

SENATE BILL NO. 417—COMMITTEE ON JUDICIARY

MARCH 25, 2013

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to civil actions.
(BDR 2-1105)

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 provisions relating to indemnity; authorizing a claimant to commence an action for a defect in certain products without providing written notice of a constructional defect; revising the definition of “constructional defect” to include the sale, distribution or manufacture of certain products; revising the definition of “supplier” for the purposes of claims for a constructional defect; providing that a contractor is liable for the acts or omissions of a supplier of the contractor in a claim to recover damages resulting from a constructional defect; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Under existing law, before a claimant commences an action or amends a complaint to add a cause of action for a constructional defect against a contractor, subcontractor, supplier or design professional, the claimant must give written notice to the contractor, and may give written notice to any subcontractor, supplier or design professional in certain circumstances. (NRS 40.645) **Sections 2 and 8** of this bill authorize a claimant to commence an action for a constructional defect against a supplier who sells, distributes or manufactures a product that is incorporated into a new residence, an alteration of or addition to an existing residence, or an appurtenance without providing such written notice. **Section 2** also authorizes a claimant to commence such an action on behalf of himself or herself and all similarly situated owners of residences or appurtenances in this State who allegedly have a common defective product incorporated into such a residence or appurtenance. **Section 2** additionally provides that only certain provisions relating to actions resulting from constructional defects govern such an action commenced against such a supplier.

Existing law defines “constructional defect” as a defect in the design, construction, manufacture, repair or landscaping of a new residence, of an



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18 alteration of or addition to an existing residence, or of an appurtenance. (NRS
19 40.615) **Section 4** of this bill revises the definition to include a defect in the
20 manufacture of a product that is incorporated into a new residence, an alteration of
21 or addition to an existing residence, or an appurtenance. Existing law defines
22 "supplier," for the purposes of actions resulting from constructional defects, as a
23 person who provides materials, equipment or other supplies for the construction of
24 a residence or appurtenance. (NRS 40.634) **Section 5** of this bill revises the
25 definition to include a person who sells, distributes or manufactures a product that
26 is incorporated into a new residence, an alteration of or addition to an existing
27 residence, or an appurtenance.

28 Existing law also provides that a contractor is liable for the contractor's acts or
29 omissions or the acts or omissions of the contractor's agents, employees or
30 subcontractors in a claim to recover damages resulting from a constructional defect.
31 (NRS 40.640) **Section 7** of this bill additionally provides that a contractor is liable
32 for the acts or omissions of the contractor's suppliers in such a claim.

33 **Section 1** of this bill specifies that "indemnity" means any right of indemnity,
34 whether created by the court or expressly provided for in a written agreement.

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

1 **Section 1.** NRS 17.245 is hereby amended to read as follows:

2 17.245 1. When a release or a covenant not to sue or not to
3 enforce judgment is given in good faith to one of two or more
4 persons liable in tort for the same injury or the same wrongful death:

5 (a) It does not discharge any of the other tortfeasors from
6 liability for the injury or wrongful death unless its terms so provide,
7 but it reduces the claim against the others to the extent of any
8 amount stipulated by the release or the covenant, or in the amount of
9 the consideration paid for it, whichever is the greater; and

10 (b) It discharges the tortfeasor to whom it is given from all
11 liability for contribution and for ~~equitable~~ indemnity to any other
12 tortfeasor.

13 2. As used in this section, ~~equitable~~ "indemnity" means ~~any~~
14 ~~any~~ right of indemnity ~~that is~~, *whether* created by the court ~~rather~~
15 ~~than~~ *or* expressly provided for in a written agreement.

16 **Sec. 2.** Chapter 40 of NRS is hereby amended by adding
17 thereto a new section to read as follows:

18 *1. Notwithstanding the provisions of this section and NRS*
19 *40.600 to 40.695, inclusive, a claimant may commence an action*
20 *for a constructional defect against a supplier who sells, distributes*
21 *or manufactures a product that is incorporated into a new*
22 *residence, an alteration of or addition to an existing residence, or*
23 *an appurtenance without providing written notice pursuant to*
24 *NRS 40.645.*

25 *2. A claimant also may commence an action for a*
26 *constructional defect pursuant to subsection 1 on behalf of*



1 *himself or herself and all similarly situated owners of residences*
2 *or appurtenances in this State who allegedly have a common*
3 *defective product incorporated into such a residence or*
4 *appurtenance.*

5 3. *No provision of this section and NRS 40.600 to 40.695,*
6 *inclusive, governs an action commenced pursuant to this section*
7 *except the applicable provisions of this section and NRS 40.600 to*
8 *40.634, inclusive, and the provisions of NRS 40.635, 40.655 and*
9 *40.670.*

10 **Sec. 3.** NRS 40.600 is hereby amended to read as follows:
11 40.600 As used in NRS 40.600 to 40.695, inclusive, *and*
12 *section 2 of this act*, unless the context otherwise requires, the
13 words and terms defined in NRS 40.603 to 40.634, inclusive, have
14 the meanings ascribed to them in those sections.

15 **Sec. 4.** NRS 40.615 is hereby amended to read as follows:
16 40.615 “Constructional defect” means a defect in the design,
17 construction, manufacture, repair or landscaping of a new residence,
18 of an alteration of or addition to an existing residence, or of an
19 appurtenance, *or a defect in the manufacture of a product that is*
20 *incorporated into a new residence, an alteration of or addition to*
21 *an existing residence, or an appurtenance*, and includes, without
22 limitation, the design, construction, manufacture, repair or
23 landscaping of a new residence, of an alteration of or addition to an
24 existing residence, or of an appurtenance ~~+~~, *or the manufacture of*
25 *a product that is incorporated into a new residence, an alteration*
26 *of or addition to an existing residence, or an appurtenance:*

27 1. Which is done in violation of law, including, without
28 limitation, in violation of local codes or ordinances;

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

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

36 4. Which presents an unreasonable risk of injury to a person or
37 property.

38 **Sec. 5.** NRS 40.634 is hereby amended to read as follows:
39 40.634 “Supplier” means a person who *sells, distributes or*
40 *manufactures a product that is incorporated into a residence or*
41 *appurtenance or* provides materials, equipment or other supplies for
42 the construction of a residence or appurtenance.

43 **Sec. 6.** NRS 40.635 is hereby amended to read as follows:
44 40.635 NRS 40.600 to 40.695, inclusive ~~+~~, *and section 2 of*
45 *this act:*



1 1. Apply to any claim that arises before, on or after July 1,
2 1995, as the result of a constructional defect, except a claim for
3 personal injury or wrongful death, if the claim is the subject of an
4 action commenced on or after July 1, 1995.

5 2. Prevail over any conflicting law otherwise applicable to the
6 claim or cause of action.

7 3. Do not bar or limit any defense otherwise available, except
8 as otherwise provided in those sections.

9 4. Do not create a new theory upon which liability may be
10 based, except as otherwise provided in those sections.

11 **Sec. 7.** NRS 40.640 is hereby amended to read as follows:

12 40.640 In a claim to recover damages resulting from a
13 constructional defect, a contractor is liable for the contractor's acts
14 or omissions or the acts or omissions of the contractor's agents,
15 employees, ~~and~~ subcontractors *or suppliers* and is not liable for any
16 damages caused by:

17 1. The acts or omissions of a person other than the contractor
18 or the contractor's agent, employee, ~~and~~ subcontractor ~~and~~ *or*
19 *supplier*;

20 2. The failure of a person other than the contractor or the
21 contractor's agent, employee, ~~and~~ subcontractor *or supplier* to take
22 reasonable action to reduce the damages or maintain the residence;

23 3. Normal wear, tear or deterioration;

24 4. Normal shrinkage, swelling, expansion or settlement; or

25 5. Any constructional defect disclosed to an owner before the
26 owner's purchase of the residence, if the disclosure was provided in
27 language that is understandable and was written in underlined and
28 boldfaced type with capital letters.

29 **Sec. 8.** NRS 40.645 is hereby amended to read as follows:

30 40.645 1. Except as otherwise provided in this section and
31 NRS 40.670, *and section 2 of this act*, before a claimant
32 commences an action or amends a complaint to add a cause of
33 action for a constructional defect against a contractor, subcontractor,
34 supplier or design professional, the claimant:

35 (a) Must give written notice by certified mail, return receipt
36 requested, to the contractor, at the contractor's address listed in the
37 records of the State Contractors' Board or in the records of the
38 office of the county or city clerk or at the contractor's last known
39 address if the contractor's address is not listed in those records; and

40 (b) May give written notice by certified mail, return receipt
41 requested, to any subcontractor, supplier or design professional
42 known to the claimant who may be responsible for the
43 constructional defect, if the claimant knows that the contractor is no
44 longer licensed in this State or that the contractor no longer acts as a
45 contractor in this State.



- 1 2. The notice given pursuant to subsection 1 must:
- 2 (a) Include a statement that the notice is being given to satisfy
- 3 the requirements of this section;
- 4 (b) Specify in reasonable detail the defects or any damages or
- 5 injuries to each residence or appurtenance that is the subject of the
- 6 claim; and
- 7 (c) Describe in reasonable detail the cause of the defects if the
- 8 cause is known, the nature and extent that is known of the damage
- 9 or injury resulting from the defects and the location of each defect
- 10 within each residence or appurtenance to the extent known.
- 11 3. Notice that includes an expert opinion concerning the cause
- 12 of the constructional defects and the nature and extent of the damage
- 13 or injury resulting from the defects which is based on a valid and
- 14 reliable representative sample of the components of the residences
- 15 or appurtenances may be used as notice of the common
- 16 constructional defects within the residences or appurtenances to
- 17 which the expert opinion applies.
- 18 4. Except as otherwise provided in subsection 5, one notice
- 19 may be sent relating to all similarly situated owners of residences or
- 20 appurtenances within a single development that allegedly have
- 21 common constructional defects if:
- 22 (a) An expert opinion is obtained concerning the cause of the
- 23 common constructional defects and the nature and extent of the
- 24 damage or injury resulting from the common constructional defects;
- 25 (b) That expert opinion concludes that based on a valid and
- 26 reliable representative sample of the components of the residences
- 27 and appurtenances included in the notice, it is the opinion of the
- 28 expert that those similarly situated residences and appurtenances
- 29 may have such common constructional defects; and
- 30 (c) A copy of the expert opinion is included with the notice.
- 31 5. A representative of a homeowner's association may send
- 32 notice pursuant to this section on behalf of an association that is
- 33 responsible for a residence or appurtenance if the representative is
- 34 acting within the scope of the representative's duties pursuant to
- 35 chapter 116 or 117 of NRS.
- 36 6. Notice is not required pursuant to this section before
- 37 commencing an action if:
- 38 (a) The contractor, subcontractor, supplier or design professional
- 39 has filed an action against the claimant; or
- 40 (b) The claimant has filed a formal complaint with a law
- 41 enforcement agency against the contractor, subcontractor, supplier
- 42 or design professional for threatening to commit or committing an
- 43 act of violence or a criminal offense against the claimant or the
- 44 property of the claimant.



Sec. 9. 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, *and section 2 of this act*, 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) 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 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, *and section 2 of this act*, 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 *H, and section 2 of this act*.

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



1 **Sec. 10.** The amendatory provisions of this act preserve any
2 and all remedies available on October 1, 2013, in an action for a
3 construction defect.

