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EMERGENCY REQUEST OF ASSEMBLY MINORITY LEADER

ASSEMBLY BILL NO. 504—ASSEMBLYMEN HICKEY, DUNCAN,  
HARDY, HAMBRICK, KIRNER; PAUL ANDERSON, ELLISON,  
GRADY, LIVERMORE, OSCARSON AND STEWART

MAY 30, 2013

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JOINT SPONSORS: SENATORS ROBERSON, KIECKHEFER,  
BROWER, HUTCHISON; AND HAMMOND

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Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions relating to constructional defects.  
(BDR 3-1247)

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.

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AN ACT relating to constructional defects; prohibiting a controlling party from seeking indemnification under certain circumstances; revising the definition of “constructional defect”; requiring an attorney to obtain an affidavit from a claimant and file the affidavit with the court under certain circumstances; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

1 **Section 1** of this bill prohibits a controlling party for certain development  
2 projects from seeking indemnification from a subcontractor, supplier, design  
3 professional or any other person providing a service to the development project for  
4 the sole negligence or willful misconduct of the controlling party unless such  
5 indemnification is expressly and explicitly stated in a contract or subcontract.

6 **Section 3** of this bill amends the existing definition of “constructional defect”  
7 to provide that a constructional defect is a defect: (1) which presents an  
8 unreasonable risk of injury to a person or property; or (2) which is not completed in  
9 a good and workmanlike manner, violates any law, local codes or ordinances, and  
10 proximately causes physical damage to the residence, an appurtenance or the real  
11 property to which the residence or appurtenance is affixed. **Section 3** also specifies  
12 the circumstances under which work is not completed in a good and workmanlike



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13 manner and the circumstances under which work is done in violation of the law,  
14 local codes or ordinances.

15 Existing law also requires an attorney for a claimant to notify the claimant in  
16 writing of certain provisions of law relating to constructional defects before the  
17 attorney takes any action on a claim for a constructional defect. (NRS 40.688)  
18 **Section 5** of this bill revises this requirement and instead provides that an attorney  
19 must obtain from a claimant a signed affidavit stating that the claimant has been  
20 notified of certain provisions relating to constructional defects. If the claimant is a  
21 representative of a homeowners' association, **section 5** requires that the affidavit  
22 also attest that the claimant has notified the units' owners on whose behalf the  
23 claim is brought of the provisions of **section 5**. **Section 5** further provides that in a  
24 subsequent action, the attorney must file the affidavit with the court or the action  
25 will be dismissed.

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

1 **Section 1.** Chapter 40 of NRS is hereby amended by adding  
2 thereto a new section to read as follows:

3 *1. With respect to a claim governed by this section and NRS*  
4 *40.600 to 40.695, inclusive, a controlling party shall not seek*  
5 *indemnification from a subcontractor, supplier, design*  
6 *professional or any other person providing a service for a*  
7 *development project for the sole negligence or willful misconduct*  
8 *of the controlling party unless such indemnification is expressly*  
9 *and explicitly stated in a contract or subcontract.*

10 *2. As used in this section:*

11 *(a) "Controlling party" means any person who:*

12 *(1) Is responsible for the planning, oversight, supervision,*  
13 *management or selection of the design professionals or the first-*  
14 *tier subcontractors for a development project; or*

15 *(2) Receives, or controls the allocation of, the receipts or*  
16 *profits for a development project.*

17 *(b) "Development project" means the design, construction,*  
18 *manufacture or landscaping of a new residence.*

19 **Sec. 2.** NRS 40.600 is hereby amended to read as follows:

20 40.600 As used in NRS 40.600 to 40.695, inclusive, *and*  
21 *section 1 of this act*, unless the context otherwise requires, the  
22 words and terms defined in NRS 40.603 to 40.634, inclusive, have  
23 the meanings ascribed to them in those sections.

24 **Sec. 3.** NRS 40.615 is hereby amended to read as follows:

25 40.615 *1. "Constructional defect" means a defect in the*  
26 *design, construction, manufacture, repair or landscaping of a new*  
27 *residence, of an alteration or addition to an existing residence, or*  
28 *of an appurtenance and includes, without limitation, the design,*  
29 *construction, manufacture, repair or landscaping of a new residence,*



1 of an alteration of or addition to an existing residence, or of an  
2 appurtenance †

3 ~~1. Which is done in violation of law, including, without~~  
4 ~~limitation, in violation of local codes or ordinances;~~

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

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

12 ~~4. Which presents†, which:~~

13 (a) *Presents* an unreasonable risk of injury to a person or  
14 property †; or

15 (b) *Is not completed in a good and workmanlike manner, is in*  
16 *violation of any law, local codes or ordinances, and proximately*  
17 *causes physical damage to the residence, an appurtenance or the*  
18 *real property to which the residence or appurtenance is affixed.*

19 2. *For the purposes of this section:*

20 (a) *The design, construction, manufacture, repair or*  
21 *landscaping of a new residence, of an alteration of or addition to*  
22 *an existing residence, or of an appurtenance is not completed in a*  
23 *good and workmanlike manner if the design, construction,*  
24 *manufacture, repair or landscaping has not been performed in*  
25 *accordance with the generally accepted standard of care in the*  
26 *industry for that type of design, construction, manufacture, repair*  
27 *or landscaping, and is not performing as intended.*

28 (b) *The design, construction, manufacture, repair or*  
29 *landscaping of a new residence, of an alteration of or addition to*  
30 *an existing residence, or of an appurtenance is not done in*  
31 *violation of any law, local codes or ordinances if the workmanship*  
32 *of the design, construction, manufacture, repair or landscaping*  
33 *exceeds the standards set forth in any applicable law, local codes*  
34 *or ordinances.*

35 3. *As used in this section, "law, local codes or ordinances"*  
36 *includes, without limitation, the standards prescribed in*  
37 *subsection 1 of NRS 624.3017.*

38 **Sec. 4.** NRS 40.635 is hereby amended to read as follows:

39 40.635 NRS 40.600 to 40.695, inclusive †, *and section 1 of*  
40 *this act:*

41 1. Apply to any claim that arises before, on or after July 1,  
42 1995, as the result of a constructional defect, except a claim for  
43 personal injury or wrongful death, if the claim is the subject of an  
44 action commenced on or after July 1, 1995.



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

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

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

7 **Sec. 5.** NRS 40.688 is hereby amended to read as follows:

8 40.688 1. If a claimant attempts to sell a residence that is or  
9 has been the subject of a claim governed by NRS 40.600 to 40.695,  
10 inclusive, *and section 1 of this act*, the claimant shall disclose, in  
11 writing, to any prospective purchaser of the residence, not less than  
12 30 days before the close of escrow for the sale of the residence or, if  
13 escrow is to close less than 30 days after the execution of the sales  
14 agreement, then immediately upon the execution of the sales  
15 agreement or, if a claim is initiated less than 30 days before the  
16 close of escrow, within 24 hours after giving written notice to the  
17 contractor pursuant to NRS 40.645:

18 (a) All notices given by the claimant to the contractor pursuant  
19 to NRS 40.600 to 40.695, inclusive, *and section 1 of this act* that  
20 are related to the residence;

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

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

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

29 2. Before taking any action on a claim pursuant to NRS 40.600  
30 to 40.695, inclusive, *and section 1 of this act*, the attorney for a  
31 claimant shall ~~notify~~ *obtain a signed affidavit from* the claimant  
32 ~~in writing~~ *stating that the claimant has been notified* of the  
33 provisions of this section. *If the claimant is a representative of a*  
34 *homeowners' association, the affidavit must attest that the*  
35 *claimant has notified the units' owners on whose behalf the claim*  
36 *is brought of the provisions of this section. At the time of*  
37 *commencing an action or amending a complaint to add a cause of*  
38 *action for a constructional defect, the attorney shall file the*  
39 *affidavit with the court. The action or cause of action will be*  
40 *dismissed by the court if the attorney fails to file the required*  
41 *affidavit.*

42 **Sec. 6.** The amendatory provisions of this act apply to any  
43 claim that arises on or after October 1, 2013.

