process.

~~[(e)]~~ (5) Except as otherwise provided in *this section and* NRS 11.215, an action to recover damages for injuries to a person or for the death of a person caused by the wrongful act or neglect of another. The provisions of this ~~[paragraph]~~ *subparagraph* relating to an action to recover damages for injuries to a person apply only to causes of action which accrue after March 20, 1951.

~~[(f)]~~ (6) An action to recover damages under NRS 41.740.

~~[(5-)]~~ (e) Within 1 year:

~~[(a)]~~ (1) An action against an officer, or officer de facto to recover goods, wares, merchandise or other property seized by the officer in his or her official capacity, as tax collector, or to recover the price or value of goods, wares, merchandise or other personal property so seized, or for damages for the seizure, detention or sale of, or injury to, goods, wares, merchandise or other personal property seized, or for damages done to any person or property in making the seizure.

~~[(b)]~~ (2) An action against an officer, or officer de facto for money paid to the officer under protest, or seized by the officer in his or her official capacity, as a collector of taxes, and which, it is claimed, ought to be refunded.

**2. *As used in this section:***

(a) *"Appurtenance" has the meaning ascribed to it in NRS 40.605.*

(b) *"Residence" has the meaning ascribed to it in NRS 40.630.*

**Sec. 5.** NRS 11.202 is hereby amended to read as follows:

11.202 1. ~~[(A)]~~ *Except as otherwise provided in section 3 of this act, an* 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 at any time 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





1 improvement which is the result of his or her willful misconduct or  
2 which he or she fraudulently concealed;

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

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

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

9 (a) The owner or keeper of any hotel, inn, motel, motor court,  
10 boardinghouse or lodging house in this State on account of his or  
11 her liability as an innkeeper.

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

13 **Sec. 6.** NRS 11.203 is hereby amended to read as follows:

14 11.203 1. Except as otherwise provided in NRS 11.202 and  
15 11.206, *and section 3 of this act*, no action may be commenced  
16 against the owner, occupier or any person performing or furnishing  
17 the design, planning, supervision or observation of construction, or  
18 the construction of an improvement to real property more than 10  
19 years after the substantial completion of such an improvement, for  
20 the recovery of damages for:

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

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

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

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

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

40 **Sec. 7.** NRS 11.204 is hereby amended to read as follows:

41 11.204 1. Except as otherwise provided in NRS 11.202,  
42 11.203 and 11.206, *and section 3 of this act*, no action may be  
43 commenced against the owner, occupier or any person performing  
44 or furnishing the design, planning, supervision or observation of  
45 construction, or the construction, of an improvement to real property



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1 more than 8 years after the substantial completion of such an  
2 improvement, for the recovery of damages for:

3 (a) Any latent 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 eighth year  
12 after the substantial completion of such an improvement, an action  
13 for 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 10 years after the substantial completion of  
18 the improvement.

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

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

23 **Sec. 8.** NRS 11.205 is hereby amended to read as follows:

24 11.205 1. Except as otherwise provided in NRS 11.202,  
25 11.203 and 11.206, *and section 3 of this act*, no action may be  
26 commenced against the owner, occupier or any person performing  
27 or furnishing the design, planning, supervision or observation of  
28 construction, or the construction of an improvement to real property  
29 more than 6 years after the substantial completion of such an  
30 improvement, for the recovery of damages for:

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

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

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

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



1 commenced more than 8 years after the substantial completion of  
2 the improvement.

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

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

7 **Sec. 8.5.** (Deleted by amendment.)

8 **Sec. 9.** The amendatory provisions of:

9 1. Sections 1 and 2 of this act apply to any:

10 (a) Action commenced in accordance with NRS 40.600 to  
11 40.695, inclusive; or

12 (b) Notice of a claim given to a contractor, subcontractor,  
13 supplier or design professional pursuant to NRS 40.600 to 40.695,  
14 inclusive,

15 ➔ on or after October 1, 2011.

16 2. Sections 3 to 8, inclusive, of this act apply to any residence  
17 or appurtenance or improvement to any residence or appurtenance  
18 substantially completed on or after October 1, 2011.

