

SENATE BILL NO. 241—COMMITTEE ON COMMERCE AND LABOR

MARCH 6, 2003

Referred to Committee on Commerce and Labor

SUMMARY—Makes various changes to provisions governing certain claims for constructional defects. (BDR 3-156)

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 real property; making various changes to provisions governing certain claims for constructional defects; establishing certain rights, remedies and procedures governing certain claims for constructional defects; revising and recodifying various provisions governing certain claims for constructional defects; and providing other matters properly relating thereto.

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

- 1     **Section 1.** Title 3 of NRS is hereby amended by adding  
2     thereto a new chapter to consist of the provisions set forth as  
3     sections 2 to 53, inclusive, of this act.  
4     **Sec. 2.** *As used in this chapter, unless the context otherwise*  
5     *requires, the words and terms defined in sections 3 to 21,*  
6     *inclusive, of this act have the meanings ascribed to them in those*  
7     *sections.*  
8     **Sec. 3.** *“Amend a complaint to add a cause of action for a*  
9     *constructional defect” means any act by which a claimant seeks*  
10    *to:*  
11    1. *Add to the pleadings a constructional defect that is not*  
12    *otherwise included in the pleadings; or*



\* S B 2 4 1 R 1 \*

1       2. *Amend the pleadings in such a manner that the practical*  
2 *effect is the addition of a constructional defect that is not*  
3 *otherwise included in the pleadings.*

4       **Sec. 4. 1. “Appurtenance”** means any structure,  
5 *installation, facility, amenity or other improvement which is*  
6 *appurtenant to or benefits one or more residences but which is not*  
7 *a part of the dwelling unit.*

8       2. *The term includes, without limitation, the parcel of real*  
9 *property, recreational facilities, golf courses, walls, sidewalks,*  
10 *driveways, landscaping, common elements and limited common*  
11 *elements other than those described in NRS 116.2102, and other*  
12 *structures, installations, facilities, amenities and improvements*  
13 *associated with or benefiting one or more residences.*

14       **Sec. 5. “Building inspector”** means an inspector who is  
15 *employed by a governmental entity and who has the authority to*  
16 *approve or certify any construction project.*

17       **Sec. 6. “Cause of action for a constructional defect”** means a  
18 *claim brought by a claimant in a court of competent jurisdiction in*  
19 *which the claimant alleges that one or more contractors,*  
20 *subcontractors, suppliers, design professionals or other persons*  
21 *are liable for damages arising from a constructional defect.*

22       **Sec. 7. “Claimant”** means:

23       1. *An owner of a residence or appurtenance;*

24       2. *A representative of a homeowners’ association that is*  
25 *responsible for a residence or appurtenance if the representative is*  
26 *acting within the scope of his authority under the law and the*  
27 *governing documents for the homeowners’ association; or*

28       3. *Each member of a class action who has complied with the*  
29 *notice provisions of section 27 of this act.*

30       **Sec. 8. “Common elements”** has the meaning ascribed to it  
31 *in NRS 116.110318.*

32       **Sec. 9. “Construction project”** means any design,  
33 *development, construction, manufacturing, alteration,*  
34 *improvement, repair or landscaping involving a residence or*  
35 *appurtenance, or any part thereof.*

36       **Sec. 10. 1. “Constructional defect”** means a defect in the  
37 *design, construction, manufacturing, alteration, improvement,*  
38 *repair or landscaping of:*

39       (a) *A new residence or a new appurtenance; or*

40       (b) *An existing residence or an existing appurtenance, when*  
41 *the existing residence or existing appurtenance is changed,*  
42 *altered, added to or improved by a construction project.*

43       2. *The term includes physical damage to the residence, an*  
44 *appurtenance or the real property to which the residence or*



1 appurtenance is affixed that is proximately caused by a  
2 construction defect.

3 3. The term does not include:

4 (a) Any design, construction, manufacturing, alteration,  
5 improvement, repair or landscaping for which a contractor,  
6 subcontractor, supplier or design professional cannot be held  
7 liable pursuant to section 24 of this act; or

8 (b) Any act, omission, condition or damage for which a  
9 contractor, subcontractor, supplier or design professional cannot  
10 be held liable pursuant to section 25 of this act.

11 **Sec. 11.** "Contractor" means a person who, with or without a  
12 license issued pursuant to chapter 624 of NRS, by himself or  
13 through his agents, employees or subcontractors:

14 1. Develops, designs, constructs, manufactures, alters,  
15 improves, repairs or landscapes a residence, appurtenance or any  
16 part thereof;

17 2. Develops a site for a residence, appurtenance or any part  
18 thereof; or

19 3. Sells a residence or appurtenance, any part of which the  
20 person, by himself or through his agents, employees or  
21 subcontractors, has developed, designed, constructed,  
22 manufactured, altered, improved, repaired or landscaped.

23 **Sec. 12.** "Contractor for the construction project" means,  
24 with regard to any construction project:

25 1. The contractor who is the general contractor for the  
26 construction project; or

27 2. In the absence of a general contractor for the construction  
28 project, the contractor who is the primary contractor for the  
29 construction project or who is responsible for the work performed  
30 on the construction project.

31 **Sec. 13.** "Design professional" means:

32 1. A person who holds a professional license or certificate  
33 issued pursuant to chapter 623, 623A or 625 of NRS and who  
34 provides professional services with regard to any construction  
35 project; or

36 2. A person who is primarily engaged in the practice of  
37 professional engineering, land surveying, architecture or  
38 landscape architecture and who provides professional services  
39 with regard to any construction project.

40 **Sec. 14.** 1. "Homeowner's warranty" means a warranty or  
41 policy of insurance:

42 (a) Issued or purchased by or on behalf of a contractor,  
43 subcontractor, supplier or design professional for the protection of  
44 a claimant; or



- 1       **(b) Purchased by or on behalf of a claimant pursuant to NRS**  
2 **690B.100 to 690B.180, inclusive.**
- 3       **2. The term includes a warranty contract issued by a risk**  
4 **retention group that operates in compliance with chapter 695E of**  
5 **NRS and insures all or any part of the liability of a contractor,**  
6 **subcontractor, supplier or design professional for the cost to**  
7 **repair a constructional defect.**
- 8       **Sec. 15. "Limited common element" has the meaning**  
9 **ascribed to it in NRS 116.110355.**
- 10       **Sec. 16. "Master developer" means a person who buys, sells**  
11 **or develops a planned unit development, including, without**  
12 **limitation, a person who enters into a development agreement**  
13 **pursuant to NRS 278.0201.**
- 14       **Sec. 17. "Planned unit development" has the meaning**  
15 **ascribed to it in NRS 278A.065.**
- 16       **Sec. 18. "Residence" means any dwelling in which title to**  
17 **the individual units is transferred to the owners.**
- 18       **Sec. 19. "Subcontractor" means a contractor who performs**  
19 **work on behalf of another contractor for any construction project.**
- 20       **Sec. 20. "Subdivider" has the meaning ascribed to it in**  
21 **NRS 278.0185.**
- 22       **Sec. 21. "Supplier" means a person who provides materials,**  
23 **equipment or other supplies for any construction project.**
- 24       **Sec. 22. For the purposes of this chapter, a claimant**  
25 **"recovers money for a constructional defect" if the claimant**  
26 **recovers any amount of money to remedy the constructional defect**  
27 **or to compensate the claimant for the constructional defect,**  
28 **whether the recovery occurs through a final judgment, order,**  
29 **award, settlement or compromise or through any other means that**  
30 **resolves the claim for the constructional defect.**
- 31       **Sec. 23. 1. The provisions of this chapter apply to any**  
32 **claim for a constructional defect that arises before, on or after the**  
33 **effective date of this act, unless the claimant:**
- 34       **(a) Has commenced an action concerning the claim in**  
35 **accordance with NRS 40.600 to 40.695, inclusive, before the**  
36 **effective date of this act; or**
- 37       **(b) Has given notice of the claim to the contractor,**  
38 **subcontractor, supplier or design professional pursuant to NRS**  
39 **40.600 to 40.695, inclusive, before the effective date of this act.**
- 40       **2. Except as otherwise provided in this chapter, the provisions**  
41 **of this chapter prevail over any conflicting law otherwise**  
42 **applicable to a claim or cause of action for a constructional defect.**
- 43       **3. The provisions of this chapter do not:**
- 44       **(a) Create a new theory upon which liability may be based; or**



1 (b) Bar or limit any defense otherwise available, unless the  
2 defense is expressly barred or limited pursuant to the provisions of  
3 this chapter.

4 4. The provisions of this chapter do not apply to:  
5 (a) A claim for personal injury or wrongful death; or  
6 (b) A claim that is subject to the provisions of NRS 40.600 to  
7 40.695, inclusive.

8 **Sec. 24. 1.** A contractor, subcontractor, supplier or design  
9 professional is not liable for any design, construction,  
10 manufacturing, alteration, improvement, repair or landscaping  
11 that:

12 (a) Is functioning as intended and was completed in  
13 compliance with the provisions of the applicable building codes in  
14 effect when it was completed; or

15 (b) Is not the proximate cause of any damage or injury.

16 2. For the purposes of this section, the approval of any  
17 design, construction, manufacturing, alteration, improvement,  
18 repair or landscaping by a building inspector is prima facie  
19 evidence that the design, construction, manufacturing, alteration,  
20 improvement, repair or landscaping was completed in compliance  
21 with the provisions of the applicable building codes in effect when  
22 it was completed.

23 **Sec. 25. 1.** A contractor, subcontractor, supplier or design  
24 professional:

25 (a) Is liable only for damages that are proximately caused by  
26 his own acts or omissions or the acts or omissions of his agents,  
27 employees or subcontractors; and

28 (b) Is not liable for damages that are proximately caused by:

29 (1) The acts or omissions of any other person; or

30 (2) The failure of any other person to take reasonable  
31 action to maintain a residence or appurtenance or to reduce or  
32 mitigate any damage or injury.

33 2. A contractor, subcontractor, supplier or design  
34 professional is not liable for:

35 (a) Normal wear, tear or deterioration; or

36 (b) Normal shrinkage, swelling, expansion or settlement.

37 3. A contractor, subcontractor, supplier or design  
38 professional is not liable for any constructional defect that is  
39 disclosed to an owner before his purchase of the residence, if the  
40 disclosure was provided in language that is understandable and  
41 was written in underlined and boldfaced type with capital letters.

42 **Sec. 26. 1.** Except as otherwise provided in this chapter, a  
43 claimant may not bring a cause of action for a constructional  
44 defect or amend a complaint to add a cause of action for a



1 *constructional defect against a contractor, subcontractor, supplier*  
2 *or design professional, unless the claimant has:*  
3 (a) *Complied with the procedures concerning notice set forth*  
4 *in this chapter with regard to each constructional defect that*  
5 *forms the basis of the cause of action;*  
6 (b) *Complied with the procedures concerning repairs set forth*  
7 *in this chapter with regard to each constructional defect that*  
8 *forms the basis of the cause of action; and*  
9 (c) *Complied with the procedures concerning mediation set*  
10 *forth in this chapter with regard to each constructional defect that*  
11 *forms the basis of the cause of action.*  
12 2. *If a claimant brings a cause of action for a constructional*  
13 *defect in violation of this section or amends a complaint to add a*  
14 *cause of action for a constructional defect in violation of this*  
15 *section, the court does not have jurisdiction to hear the subject*  
16 *matter of the cause of action and the court shall dismiss the cause*  
17 *of action without prejudice. The provisions of this section do not*  
18 *preclude the court from dismissing the cause of action with*  
19 *prejudice for reasons other than a violation of this section.*  
20 **Sec. 27. 1. Except as otherwise provided in this chapter,**  
21 *before a claimant may bring a cause of action for a constructional*  
22 *defect or amend a complaint to add a cause of action for a*  
23 *constructional defect against a contractor, subcontractor, supplier*  
24 *or design professional, the claimant must provide the contractor*  
25 *for the construction project with written notice of each*  
26 *constructional defect that forms the basis of the cause of action.*  
27 *To provide such written notice, the claimant must:*  
28 (a) *Use the standard form for providing notice of a*  
29 *constructional defect;*  
30 (b) *List on the standard form each contractor, subcontractor,*  
31 *supplier and design professional who may be liable for the*  
32 *constructional defect and whose identity is known by the claimant;*  
33 *and*  
34 (c) *Send the standard form by registered mail, return receipt*  
35 *requested, to:*  
36 (1) *The last known address of the contractor; or*  
37 (2) *The address of the contractor that is listed in the records*  
38 *of the State Contractors' Board, the office of the county recorder*  
39 *for the county where the work was performed, or the office of*  
40 *the clerk that issues business licenses for the county or city where*  
41 *the work was performed.*  
42 2. *If, before the claimant provides written notice to the*  
43 *contractor for the construction project, the claimant knows that*  
44 *the contractor for the construction project is no longer in business*  
45 *as a contractor, the claimant shall provide written notice to each*



1 *subcontractor, supplier and design professional who may be liable*  
2 *for the constructional defect and whose identity is known by the*  
3 *claimant. To provide such written notice, the claimant must:*  
4 (a) *Use the standard form for providing notice of a*  
5 *constructional defect;*  
6 (b) *List on the standard form each contractor, subcontractor,*  
7 *supplier and design professional who may be liable for the*  
8 *constructional defect and whose identity is known by the claimant;*  
9 *and*  
10 (c) *Send the standard form by registered mail, return receipt*  
11 *requested, to:*  
12 (1) *The last known address of the subcontractor, supplier*  
13 *or design professional; or*  
14 (2) *The address of the subcontractor, supplier or design*  
15 *professional that is listed in the records of the State Contractors'*  
16 *Board, the office of the county recorder for the county where the*  
17 *work was performed, or the office of the clerk that issues business*  
18 *licenses for the county or city where the work was performed.*  
19 3. *A subcontractor, supplier or design professional who*  
20 *receives written notice from a claimant pursuant to this section is*  
21 *entitled to the same rights to repair the constructional defect that*  
22 *are afforded to a contractor pursuant to this chapter.*  
23 4. *A representative of a homeowners' association that is*  
24 *responsible for a residence or appurtenance may not provide the*  
25 *written notice required by this section, unless the representative is*  
26 *acting within the scope of his authority under the law and the*  
27 *governing documents for the homeowners' association and has*  
28 *obtained an affirmative vote of at least a simple majority of the*  
29 *members of the association.*  
30 5. *The State Contractors' Board shall:*  
31 (a) *Develop a standard form for providing notice of a*  
32 *constructional defect for the purposes of this section; and*  
33 (b) *Make the standard form available to claimants.*  
34 **Sec. 28. 1.** *After the claimant sends written notice of a*  
35 *constructional defect pursuant to section 27 of this act, the*  
36 *claimant, upon reasonable notice, shall provide the contractor for*  
37 *the construction project and each subcontractor, supplier or*  
38 *design professional who may be liable for the constructional*  
39 *defect with access to the residence or appurtenance where the*  
40 *constructional defect is located for the purposes of inspecting the*  
41 *residence or appurtenance to determine the nature and extent of*  
42 *the constructional defect and the nature and extent of any repairs*  
43 *that may be necessary.*  
44 2. *The claimant shall provide the access required by this*  
45 *section not later than 60 days after the date that written notice is*



1 *sent to the contractor pursuant to section 27 of this act or, if*  
2 *written notice is sent to a subcontractor, supplier or design*  
3 *professional pursuant to that section, not later than 60 days after*  
4 *the date that written notice is sent to the subcontractor, supplier or*  
5 *design professional.*

6 **Sec. 29. 1.** *Not later than 30 days after the date that written*  
7 *notice of a constructional defect is received by the contractor for*  
8 *the construction project pursuant to section 27 of this act, the*  
9 *contractor shall provide a copy of the written notice to each*  
10 *subcontractor, supplier or design professional who the contractor*  
11 *reasonably believes may be liable for the constructional defect.*  
12 *The contractor must send the copy by registered mail, return*  
13 *receipt requested, to:*

14 (a) *The last known address of the subcontractor, supplier or*  
15 *design professional; and*

16 (b) *The address of the subcontractor, supplier or design*  
17 *professional that is listed in the contract between the contractor*  
18 *and the subcontractor, supplier or design professional.*

19 2. *Not later than 15 days after the date of the inspection of*  
20 *the constructional defect, the subcontractor, supplier or design*  
21 *professional shall provide the contractor with:*

22 (a) *A written statement indicating whether the subcontractor,*  
23 *supplier or design professional has elected to repair the*  
24 *constructional defect; and*

25 (b) *If such an election is made:*

26 (1) *A written estimate as to the length of time to complete*  
27 *the repairs and at least two proposed dates and times when the*  
28 *repairs will begin; and*

29 (2) *A written statement waiving all rights to file mechanics'*  
30 *and materialmen's liens against the residence and its*  
31 *appurtenances pursuant to NRS 108.221 to 108.246, inclusive,*  
32 *with regard to the repairs performed pursuant to this chapter.*

33 3. *Except as otherwise provided in this chapter, the*  
34 *contractor may not pursue any claim related to the constructional*  
35 *defect against a subcontractor, supplier or design professional*  
36 *who is liable for the constructional defect, unless the contractor*  
37 *has provided the subcontractor, supplier or design professional*  
38 *with:*

39 (a) *A copy of the written notice from the claimant as required*  
40 *by this section; and*

41 (b) *A reasonable opportunity to repair the constructional*  
42 *defect.*

43 4. *The contractor may pursue a claim related to the*  
44 *constructional defect against a subcontractor, supplier or design*





1 *professional who is liable for the constructional defect if the*  
2 *contractor:*

3 (a) *Made a good faith effort to discover the identity of the*  
4 *subcontractor, supplier or design professional after the contractor*  
5 *received written notice of the constructional defect from the*  
6 *claimant; and*

7 (b) *Was unable to discover the identity of the subcontractor,*  
8 *supplier or design professional within the 30-day period for*  
9 *providing a copy of the written notice to the subcontractor,*  
10 *supplier or design professional.*

11 **Sec. 30. 1.** *Not later than 90 days after the date that written*  
12 *notice is sent to the contractor pursuant to section 27 of this act or,*  
13 *if written notice is sent to a subcontractor, supplier or design*  
14 *professional pursuant to that section, not later than 90 days after*  
15 *the date that written notice is sent to the subcontractor, supplier or*  
16 *design professional, the contractor, subcontractor, supplier or*  
17 *design professional, as appropriate, shall provide the claimant*  
18 *with a written statement indicating whether the contractor,*  
19 *subcontractor, supplier or design professional has elected to repair*  
20 *the constructional defect.*

21 2. *Except as otherwise provided in this chapter:*

22 (a) *If the contractor, subcontractor, supplier or design*  
23 *professional has elected not to repair the constructional defect, the*  
24 *claimant may bring a cause of action for the constructional defect*  
25 *or amend a complaint to add a cause of action for the*  
26 *constructional defect.*

27 (b) *If the contractor, subcontractor, supplier or design*  
28 *professional has elected to repair the constructional defect, the*  
29 *claimant must provide the contractor, subcontractor, supplier or*  
30 *design professional with a reasonable opportunity to repair the*  
31 *constructional defect.*

32 3. *If the contractor, subcontractor, supplier or design*  
33 *professional has elected to repair the constructional defect, the*  
34 *contractor, subcontractor, supplier or design professional must:*

35 (a) *Either perform the repairs, but only if he is properly*  
36 *licensed, bonded and insured to perform the repairs, or have the*  
37 *repairs performed by a properly licensed, bonded and insured*  
38 *contractor or subcontractor;*

39 (b) *Perform the repairs or have the repairs performed at*  
40 *reasonable dates and times that are agreed to in advance with the*  
41 *claimant;*

42 (c) *Complete the repairs or have the repairs completed within a*  
43 *reasonable period as required by the provisions of this section;*

44 (d) *Not later than 30 days after the repairs are completed,*  
45 *provide the claimant with a written statement indicating the nature*



1 *and extent of the repairs, the methods that were used to perform*  
2 *the repairs and the nature and extent of any materials or parts that*  
3 *were replaced; and*

4 *(e) Ensure that all contractors, subcontractors and suppliers*  
5 *are paid for any labor performed or materials furnished for the*  
6 *repairs so that there are no mechanics' and materialmen's liens*  
7 *filed against the residence and its appurtenances pursuant to NRS*  
8 *108.221 to 108.246, inclusive, and indemnify the claimant against*  
9 *all such liens.*

10 *4. Except as otherwise provided in this chapter, the*  
11 *contractor, subcontractor, supplier or design professional must*  
12 *complete or have the repairs completed not later than 150 days*  
13 *after the date that written notice of the constructional defect is*  
14 *sent to the contractor pursuant to section 27 of this act or, if*  
15 *written notice is sent to the subcontractor, supplier or design*  
16 *professional pursuant to that section, not later than 150 days after*  
17 *the date that written notice is sent to the subcontractor, supplier or*  
18 *design professional.*

19 *5. The contractor, subcontractor, supplier or design*  
20 *professional is not required to complete or have the repairs*  
21 *completed within the period set forth in subsection 4 if:*

22 *(a) Completion of the repairs is delayed by the claimant or by*  
23 *other events beyond the control of the contractor, subcontractor,*  
24 *supplier or design professional; or*

25 *(b) Timely completion of the repairs is not reasonably possible.*  
26 *If timely completion of the repairs is not reasonably possible, the*  
27 *claimant and the contractor, subcontractor, supplier or design*  
28 *professional must negotiate in good faith to set a reasonable*  
29 *period for completion of the repairs.*

30 *6. The claimant and any contractor, subcontractor, supplier*  
31 *or design professional may agree in writing to extend the periods*  
32 *prescribed by this section and sections 28 and 29 of this act.*

33 **Sec. 31. 1.** *If the claimant disputes the method or adequacy*  
34 *of any repairs that are performed pursuant to section 30 of this*  
35 *act, the claimant or the contractor, subcontractor, supplier or*  
36 *design professional who performed or had the repairs performed*  
37 *may submit the dispute to the State Contractors' Board.*

38 *2. If a dispute is submitted to the State Contractors' Board*  
39 *pursuant to this section, the State Contractors' Board shall,*  
40 *pursuant to its regulations, rules and procedures, investigate the*  
41 *dispute and render a decision concerning:*

42 *(a) Whether the method used to perform the repairs was*  
43 *appropriate; and*

44 *(b) Whether the repairs were performed adequately in a good*  
45 *and workmanlike manner and in accordance with applicable law.*



1       3. *The decision of the State Contractors' Board:*  
2       (a) *Is not subject to judicial review pursuant to the provisions*  
3       *of chapters 233B and 624 of NRS; and*

4       (b) *Is admissible in any action brought pursuant to the*  
5       *provisions of this chapter.*

6       4. *The provisions of this chapter do not preclude a claimant*  
7       *or a contractor, subcontractor, supplier or design professional*  
8       *from pursuing any remedy otherwise available from the State*  
9       *Contractors' Board pursuant to the provisions of chapter 624 of*  
10       *NRS concerning a constructional defect.*

11       5. *If a claimant or a contractor, subcontractor, supplier or*  
12       *design professional pursues any remedy available from the State*  
13       *Contractors' Board pursuant to the provisions of this section or*  
14       *chapter 624 of NRS concerning a constructional defect, no person*  
15       *may bring a cause of action for the constructional defect or, if*  
16       *such a cause of action already has been brought in a court of*  
17       *competent jurisdiction, no further court proceedings may be held*  
18       *concerning the cause of action until the State Contractors' Board*  
19       *renders a decision in the matter.*

20       **Sec. 31.5. 1.** *In carrying out the duties assigned to it*  
21       *pursuant to the provisions of this chapter, the State Contractors'*  
22       *Board may, as necessary:*

23       (a) *Adopt regulations and charge and collect reasonable fees;*

24       (b) *Recover its administrative, investigative and legal costs*  
25       *from contractors and subcontractors who are parties to*  
26       *proceedings before the State Contractors' Board pursuant to the*  
27       *provisions of this chapter; and*

28       (c) *Delegate its authority to investigators, hearing officers,*  
29       *hearing panels and other appropriate persons.*

30       2. *The State Contractors' Board and its members and the*  
31       *employees and agents of the State Contractors' Board are not*  
32       *liable in a civil action for any act performed in good faith and*  
33       *within the scope of the duties assigned to the State Contractors'*  
34       *Board pursuant to the provisions of this chapter.*

35       **Sec. 32. 1.** *Any statutes of limitation or statutes of repose*  
36       *applicable to a cause of action for a constructional defect are*  
37       *tolled during the following periods:*

38       (a) *From the date that the claimant sends written notice of the*  
39       *constructional defect pursuant to section 27 of this act until:*

40       (1) *Sixty days after the date that the period for completion*  
41       *of the repairs has expired pursuant to this chapter; or*

42       (2) *If the parties by mutual agreement have set a later date*  
43       *for the completion of the repairs, 60 days after the later date.*



1       ***(b) During any period in which the constructional defect is***  
2 ***the subject of an administrative proceeding that is pending before***  
3 ***the State Contractors' Board.***

4       ***(c) During any period in which the constructional defect is the***  
5 ***subject of a mediation that is pending.***

6       ***2. The tolling of any applicable statutes of limitation or***  
7 ***statutes of repose pursuant to this section:***

8       ***(a) Applies only to the specific constructional defect that is the***  
9 ***subject of the repairs, the administrative proceeding pending***  
10 ***before the State Contractors' Board or the mediation; and***

11       ***(b) Does not apply to any other constructional defect,***  
12 ***regardless of whether the other constructional defect is in the***  
13 ***same residence or appurtenance.***

14       ***3. If any applicable statutes of limitation or statutes of repose***  
15 ***are tolled pursuant to this section, that tolling applies to the***  
16 ***claimant and to each contractor, subcontractor, supplier or design***  
17 ***professional who may be liable for the constructional defect.***

18       ***Sec. 33. 1. If a contractor, subcontractor, supplier or***  
19 ***design professional receives written notice of a constructional***  
20 ***defect pursuant to this chapter, the contractor, subcontractor,***  
21 ***supplier or design professional may present the claim to an***  
22 ***insurer which has issued a policy of insurance that covers all or***  
23 ***any portion of the business of the contractor, subcontractor,***  
24 ***supplier or design professional.***

25       ***2. If the contractor, subcontractor, supplier or design***  
26 ***professional presents the claim to the insurer pursuant to this***  
27 ***section, the insurer:***

28       ***(a) Must treat the claim as if a civil action has been brought***  
29 ***against the contractor, subcontractor, supplier or design***  
30 ***professional; and***

31       ***(b) Must provide coverage under the policy of insurance as if a***  
32 ***civil action has been brought against the contractor,***  
33 ***subcontractor, supplier or design professional.***

34       ***3. A contractor, subcontractor, supplier or design***  
35 ***professional is not required to present a claim to the insurer***  
36 ***pursuant to this section, and the failure to present such a claim to***  
37 ***the insurer does not relieve the insurer of any duty under the***  
38 ***policy of insurance to the contractor, subcontractor, supplier or***  
39 ***design professional.***

40       ***Sec. 34. 1. If a claimant brings a cause of action for a***  
41 ***constructional defect or amends a complaint to add a cause of***  
42 ***action for a constructional defect against the contractor for the***  
43 ***construction project, any subcontractor, supplier or design***  
44 ***professional who is liable for the constructional defect and who***  
45 ***did not receive written notice of the constructional defect pursuant***



1 to section 27 or 29 of this act may make directly to the claimant an  
2 offer to repair the constructional defect.

3 2. Except as otherwise provided in this section, if the claimant  
4 accepts the offer of the subcontractor, supplier or design  
5 professional, the contractor may not pursue any claim related to  
6 the constructional defect against the subcontractor, supplier or  
7 design professional if:

8 (a) The subcontractor, supplier or design professional has the  
9 constructional defect repaired to the satisfaction of the claimant;  
10 and

11 (b) The claimant provides a written statement to the  
12 subcontractor, supplier or design professional which indicates that  
13 the constructional defect has been repaired to the satisfaction of  
14 the claimant and which releases all claims against the contractor,  
15 subcontractor, supplier or design professional with regard to the  
16 constructional defect.

17 3. Notwithstanding the provisions of subsections 1 and 2, the  
18 contractor may pursue a claim related to the constructional defect  
19 against the subcontractor, supplier or design professional if the  
20 contractor:

21 (a) Made a good faith effort to discover the identity of the  
22 subcontractor, supplier or design professional after the contractor  
23 received written notice of the constructional defect from the  
24 claimant; and

25 (b) Was unable to discover the identity of the subcontractor,  
26 supplier or design professional within the 30-day period for  
27 providing a copy of the written notice to the subcontractor,  
28 supplier or design professional.

29 **Sec. 35. 1.** Notwithstanding any other provision of this  
30 chapter, if a claimant sends written notice of a constructional  
31 defect to the contractor for the construction project and the nature  
32 and extent of the constructional defect would lead a reasonable  
33 contractor to believe that the constructional defect creates an  
34 imminent threat to the health or safety of the inhabitants of the  
35 residence, the contractor is required to repair the constructional  
36 defect as soon as reasonably practicable. The contractor must:

37 (a) Either perform the repairs, but only if he is properly  
38 licensed, bonded and insured to perform the repairs, or have the  
39 repairs performed by a properly licensed, bonded and insured  
40 contractor or subcontractor; and

41 (b) Ensure that all contractors, subcontractors and suppliers  
42 are paid for any labor performed or materials furnished for the  
43 repairs so that there are no mechanics' and materialmen's liens  
44 filed against the residence and its appurtenances pursuant to NRS



1 108.221 to 108.246, inclusive, and indemnify the claimant against  
2 all such liens.

3 2. If the contractor does not repair the constructional defect  
4 as soon as reasonably practicable, the claimant may have  
5 the defect repaired and may bring a cause of action for the  
6 constructional defect against the contractor to recover:

- 7 (a) The reasonable costs of the repairs;
- 8 (b) Reasonable attorney's fees and costs; and
- 9 (c) Any other damages recoverable under any other law.

10 3. If, after a reasonable inspection of the residence, the  
11 contractor determines, in good faith, that the constructional defect  
12 does not create an imminent threat to the health or safety of the  
13 inhabitants of the residence, the contractor is not subject to the  
14 provisions of this section unless, after the contractor makes his  
15 determination, a building inspector certifies that the  
16 constructional defect creates an imminent threat to the health or  
17 safety of the inhabitants of the residence.

18 **Sec. 36. 1.** Notwithstanding any other provision of this  
19 chapter, if a claimant is the initial purchaser of a new residence  
20 and, not later than 1 year after the close of escrow for the initial  
21 purchase, the claimant sends to the contractor for the construction  
22 project written notice of a constructional defect that does not  
23 create an imminent threat to the health or safety of the inhabitants  
24 of the residence, the contractor is required to repair the  
25 constructional defect in accordance with the provisions of this  
26 section, unless:

- 27 (a) After a reasonable inspection, the contractor determines, in  
28 good faith, that there is no constructional defect; and
- 29 (b) The contractor provides to the claimant written notice of  
30 the contractor's determination.

31 2. If the contractor is required to repair the constructional  
32 defect in accordance with the provisions of this section, the  
33 contractor must:

- 34 (a) Either perform the repairs, but only if he is properly  
35 licensed, bonded and insured to perform the repairs, or have the  
36 repairs performed by a properly licensed, bonded and insured  
37 contractor or subcontractor;
- 38 (b) Perform the repairs or have the repairs performed at  
39 reasonable dates and times that are agreed to in advance with the  
40 claimant;
- 41 (c) Complete the repairs or have the repairs completed within a  
42 reasonable period as required by the provisions of this section;  
43 and
- 44 (d) Ensure that all contractors, subcontractors and suppliers  
45 are paid for any labor performed or materials furnished for the



1 *repairs so that there are no mechanics' and materialmen's liens*  
2 *filed against the residence and its appurtenances pursuant to NRS*  
3 *108.221 to 108.246, inclusive, and indemnify the claimant against*  
4 *all such liens.*

5 *3. The contractor must complete the repairs or have the*  
6 *repairs completed not later than 45 days after the date that written*  
7 *notice of the constructional defect is sent to the contractor, unless:*

8 *(a) Completion of the repairs is delayed by the claimant or by*  
9 *other events beyond the control of the contractor; or*

10 *(b) Timely completion of the repairs is not reasonably possible.*  
11 *If timely completion of the repairs is not reasonably possible, the*  
12 *claimant and the contractor must negotiate in good faith to set a*  
13 *reasonable period for completion of the repairs.*

14 *4. The claimant and the contractor may agree in writing to*  
15 *extend the periods prescribed by this section.*

16 *5. If the contractor fails to comply with this section, the*  
17 *contractor is immediately subject to discipline pursuant to*  
18 *NRS 624.300.*

19 **Sec. 37. 1.** *In addition to the other requirements of this*  
20 *chapter, a claimant may not bring a cause of action for a*  
21 *constructional defect or amend a complaint to add a cause of*  
22 *action for a constructional defect against a contractor,*  
23 *subcontractor, supplier or design professional, unless:*

24 *(a) The matter is first submitted to a mediation; or*

25 *(b) The claimant and the other parties agree, in writing, to*  
26 *waive the mediation.*

27 *2. If the matter is submitted to a mediation, the mediator must*  
28 *be selected by an agreement between the claimant and the other*  
29 *parties. If the claimant and the other parties fail to agree upon a*  
30 *mediator within 45 days after a mediator is first selected by the*  
31 *claimant, the claimant or any other party may petition the*  
32 *American Arbitration Association, the Nevada Arbitration*  
33 *Association, Nevada Dispute Resolution Services or any other*  
34 *mediation service acceptable to the parties for the appointment of*  
35 *a mediator.*

36 *3. The mediator shall commence the mediation within 60*  
37 *days after the matter is submitted to him, unless the claimant and*  
38 *the other parties agree to extend the time for the commencement*  
39 *of the mediation.*

40 *4. Before the mediation begins:*

41 *(a) The claimant shall deposit \$50 with the mediation service;*  
42 *and*

43 *(b) The other parties shall deposit with the mediation service*  
44 *the remaining amount estimated by the mediation service as*  
45 *necessary to pay the fees and expenses of the mediator for the first*



1 *session of the mediation. The other parties shall deposit additional*  
2 *amounts demanded by the mediation service as incurred for that*  
3 *purpose.*

4 *5. The total fees for each day of the mediation and the*  
5 *mediator must not exceed \$750 per day, unless the claimant and*  
6 *the other parties agree to a different amount.*

7 *6. The mediator may discover only those documents or*  
8 *materials which are necessary to conduct the mediation.*

9 *7. Not later than 15 days before the mediation begins and*  
10 *upon providing 15 days' notice, each party shall provide the other*  
11 *party, or shall make a reasonable effort to assist the other party to*  
12 *obtain, all relevant reports, photos, correspondence, plans,*  
13 *specifications, warranties, contracts, subcontracts, work orders for*  
14 *repair, videotapes, technical reports, soil and other engineering*  
15 *reports and other documents or materials relating to the*  
16 *constructional defect to the extent that such documents or*  
17 *materials are not privileged.*

18 **Sec. 38. 1.** *If the claimant and any other party fail to*  
19 *resolve the matter during the mediation or if any other party fails*  
20 *to pay the required fees for the mediation or fails to appear for the*  
21 *mediation:*

22 *(a) The claimant may bring a cause of action for the*  
23 *constructional defect or amend a complaint to add a cause of*  
24 *action for the constructional defect against the party; and*

25 *(b) The prevailing party in the action may recover, as costs of*  
26 *the action, the reasonable costs and fees paid by the party for the*  
27 *mediation.*

28 *2. In such an action, the claimant or any other party may*  
29 *petition the court in which the action is commenced for the*  
30 *appointment of a special master. If the court appoints a special*  
31 *master, the special master may:*

32 *(a) Review all pleadings, papers or documents filed with the*  
33 *court concerning the action.*

34 *(b) Coordinate the discovery of any books, records, papers or*  
35 *other documents or materials by the parties, including the*  
36 *disclosure of witnesses and the taking of the deposition of any*  
37 *party.*

38 *(c) Order any inspections on the site of the property by a party*  
39 *and any consultants or experts of a party.*

40 *(d) Order settlement conferences and attendance at those*  
41 *conferences by any representative of the insurer of a party.*

42 *(e) Require any attorney representing a party to provide*  
43 *statements of legal and factual issues concerning the action.*





1       (f) Refer to the judge who appointed him or to the presiding  
2 judge of the court in which the action is commenced any matter  
3 requiring assistance from the court.

4       3. The special master shall not personally conduct any  
5 settlement conferences or engage in any ex parte meetings  
6 regarding the action, unless the claimant and the other parties  
7 agree to allow the special master to engage in such conduct.

8       4. Upon application by a party to the court in which the  
9 action is commenced, any decision or other action taken by the  
10 special master may be appealed to the court for a decision.

11       5. A report issued by a mediator or a special master which  
12 indicates that a party has failed to appear before him or to mediate  
13 in good faith is admissible in the action, but a statement or  
14 admission made by a party in the course of the mediation or an  
15 appearance before the special master is not admissible.

16       **Sec. 39. 1.** In addition to the other requirements of this  
17 chapter and except as otherwise provided in subsection 2, if a  
18 claimant brings a cause of action for a constructional defect or  
19 amends a complaint to add a cause of action for a constructional  
20 defect against a design professional, including, without limitation,  
21 a cause of action for professional negligence, the attorney for the  
22 claimant must file an affidavit with the court concurrently with the  
23 service of the first pleading in the action stating that the attorney:

- 24       (a) Has reviewed the facts of the case;  
25       (b) Has consulted with an expert;  
26       (c) Reasonably believes the expert who was consulted is  
27 knowledgeable in the relevant discipline involved in the action;  
28       and  
29       (d) Has concluded on the basis of his review and the  
30 consultation with the expert that the action has a reasonable basis  
31 in law and fact.

32       2. The attorney for the claimant may file the affidavit  
33 required pursuant to subsection 1 at a later time if the attorney  
34 could not consult with an expert and prepare the affidavit before  
35 filing the action without causing the action to be impaired or  
36 barred by any statutes of limitations or statutes of repose, or other  
37 limitations prescribed by law. If the attorney must submit the  
38 affidavit late, the attorney shall:

39       (a) File an affidavit concurrently with the service of the first  
40 pleading in the action stating his reason for failing to comply with  
41 subsection 1; and

42       (b) Consult with an expert and file the affidavit required  
43 pursuant to subsection 1 not later than 45 days after filing the  
44 action.



- 1       3. *In addition to the statement included in the affidavit*  
2 *pursuant to subsection 1, a report must be attached to the*  
3 *affidavit. Except as otherwise provided in subsection 4, the report*  
4 *must be prepared by the expert consulted by the attorney and*  
5 *include, without limitation:*
- 6       (a) *The resume of the expert;*
  - 7       (b) *A statement that the expert is experienced in each*  
8 *discipline which is the subject of the report;*
  - 9       (c) *A copy of each nonprivileged document reviewed by the*  
10 *expert in preparing his report, including, without limitation, each*  
11 *record, report and related document that the expert has*  
12 *determined is relevant to the allegations of negligent conduct that*  
13 *are the basis for the action;*
  - 14       (d) *The conclusions of the expert and the basis for the*  
15 *conclusions; and*
  - 16       (e) *A statement that the expert has concluded that there is a*  
17 *reasonable basis for filing the action.*
- 18       4. *In an action brought by a claimant in which an affidavit is*  
19 *required to be filed pursuant to subsection 1:*
- 20       (a) *The report required pursuant to subsection 3 is not*  
21 *required to include the information set forth in paragraphs (c) and*  
22 *(d) of subsection 3 if the claimant or his attorney files an affidavit,*  
23 *at the time that the affidavit is filed pursuant to subsection 1,*  
24 *stating that he made reasonable efforts to obtain the nonprivileged*  
25 *documents described in paragraph (c) of subsection 3, but was*  
26 *unable to obtain such documents before filing the action;*
  - 27       (b) *The claimant or his attorney shall amend the report*  
28 *required pursuant to subsection 3 to include any documents and*  
29 *information required pursuant to paragraph (c) or (d) of*  
30 *subsection 3 as soon as reasonably practicable after receiving the*  
31 *document or information; and*
  - 32       (c) *The court may dismiss the action if the claimant and his*  
33 *attorney fail to comply with the requirements of paragraph (b).*
- 34       5. *An expert consulted by the attorney of the claimant to*  
35 *prepare an affidavit pursuant to this section must not be a party to*  
36 *the action.*
- 37       6. *The court shall dismiss the action against the design*  
38 *professional if the attorney for the claimant fails to:*
- 39       (a) *File an affidavit required pursuant to this section;*
  - 40       (b) *File a report required pursuant to subsection 3; or*
  - 41       (c) *Name the expert consulted in the affidavit required*  
42 *pursuant to subsection 1.*
- 43       7. *The fact that the attorney for the claimant has complied or*  
44 *failed to comply with the provisions of this section is admissible in*  
45 *the action.*



1 8. As used in this section, "expert" means a person who is  
2 licensed in a state to engage in the practice of professional  
3 engineering, land surveying, architecture or landscape  
4 architecture.

5 **Sec. 40. 1.** Notwithstanding any other provision of this  
6 chapter, a claimant may not bring a cause of action or amend a  
7 complaint to add a cause of action against a subdivider or master  
8 developer for a constructional defect in an appurtenance  
9 constructed on behalf of the subdivider or master developer in a  
10 planned unit development, to the extent that the appurtenance was  
11 constructed by or through a licensed general contractor, unless:

12 (a) The subdivider or master developer fails to provide to the  
13 claimant the name, address and telephone number of each  
14 contractor hired by the subdivider or master developer to construct  
15 the appurtenance within 30 days after the receipt by the subdivider  
16 or master developer of a request from the claimant for such  
17 information; or

18 (b) After the claimant has made a good faith effort to obtain  
19 full recovery from the contractors hired by the subdivider or  
20 master developer to construct the appurtenance, the claimant has  
21 not obtained a full recovery.

22 2. Any statutes of limitation or statutes of repose applicable to  
23 a claim governed by this section are tolled from the time the  
24 claimant notifies a contractor hired by the subdivider or master  
25 developer of the claim until the earlier of the date:

26 (a) A court determines that the claimant cannot obtain a full  
27 recovery against those contractors; or

28 (b) The claimant receives notice that those contractors are  
29 bankrupt, insolvent or dissolved.

30 Tolling pursuant to this subsection applies only to the subdivider  
31 or master developer. Notwithstanding any applicable statutes of  
32 limitation or statutes of repose, the claimant may commence an  
33 action against the subdivider or master developer for the claim  
34 within 1 year after the end of the tolling described in this  
35 subsection.

36 3. The provisions of this section do not prohibit the  
37 commencement of an action against a subdivider or master  
38 developer for a constructional defect in a residence sold, designed  
39 or constructed by or on behalf of the subdivider or master  
40 developer.

41 4. The provisions of this section do not prohibit a person  
42 other than the claimant from commencing an action against a  
43 subdivider or master developer to enforce his own rights.

44 5. The provisions of this section do not apply to a subdivider  
45 or master developer who acts as a general contractor or uses his



1 *license as a general contractor in the course of constructing the*  
2 *appurtenance that is the subject of the action.*

3 **Sec. 41.** (Deleted by amendment.)

4 **Sec. 42.** 1. *If any party brings an action pursuant to this*  
5 *chapter as a class action or seeks certification of an action*  
6 *brought pursuant to this chapter as a class action, a claimant shall*  
7 *not be deemed to be a member of the class or a party to the class*  
8 *action and is not bound by any order, decision or judgment in the*  
9 *class action, unless:*

10 (a) *The claimant, or a party to the class action acting on*  
11 *behalf of the claimant, files with the court a certification which is*  
12 *signed and sworn by the claimant and which contains an*  
13 *affirmative representation stating that the claimant has complied*  
14 *with the notice provisions of section 27 of this act; and*

15 (b) *Each other claimant who has chosen to be a member of the*  
16 *class, or a party to the class action acting on behalf of that*  
17 *claimant, files with the court a certification which is signed and*  
18 *sworn by the claimant and which contains an affirmative*  
19 *representation stating that the claimant has complied with the*  
20 *notice provisions of section 27 of this act.*

21 2. *If there is a conflict between the provisions of this section*  
22 *and the provisions of any other statute or any court rule or any*  
23 *principle of the common law or equity, the provisions of this*  
24 *section prevail and must be interpreted to supersede any other*  
25 *provisions or principles that are in conflict with the provisions of*  
26 *this section.*

27 **Sec. 43.** 1. *At the same time that a claimant brings a cause*  
28 *of action for a constructional defect or amends a complaint to add*  
29 *a cause of action for a constructional defect, the claimant shall*  
30 *send written notice of the cause of action by registered mail,*  
31 *return receipt requested, to each person who holds a security*  
32 *interest in the residence or appurtenance which is the subject of*  
33 *the constructional defect and whose security interest is recorded in*  
34 *the office of the county recorder for the county where the*  
35 *residence or appurtenance is located.*

36 2. *If the claimant recovers money for the constructional*  
37 *defect, not later than 30 days before the claimant disburses or*  
38 *spends the money, the claimant shall send written notice by*  
39 *registered mail, return receipt requested, to each person who was*  
40 *entitled to receive the prior written notice from the claimant*  
41 *pursuant to subsection 1. The written notice must set forth the*  
42 *amount of money that the claimant recovered for the*  
43 *constructional defect.*

44 **Sec. 44.** 1. *If a constructional defect is part of a residence*  
45 *or appurtenance which is covered by a homeowner's warranty that*



1 *has been purchased by or on behalf of a claimant pursuant to*  
2 *NRS 690B.100 to 690B.180, inclusive, the claimant shall diligently*  
3 *pursue a claim under the homeowner's warranty.*

4 *2. If the claimant is paid any money under the homeowner's*  
5 *warranty for the constructional defect, the amount paid to the*  
6 *claimant under the homeowner's warranty must be deducted from*  
7 *any amount that the claimant recovers from a contractor,*  
8 *subcontractor, supplier or design professional for the*  
9 *constructional defect. The provisions of this subsection do not*  
10 *apply to any amount paid to the claimant in satisfaction of claims*  
11 *that are collateral to any coverage issued to or by the contractor,*  
12 *subcontractor, supplier or design professional.*

13 *3. If an insurer, in bad faith, denies coverage under a*  
14 *homeowner's warranty, the claimant and each contractor,*  
15 *subcontractor, supplier or design professional who is liable for the*  
16 *constructional defect may bring a cause of action against the*  
17 *insurer to recover:*

18 *(a) The money that would have been paid under the*  
19 *homeowner's warranty if the coverage had been provided; and*

20 *(b) Reasonable attorney's fees and costs.*

21 **Sec. 45. 1.** *Not later than 10 days after bringing a cause of*  
22 *action or amending a complaint to add a cause of action for a*  
23 *constructional defect against a contractor, subcontractor, supplier*  
24 *or design professional, the claimant shall disclose all information*  
25 *about any homeowner's warranty that is applicable to the cause of*  
26 *action.*

27 *2. Not later than 10 days after the claimant's disclosure, the*  
28 *contractor, subcontractor, supplier or design professional shall*  
29 *disclose any information about insurance agreements that may be*  
30 *obtained by discovery pursuant to Rule 26(b)(2) of the Nevada*  
31 *Rules of Civil Procedure. Such disclosure does not affect the*  
32 *admissibility at trial of the information disclosed.*

33 *3. Except as otherwise provided in subsection 4, if any party*  
34 *fails to provide the information required pursuant to subsection 1*  
35 *or 2 within the time allowed, any party who is aggrieved by the*  
36 *failure may petition the court to compel production of the*  
37 *information. Upon receiving such a petition, the court may order*  
38 *the party to produce the required information and may award the*  
39 *petitioning party reasonable attorney's fees and costs incurred in*  
40 *petitioning the court pursuant to this subsection.*

41 *4. The parties may agree to an extension of time to produce*  
42 *the information required pursuant to this section.*

43 *5. If there is a conflict between the provisions of this section*  
44 *and the provisions of any other statute or any court rule or any*  
45 *principle of the common law or equity, the provisions of this*



1 *section prevail and must be interpreted to supersede any other*  
2 *provisions or principles that are in conflict with the provisions of*  
3 *this section.*

4 *6. As used in this section, "information about insurance*  
5 *agreements" means any declaration sheets, endorsements and*  
6 *contracts of insurance issued to the contractor, subcontractor,*  
7 *supplier or design professional from the commencement of*  
8 *construction of the residence or appurtenance to the date on*  
9 *which the request for the information is made. The term does not*  
10 *include any information concerning any disputes between the*  
11 *contractor, subcontractor, supplier or design professional and the*  
12 *insurer, or any information concerning any reservation of rights*  
13 *by the insurer.*

14 **Sec. 46. 1.** *Not later than 30 days after the date of service*  
15 *of the answer to the complaint, the parties shall meet to establish:*

16 *(a) A schedule for the parties to exchange or provide*  
17 *reasonable access to all relevant reports, photos, correspondence,*  
18 *plans, specifications, warranties, contracts, subcontracts, work*  
19 *orders for repair, videotapes, technical reports, soil and other*  
20 *engineering reports and other documents or materials relating to*  
21 *each constructional defect to the extent that such documents or*  
22 *materials are not privileged.*

23 *(b) A schedule for the parties to inspect the residence or*  
24 *appurtenance where each constructional defect is located.*

25 *(c) A schedule for the parties to conduct any tests that are*  
26 *reasonably necessary to determine the nature and cause of each*  
27 *constructional defect or any damage or injury, and the nature and*  
28 *extent of any repairs necessary to remedy each constructional*  
29 *defect or any damage or injury. The party conducting the test shall*  
30 *provide reasonable notice of the test to all other parties and*  
31 *conduct the test at a reasonable time.*

32 *(d) A deadline for the claimant to issue to the other parties a*  
33 *final defect list. The deadline must not be later than 180 days after*  
34 *the date that the meeting is held pursuant to this subsection. The*  
35 *final defect list must include:*

36 *(1) A description of each constructional defect;*

37 *(2) The disclosure of each specific location which has been*  
38 *inspected with regard to each constructional defect;*

39 *(3) The disclosure of each specific location which has*  
40 *been intrusively tested with regard to each constructional defect;*

41 *(4) A description of any other testing which has been*  
42 *conducted to substantiate each constructional defect; and*

43 *(5) A statement of the legal and factual basis for each*  
44 *constructional defect, including, without limitation, any applicable*



1 *construction standards or specifications which may have been*  
2 *violated.*

3 *(e) A deadline for the claimant to issue to the other parties a*  
4 *statement of the method and cost of repair. The deadline must not*  
5 *be later than 180 days after the date that the meeting is held*  
6 *pursuant to this subsection. The statement of the method and cost*  
7 *of repair must include:*

8 *(1) A description of the method to be used to repair each*  
9 *constructional defect described in the final defect list; and*

10 *(2) An estimate of the cost to repair each constructional*  
11 *defect described in the final defect list, including, without*  
12 *limitation, an estimate of the quantities of materials needed for the*  
13 *repairs and the unit cost for those materials, an estimate of the*  
14 *cost for labor and other materials and an estimate of any*  
15 *construction burdens.*

16 *2. The claimant shall issue the final defect list and the*  
17 *statement of the method and cost of repair to the other parties not*  
18 *later than the deadline established by the parties pursuant to*  
19 *subsection 1. After the claimant issues the final defect list and the*  
20 *statement of the method and cost of repair, the claimant may not*  
21 *amend or otherwise change the final defect list or the statement of*  
22 *the method and cost of repair to include any additional*  
23 *constructional defects, unless the claimant is able to demonstrate,*  
24 *by clear and convincing evidence, that the additional*  
25 *constructional defects arose after the date that the claimant issued*  
26 *the final defect list.*

27 *3. At the meeting held pursuant to subsection 1, the parties*  
28 *shall establish a schedule for adding additional parties to the*  
29 *complaint and for filing any third-party complaints against*  
30 *additional parties who may be liable, in whole or in part, for the*  
31 *constructional defects alleged in the complaint.*

32 *4. If any party adds an additional party to the complaint or*  
33 *files a third-party complaint against an additional party:*

34 *(a) The additional party shall file and serve an answer as*  
35 *required by law; and*

36 *(b) Not later than 30 days after the date that the additional*  
37 *party files an answer, the additional party shall meet with the*  
38 *other parties to establish or modify the schedules and deadlines*  
39 *required by subsection 1 with regard to the additional party.*

40 **Sec. 47. 1.** *If a settlement conference is held concerning a*  
41 *claim for a constructional defect, the special master, if any, or the*  
42 *judge presiding over the claim may order a representative of an*  
43 *insurer of a party to attend the settlement conference. If a*  
44 *representative of an insurer is ordered to attend the settlement*



1 conference, the insurer shall ensure that the representative is  
2 authorized, on behalf of the insurer, to:  
3 (a) Bind the insurer to any settlement agreement relating to  
4 the claim;  
5 (b) Enter into any agreement relating to coverage under the  
6 party's policy of insurance that is required to carry out any  
7 settlement relating to the claim; and  
8 (c) Commit for expenditure any money or other assets  
9 available under the party's policy of insurance.  
10 2. If a representative of an insurer who is ordered to attend a  
11 settlement conference pursuant to subsection 1 fails to attend the  
12 settlement conference or attends but is substantially unprepared to  
13 participate, or fails to participate in good faith, the special master  
14 or the judge may, on his own motion or that of a party, issue any  
15 order with regard thereto that is just under the circumstances.  
16 3. In lieu of or in addition to any other sanction, the special  
17 master or the judge may require the insurer to pay any reasonable  
18 expenses or attorney's fees incurred by a party because of the  
19 failure of the insurer or its representative to comply with the  
20 provisions of this section or any order issued pursuant to this  
21 section, unless the special master or the judge finds that the  
22 failure to comply was substantially justified or that any other  
23 circumstances make the award of such expenses or fees unjust.  
24 4. The special master may report any violation of this section  
25 or any order issued by the special master pursuant to this section  
26 to any judge who subsequently presides over the claim and may  
27 recommend any appropriate sanctions as a result of the violation.  
28 5. Any insurer which conducts business in this state and  
29 which insures a party against liability for the claim shall be  
30 deemed to have consented to the jurisdiction of the special master  
31 or the judge for the purposes of this section. To the extent that the  
32 insurer fails to comply with any order issued by the special master  
33 or the judge, the insurer is subject to an award of sanctions  
34 imposed by the special master or the judge.  
35 6. The authority conferred upon the special master or the  
36 judge pursuant to this section is in addition to any other authority  
37 conferred upon the special master or the judge pursuant to any  
38 other statute or any court rule.  
39 **Sec. 48. 1.** In addition to any other method for settling a  
40 claim for a constructional defect, a contractor, subcontractor,  
41 supplier or design professional may enter into a written agreement  
42 with the claimant to settle the claim by repurchasing the  
43 claimant's residence and the real property upon which it is  
44 located.





1       2. *The agreement may include provisions which reimburse*  
2 *the claimant for:*

3       (a) *The market value of the residence as if no constructional*  
4 *defect existed, except that if a residence is less than 2 years of age*  
5 *and was purchased from the contractor against whom the claim is*  
6 *brought, the market value is the price at which the residence was*  
7 *sold to the claimant;*

8       (b) *The value of any improvements made to the property by a*  
9 *person other than the contractor, subcontractor, supplier or design*  
10 *professional;*

11       (c) *Reasonable attorney's fees and fees for experts; and*

12       (d) *Any other costs, including, without limitation:*

13           (1) *Costs and expenses for moving; and*

14           (2) *Costs, points and fees for loans.*

15       **Sec. 49. 1.** *If a contractor, subcontractor, supplier or*  
16 *design professional is found liable to the claimant for a cause of*  
17 *action for a constructional defect, the claimant is entitled to*  
18 *recover only the damages set forth in this section to the extent*  
19 *those damages are proximately caused by the constructional*  
20 *defect.*

21       2. *The claimant is entitled to recover the lesser of:*

22       (a) *The reasonable cost of any repairs already made that were*  
23 *necessary and of any repairs yet to be made that are necessary to*  
24 *cure the constructional defect to the extent that the contractor,*  
25 *subcontractor, supplier or design professional failed to cure the*  
26 *constructional defect, plus the reasonable expenses of any*  
27 *temporary housing that was or will be reasonably necessary*  
28 *during any such repairs; or*

29       (b) *The diminution in the value of the residence, appurtenance*  
30 *or other property resulting from the constructional defect to the*  
31 *extent that the contractor, subcontractor, supplier or design*  
32 *professional failed to cure the constructional defect.*

33       3. *The claimant is entitled to recover the reasonable value of*  
34 *any other property damaged by the constructional defect.*

35       4. *The claimant is entitled to recover any interest provided by*  
36 *statute, except that the claimant is not entitled to recover any*  
37 *prejudgment interest if the claimant is using present value as the*  
38 *basis for determining the cost of repairs or the amount of the*  
39 *damages.*

40       **Sec. 50. 1.** *For each cause of action for a constructional*  
41 *defect, the court shall determine which party is the prevailing*  
42 *party for the cause of action. A prevailing party is entitled to*  
43 *recover:*

44       (a) *Reasonable attorney's fees; and*



1       ***(b) Any other fees and costs reasonably incurred by the***  
2 ***prevailing party, including, without limitation, any fees and costs***  
3 ***incurred for the retention of experts.***

4       ***2. For the purposes of this section, the claimant is not a***  
5 ***prevailing party and is not entitled to recover any attorney's fees***  
6 ***or other fees and costs with regard to a cause of action for a***  
7 ***constructional defect if the court finds that there is no contractor,***  
8 ***subcontractor, supplier or design professional who is liable to the***  
9 ***claimant for the constructional defect.***

10       ***3. For the purposes of this section, if the claimant rejects any***  
11 ***offer or any best and final offer made by a contractor,***  
12 ***subcontractor, supplier or design professional, and if the final***  
13 ***judgment in the action is less favorable to the claimant than the***  
14 ***offer or the best and final offer rejected by the claimant, the***  
15 ***contractor, subcontractor, supplier or design professional who***  
16 ***made the offer or the best and final offer shall be deemed to be the***  
17 ***prevailing party beginning on the date that the offer or the best***  
18 ***and final offer was rejected by the claimant. If the final judgment***  
19 ***in the action is more favorable to the claimant than the offer or***  
20 ***best and final offer rejected by the claimant, the claimant shall be***  
21 ***deemed to be the prevailing party beginning on the date that the***  
22 ***offer or the best and final offer was rejected by the claimant.***

23       ***4. Any party may challenge the reasonableness of any***  
24 ***attorney's fees or other fees and costs requested pursuant to this***  
25 ***section.***

26       ***5. Any party may submit an offer to repair a constructional***  
27 ***defect or to settle a claim directly to the claimant. In such an offer,***  
28 ***the party may reserve the right to challenge the reasonableness of***  
29 ***any attorney's fees or other fees and costs. An attorney who***  
30 ***represents the claimant shall not refuse to present an offer to the***  
31 ***claimant because the offer contains a reservation of rights to***  
32 ***challenge the reasonableness of any attorney's fees or other fees***  
33 ***and costs.***

34       ***6. The court is given the discretion to determine the***  
35 ***reasonableness of any attorney's fees or other fees and costs***  
36 ***requested pursuant to this section, and the court must approve the***  
37 ***reasonableness of any attorney's fees or other fees and costs***  
38 ***before they are awarded to the claimant or any other party.***

39       ***7. In determining the reasonableness of any attorney's fees or***  
40 ***other fees and costs, the court:***

41       ***(a) Must multiply the number of hours reasonably spent on the***  
42 ***case by a reasonable hourly rate as determined by the court;***

43       ***(b) Must take into account the nature and the extent of the risk***  
44 ***involved in prosecuting or defending the cause of action and the***



1 *necessity of agreeing to a contingency arrangement to procure*  
2 *competent counsel; and*  
3 *(c) May consider the extent to which the attorney's fees or*  
4 *other fees and costs are based on causes of action for which the*  
5 *claimant prevailed and did not prevail.*  
6 *8. A determination made by the court relating to the*  
7 *reasonableness of any attorney's fees or other fees and costs:*  
8 *(a) Is binding upon the attorney; and*  
9 *(b) Controls over any conflicting provision set forth in a*  
10 *contract or other agreement entered into between the attorney and*  
11 *the party.*  
12 *9. The provisions of this chapter:*  
13 *(a) Do not prohibit a party from making an offer of judgment*  
14 *pursuant to NRS 17.115 or Rule 68 of the Nevada Rules of Civil*  
15 *Procedure or obtaining an award of attorney's fees or other fees*  
16 *and costs pursuant thereto;*  
17 *(b) Do not prevail over, but must be applied in addition to, any*  
18 *other statute or court rule relating to the settlement of claims or*  
19 *the award of attorney's fees or other fees and costs; and*  
20 *(c) Do not impair any right of a contractor, subcontractor,*  
21 *supplier or design professional to enter into or enforce any*  
22 *contract or agreement providing for the recovery of attorney's fees*  
23 *or other fees and costs from another contractor, subcontractor,*  
24 *supplier or design professional.*  
25 **Sec. 51. 1. Notwithstanding any other provision of this**  
26 **chapter, a claimant or a contractor, subcontractor, supplier or**  
27 **design professional may not bring any claim relating to a**  
28 **constructional defect against a government, governmental agency**  
29 **or political subdivision of a government during the period in**  
30 **which the claim is being settled, mediated or otherwise resolved**  
31 **pursuant to the provisions of this chapter.**  
32 **2. The settlement of any claim relating to a constructional**  
33 **defect does not affect the rights or obligations of the claimant or**  
34 **any contractor, subcontractor, supplier or design professional in**  
35 **any action brought by the claimant or the contractor,**  
36 **subcontractor, supplier or design professional against a third**  
37 **party.**  
38 **Sec. 52. 1. A contractor who develops, constructs or**  
39 **landscapes a new residence shall provide to the initial purchaser**  
40 **of the new residence, not later than 60 days after the close of**  
41 **escrow for the initial purchase, a written statement which contains**  
42 **the following information:**  
43 **(a) For each subcontractor who performed any work relating**  
44 **to the development, construction or landscaping of the new**  
45 **residence:**



- 1           (1) *The name, license number, business address and*  
2 *telephone number of the subcontractor; and*  
3           (2) *A brief description of the work performed by the*  
4 *subcontractor.*  
5           (b) *An informational statement indicating that each*  
6 *subcontractor is entitled to record a notice of lien upon the new*  
7 *residence and its appurtenances pursuant to NRS 108.221 to*  
8 *108.246, inclusive, for any labor performed or materials furnished*  
9 *by the subcontractor in the development, construction or*  
10 *landscaping of the new residence.*  
11           (c) *An informational statement describing the rights and duties*  
12 *of contractors, subcontractors and owners with regard to:*  
13           (1) *The provisions of chapter 624 of NRS; and*  
14           (2) *The filing and enforcement of mechanics' and*  
15 *materialmen's liens pursuant to NRS 108.221 to 108.246,*  
16 *inclusive.*  
17           2. *The State Contractors' Board shall prescribe requirements*  
18 *relating to the form and contents for the written statement that a*  
19 *contractor must provide to the initial purchaser of a new residence*  
20 *pursuant to this section.*  
21           3. *A contractor shall not provide to the initial purchaser of a*  
22 *new residence a written statement that deviates materially from the*  
23 *requirements prescribed by the State Contractors' Board.*  
24           4. *A contractor who violates any provision of this section:*  
25           (a) *Shall be deemed to have violated the provisions of chapter*  
26 *624 of NRS; and*  
27           (b) *Is subject to any appropriate disciplinary action or*  
28 *punishment that is authorized for a violation of the provisions of*  
29 *chapter 624 of NRS.*  
30           **Sec. 53. 1.** *If a claimant attempts to sell a residence that is*  
31 *or has been the subject of a cause of action for a constructional*  
32 *defect, the claimant shall disclose, in writing, to any prospective*  
33 *purchaser of the residence:*  
34           (a) *All notices which the claimant has given to a contractor,*  
35 *subcontractor, supplier or design professional regarding the*  
36 *constructional defect that is or has been the subject of the cause of*  
37 *action;*  
38           (b) *All opinions which the claimant has obtained from experts*  
39 *regarding the constructional defect that is or has been the subject*  
40 *of the cause of action;*  
41           (c) *The terms of any settlement, order or judgment relating to*  
42 *the cause of action; and*  
43           (d) *A detailed report of all repairs made to the residence by or*  
44 *on behalf of the claimant as a result of the constructional defect*  
45 *that is or has been the subject of the cause of action.*



1       2. *The claimant shall provide the disclosure required by this*  
2 *section:*

3       (a) *Not less than 30 days before the close of escrow for the sale*  
4 *of the residence, if escrow is to close more than 30 days after the*  
5 *execution of the sales agreement;*

6       (b) *Immediately upon the execution of the sales agreement, if*  
7 *escrow is to close not more than 30 days after the execution of the*  
8 *sales agreement; or*

9       (c) *Within 24 hours after sending written notice to a*  
10 *contractor, subcontractor, supplier or design professional*  
11 *pursuant to section 27 of this act, if the claimant sends such notice*  
12 *after the execution of the sales agreement.*

13       3. *Before taking any action on a claim for a constructional*  
14 *defect pursuant to this chapter, the attorney for the claimant shall*  
15 *notify the claimant in writing of the provisions of this section.*

16       **Sec. 54.** NRS 40.635 is hereby amended to read as follows:

17       40.635 **1.** *The provisions of* NRS 40.600 to 40.695,  
18 *inclusive* ~~[-~~

19 ~~—1. Apply]~~, *apply* to any claim *for a constructional defect* that  
20 *arises before, on or after July 1, 1995, [as the result of a*  
21 *constructional defect, except a claim for personal injury or wrongful*  
22 *death, if the claim is the subject of]* *and before the effective date of*  
23 *this act, if the claimant:*

24       (a) *Has commenced* an action ~~[commenced]~~ *concerning the*  
25 *claim pursuant to NRS 40.600 to 40.695, inclusive, on or after*  
26 *July 1, 1995 [-], and before the effective date of this act; or*

27       (b) *Has provided notice of the claim to the contractor,*  
28 *subcontractor, supplier or design professional pursuant to NRS*  
29 *40.600 to 40.695, inclusive, before the effective date of this act.*

30       2. *The provisions of NRS 40.600 to 40.695, inclusive:*

31       (a) *Prevail over any conflicting law otherwise applicable to the*  
32 *claim or cause of action.*

33       ~~[3.]~~ (b) *Do not bar or limit any defense otherwise available*  
34 *except as otherwise provided in those sections.*

35       ~~[4.]~~ (c) *Do not create a new theory upon which liability may be*  
36 *based.*

37       3. *The provisions of NRS 40.600 to 40.695, inclusive, do not*  
38 *apply to:*

39       (a) *A claim for personal injury or wrongful death; or*

40       (b) *A claim that is subject to the provisions of sections 2 to 53,*  
41 *inclusive, of this act.*

42       **Sec. 55.** NRS 113.135 is hereby amended to read as follows:

43       113.135 1. Upon signing a sales agreement with the initial  
44 purchaser of residential property that was not occupied by the



1 purchaser for more than 120 days after substantial completion of the  
2 construction of the residential property, the seller shall:

3 (a) Provide to the initial purchaser a copy of NRS 11.202 to  
4 11.206, inclusive, and ~~[40.600 to 40.695, inclusive;]~~ *sections 2 to*  
5 *53, inclusive, of this act;*

6 (b) Notify the initial purchaser of any soil report prepared for the  
7 residential property or for the subdivision in which the residential  
8 property is located; and

9 (c) If requested in writing by the initial purchaser not later than  
10 5 days after signing the sales agreement, provide to the purchaser  
11 without cost each report described in paragraph (b) not later than 5  
12 days after the seller receives the written request.

13 2. Not later than 20 days after receipt of all reports pursuant to  
14 paragraph (c) of subsection 1, the initial purchaser may rescind the  
15 sales agreement.

16 3. The initial purchaser may waive his right to rescind the sales  
17 agreement pursuant to subsection 2. Such a waiver is effective only  
18 if it is made in a written document that is signed by the purchaser.

19 **Sec. 56.** NRS 624.160 is hereby amended to read as follows:

20 624.160 1. The Board is vested with all of the functions and  
21 duties relating to the administration of this chapter.

22 2. The Board shall:

23 (a) Carry out a program of education for customers of  
24 contractors.

25 (b) Maintain and make known a telephone number for the public  
26 to obtain information about self-protection from fraud in  
27 construction and other information concerning contractors and  
28 contracting.

29 3. The Board may provide advisory opinions and take other  
30 actions that are necessary for the effective administration of this  
31 chapter and the regulations of the Board.

32 *4. The Board may exercise any powers granted to the Board*  
33 *pursuant to this chapter in carrying out any duties assigned to the*  
34 *Board pursuant to sections 2 to 53, inclusive, of this act.*

35 **Sec. 57.** Notwithstanding the provisions of section 27 of this  
36 act, until the standard form for providing notice of a constructional  
37 defect is made available to the public by the State Contractors'  
38 Board, a claimant must provide the written notice required by  
39 section 27 of this act through the use of any document that clearly  
40 and adequately conveys the information set forth in section 27 of  
41 this act.

42 **Sec. 58.** Notwithstanding the provisions of section 31 of this  
43 act, a claimant or a contractor, subcontractor, supplier or design  
44 professional may not submit a dispute to the State Contractors'



1 Board pursuant to the provisions of section 31 of this act before  
2 October 1, 2003.

3 **Sec. 59.** 1. This section and sections 1 to 51, inclusive, and  
4 53 to 58, inclusive, of this act become effective upon passage  
5 and approval.

6 2. Section 52 of this act becomes effective upon passage and  
7 approval for the purpose of adopting regulations and developing any  
8 necessary forms, rules and procedures and on October 1, 2003, for  
9 all other purposes.

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\* S B 2 4 1 R 1 \*