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SENATE BILL NO. 273—SENATOR SCHNEIDER

MARCH 13, 2003

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Referred to Committee on Commerce and Labor

SUMMARY—Requires contractor or his representative to be present at certain inspections conducted at residence or appurtenance that is subject of claim for constructional defect. (BDR 3-252)

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 real property; requiring a contractor or his representative to be present at certain inspections conducted at a residence or appurtenance that is the subject of a claim for a constructional defect; 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.** Chapter 40 of NRS is hereby amended by adding  
2     thereto a new section to read as follows:  
3     *A contractor or his representative must be present at any*  
4     *inspection at the residence or appurtenance, if any, that is the*  
5     *subject of a claim governed by NRS 40.600 to 40.695, inclusive,*  
6     *and this section, which is conducted by the claimant or his*  
7     *representative, including, without limitation, an expert hired or*  
8     *retained by the claimant to conduct the inspection.*  
9     **Sec. 2.** NRS 40.600 is hereby amended to read as follows:  
10    40.600 As used in NRS 40.600 to 40.695, inclusive, *and*  
11    *section 1 of this act*, unless the context otherwise requires, the  
12    words and terms defined in NRS 40.605 to 40.630, inclusive, have  
13    the meanings ascribed to them in those sections.



1       **Sec. 3.** NRS 40.635 is hereby amended to read as follows:  
2       40.635 NRS 40.600 to 40.695, inclusive ~~§~~, *and section 1 of*  
3 *this act*:

4       1. Apply to any claim that arises before, on or after July 1,  
5 1995, as the result of a constructional defect, except a claim for  
6 personal injury or wrongful death, if the claim is the subject of an  
7 action commenced on or after July 1, 1995.

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

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

12       4. Do not create a new theory upon which liability may be  
13 based.

14       **Sec. 4.** NRS 40.650 is hereby amended to read as follows:

15       40.650 1. If a claimant unreasonably rejects a reasonable  
16 written offer of settlement made as part of a response made pursuant  
17 to NRS 40.645 or 40.682 or does not permit the contractor or  
18 independent contractor a reasonable opportunity to repair the defect  
19 pursuant to an accepted offer of settlement and thereafter  
20 commences an action governed by NRS 40.600 to 40.695, inclusive,  
21 *and section 1 of this act*, the court in which the action is  
22 commenced may:

23       (a) Deny the claimant's attorney's fees and costs; and

24       (b) Award attorney's fees and costs to the contractor.

25 Any sums paid under a homeowner's warranty, other than sums paid  
26 in satisfaction of claims that are collateral to any coverage issued to  
27 or by the contractor, must be deducted from any recovery.

28       2. If a contractor fails to:

29       (a) Make an offer of settlement;

30       (b) Make a good faith response to the claim asserting no  
31 liability;

32       (c) Complete, in a good and workmanlike manner, the repairs  
33 specified in an accepted offer;

34       (d) Agree to a mediator or accept the appointment of a mediator  
35 pursuant to NRS 40.680 or subsection 4 of NRS 40.682; or

36       (e) Participate in mediation,

37 the limitations on damages and defenses to liability provided in  
38 NRS 40.600 to 40.695, inclusive, *and section 1 of this act* do not  
39 apply and the claimant may commence an action without satisfying  
40 any other requirement of NRS 40.600 to 40.695, inclusive ~~§~~, *and*  
41 *section 1 of this act*.

42       3. If coverage under a homeowner's warranty is denied by an  
43 insurer in bad faith, the homeowner and the contractor have a right  
44 of action for the sums that would have been paid if coverage had  
45 been provided, plus reasonable attorney's fees and costs.



1     **Sec. 5.** NRS 40.655 is hereby amended to read as follows:  
2     40.655 1. Except as otherwise provided in NRS 40.650, in a  
3 claim governed by NRS 40.600 to 40.695, inclusive, *and section 1*  
4 *of this act*, the claimant may recover only the following damages to  
5 the extent proximately caused by a constructional defect:

6     (a) Any reasonable attorney's fees;  
7     (b) The reasonable cost of any repairs already made that were  
8 necessary and of any repairs yet to be made that are necessary to  
9 cure any constructional defect that the contractor failed to cure and  
10 the reasonable expenses of temporary housing reasonably necessary  
11 during the repair;

12     (c) The reduction in market value of the residence or accessory  
13 structure, if any, to the extent the reduction is because of structural  
14 failure;

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

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

18     (f) Any additional costs reasonably incurred by the claimant,  
19 including, but not limited to, any costs and fees incurred for the  
20 retention of experts to:

21         (1) Ascertain the nature and extent of the constructional  
22 defects;

23         (2) Evaluate appropriate corrective measures to estimate the  
24 value of loss of use; and

25         (3) Estimate the value of loss of use, the cost of temporary  
26 housing and the reduction of market value of the residence; and

27     (g) Any interest provided by statute.

28     2. The amount of any attorney's fees awarded pursuant to this  
29 section must be approved by the court.

30     3. If a contractor complies with the provisions of NRS 40.600  
31 to 40.695, inclusive, *and section 1 of this act*, the claimant may not  
32 recover from the contractor, as a result of the constructional defect,  
33 anything other than that which is provided pursuant to NRS 40.600  
34 to 40.695, inclusive ~~§~~, *and section 1 of this act*.

35     4. As used in this section, "structural failure" means physical  
36 damage to the load-bearing portion of a residence or appurtenance  
37 caused by a failure of the load-bearing portion of the residence or  
38 appurtenance.

39     **Sec. 6.** NRS 40.665 is hereby amended to read as follows:

40     40.665 In addition to any other method provided for settling a  
41 claim pursuant to NRS 40.600 to 40.695, inclusive, *and section 1 of*  
42 *this act*, a contractor may, pursuant to a written agreement entered  
43 into with a claimant, settle a claim by repurchasing the claimant's  
44 residence and the real property upon which it is located. The



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

3 1. 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 2. The value of any improvements made to the property by a  
9 person other than the contractor;

10 3. Reasonable attorney's fees and fees for experts; and

11 4. Any costs, including costs and expenses for moving and  
12 costs, points and fees for loans.

13 Any offer of settlement made that includes the items listed in this  
14 section shall be deemed reasonable for the purposes of subsection 1  
15 of NRS 40.650.

16 **Sec. 7.** NRS 40.667 is hereby amended to read as follows:

17 40.667 1. Except as otherwise provided in subsection 2, a  
18 written waiver or settlement agreement executed by a claimant after  
19 a contractor has corrected or otherwise repaired a constructional  
20 defect does not bar a claim for the constructional defect if it is  
21 determined that the contractor failed to correct or repair the defect  
22 properly.

23 2. The provisions of subsection 1 do not apply to any written  
24 waiver or settlement agreement described in subsection 1, unless:

25 (a) The claimant has obtained the opinion of an expert  
26 concerning the constructional defect;

27 (b) The claimant has provided the contractor with a written  
28 notice of the defect pursuant to NRS 40.645 or 40.682 and a copy of  
29 the expert's opinion; and

30 (c) The claimant and the contractor have complied with the  
31 requirements for inspection and repair as provided in NRS 40.600 to  
32 40.695, inclusive, **and section 1 of this act.**

33 3. If a claimant does not prevail in any action which is not  
34 barred pursuant to this section, the court may:

35 (a) Deny the claimant's attorney's fees, fees for an expert  
36 witness or costs; and

37 (b) Award attorney's fees and costs to the contractor.

38 **Sec. 8.** NRS 40.668 is hereby amended to read as follows:

39 40.668 1. Notwithstanding the provisions of NRS 40.600 to  
40 40.695, inclusive, **and section 1 of this act**, a claimant may not  
41 commence an action against a subdivider or master developer for a  
42 constructional defect in an appurtenance constructed on behalf of  
43 the subdivider or master developer in a planned unit development, to  
44 the extent that the appurtenance was constructed by or through a  
45 licensed general contractor, unless:



1 (a) The subdivider or master developer fails to provide to the  
2 claimant the name, address and telephone number of each contractor  
3 hired by the subdivider or master developer to construct the  
4 appurtenance within 30 days of the receipt by the subdivider or  
5 master developer of a request from the claimant for such  
6 information; or  
7 (b) After the claimant has made a good faith effort to obtain full  
8 recovery from the contractors hired by the subdivider or master  
9 developer to construct the appurtenance, the claimant has not  
10 obtained a full recovery.

11 2. All statutes of limitation or repose applicable to a claim  
12 governed by this section are tolled from the time the claimant  
13 notifies a contractor hired by the subdivider or master developer of  
14 the claim until the earlier of the date:

15 (a) A court determines that the claimant cannot obtain a full  
16 recovery against those contractors; or  
17 (b) The claimant receives notice that those contractors are  
18 bankrupt, insolvent or dissolved.

19 Tolling pursuant to this subsection applies only to the subdivider or  
20 master developer. Notwithstanding any applicable statute of  
21 limitation or repose, the claimant may commence an action against  
22 the subdivider or master developer for the claim within 1 year after  
23 the end of the tolling described in this subsection.

24 3. Nothing in this section prohibits the commencement of an  
25 action against a subdivider or master developer for a constructional  
26 defect in a residence sold, designed or constructed by or on behalf of  
27 the subdivider or master developer.

28 4. Nothing in this section prohibits a person other than the  
29 claimant from commencing an action against a subdivider or master  
30 developer to enforce his own rights.

31 5. The provisions of this section do not apply to a subdivider or  
32 master developer who acts as a general contractor or uses his license  
33 as a general contractor in the course of constructing the  
34 appurtenance that is the subject of the action.

35 6. As used in this section:

36 (a) "Master developer" means a person who buys, sells or  
37 develops a planned unit development, including, without limitation,  
38 a person who enters into a development agreement pursuant to  
39 NRS 278.0201.

40 (b) "Planned unit development" has the meaning ascribed to it in  
41 NRS 278A.065.

42 (c) "Subdivider" has the meaning ascribed to it in  
43 NRS 278.0185.



1       **Sec. 9.** NRS 40.675 is hereby amended to read as follows:  
2       40.675 1. A contractor who makes or provides for repairs  
3       under NRS 40.600 to 40.695, inclusive, *and section 1 of this act*  
4       may take reasonable steps to prove that the repairs were made and to  
5       have them inspected.

6       2. The provisions of NRS 40.600 to 40.695, inclusive, *and*  
7       *section 1 of this act* regarding inspection and repair are in addition  
8       to any rights of inspection and settlement provided by common law  
9       or by another statute.

10       **Sec. 10.** NRS 40.680 is hereby amended to read as follows:

11       40.680 1. Except as otherwise provided in this chapter,  
12       before an action based on a claim governed by NRS 40.600 to  
13       40.695, inclusive, *and section 1 of this act* may be commenced in  
14       court, the matter must be submitted to mediation, unless mediation  
15       is waived in writing by the contractor and the claimant.

16       2. The claimant and contractor must select a mediator by  
17       agreement. If the claimant and contractor fail to agree upon a  
18       mediator within 45 days after a mediator is first selected by the  
19       claimant, either party may petition the American Arbitration  
20       Association, the Nevada Arbitration Association, Nevada Dispute  
21       Resolution Services or any other mediation service acceptable to the  
22       parties for the appointment of a mediator. A mediator so appointed  
23       may discover only those documents or records which are necessary  
24       to conduct the mediation. The mediator shall convene the mediation  
25       within 60 days after the matter is submitted to him, unless the  
26       parties agree to extend the time. Except in a complex matter,  
27       the claimant shall, before the mediation begins, deposit \$50 with the  
28       mediation service and the contractor shall deposit with the  
29       mediation service the remaining amount estimated by the mediation  
30       service as necessary to pay the fees and expenses of the mediator for  
31       the first session of mediation, and the contractor shall deposit  
32       additional amounts demanded by the mediation service as incurred  
33       for that purpose. In a complex matter, each party shall share equally  
34       in the deposits estimated by the mediation service. Unless otherwise  
35       agreed, the total fees for each day of mediation and the mediator  
36       must not exceed \$750 per day.

37       3. If the parties do not reach an agreement concerning the  
38       matter during mediation or if the contractor fails to pay the required  
39       fees and appear, the claimant may commence his action in court  
40       and:

41       (a) The reasonable costs and fees of the mediation are  
42       recoverable by the prevailing party as costs of the action.

43       (b) Either party may petition the court in which the action is  
44       commenced for the appointment of a special master.

45       4. A special master appointed pursuant to subsection 3 may:



1 (a) Review all pleadings, papers or documents filed with the  
2 court concerning the action.

3 (b) Coordinate the discovery of any books, records, papers or  
4 other documents by the parties, including the disclosure of witnesses  
5 and the taking of the deposition of any party.

6 (c) Order any inspections on the site of the property by a party  
7 and any consultants or experts of a party.

8 (d) Order settlement conferences and attendance at those  
9 conferences by any representative of the insurer of a party.

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

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

15 The special master shall not, unless otherwise agreed by the parties,  
16 personally conduct any settlement conferences or engage in any ex  
17 parte meetings regarding the action.

18 5. Upon application by a party to the court in which the action  
19 is commenced, any decision or other action taken by a special  
20 master appointed pursuant to this section may be appealed to the  
21 court for a decision.

22 6. A report issued by a mediator or special master that indicates  
23 that either party has failed to appear before him or to mediate in  
24 good faith is admissible in the action, but a statement or admission  
25 made by either party in the course of mediation is not admissible.

26 **Sec. 11.** NRS 40.688 is hereby amended to read as follows:

27 40.688 1. If a claimant attempts to sell a residence that is or  
28 has been the subject of a claim governed by NRS 40.600 to 40.695,  
29 inclusive, *and section 1 of this act*, he shall disclose, in writing, to  
30 any prospective purchaser of the residence, not less than 30 days  
31 before the close of escrow for the sale of the residence or, if escrow  
32 is to close less than 30 days after the execution of the sales  
33 agreement, then immediately upon the execution of the sales  
34 agreement or, if a claim is initiated less than 30 days before the  
35 close of escrow, within 24 hours after giving written notice to the  
36 contractor pursuant to subsection 1 of NRS 40.645 or subsection 1  
37 of NRS 40.682:

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

41 (b) All opinions the claimant has obtained from experts  
42 regarding a constructional defect that is or has been the subject of  
43 the claim;

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



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

4 2. Before taking any action on a claim pursuant to NRS 40.600  
5 to 40.695, inclusive, *and section 1 of this act*, the attorney for a  
6 claimant shall notify the claimant in writing of the provisions of this  
7 section.

8 **Sec. 12.** NRS 40.6882 is hereby amended to read as follows:  
9 40.6882 “Complainant” means a person who makes a claim or  
10 files an action against a design professional pursuant to NRS 40.600  
11 to 40.695, inclusive ~~§~~, *and section 1 of this act*.

12 **Sec. 13.** NRS 40.6884 is hereby amended to read as follows:  
13 40.6884 1. Except as otherwise provided in subsection 2, in  
14 an action governed by NRS 40.600 to 40.695, inclusive, *and section*  
15 *1 of this act* that is commenced against a design professional or a  
16 person primarily engaged in the practice of professional  
17 engineering, land surveying, architecture or landscape architecture,  
18 including, without limitation, an action for professional negligence,  
19 the attorney for the complainant shall file an affidavit with the court  
20 concurrently with the service of the first pleading in the action  
21 stating that the attorney:

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

29 2. The attorney for the complainant may file the affidavit  
30 required pursuant to subsection 1 at a later time if he could not  
31 consult with an expert and prepare the affidavit before filing the  
32 action without causing the action to be impaired or barred by the  
33 statute of limitations or repose, or other limitations prescribed by  
34 law. If the attorney must submit the affidavit late, he shall file an  
35 affidavit concurrently with the service of the first pleading in the  
36 action stating his reason for failing to comply with subsection 1 and  
37 the attorney shall consult with an expert and file the affidavit  
38 required pursuant to subsection 1 not later than 45 days after filing  
39 the action.

40 3. In addition to the statement included in the affidavit  
41 pursuant to subsection 1, a report must be attached to the affidavit.  
42 Except as otherwise provided in subsection 4, the report must be  
43 prepared by the expert consulted by the attorney and include,  
44 without limitation:

- 45 (a) The resume of the expert;





1 (b) A statement that the expert is experienced in each discipline  
2 which is the subject of the report;

3 (c) A copy of each nonprivileged document reviewed by the  
4 expert in preparing his report, including, without limitation, each  
5 record, report and related document that the expert has determined is  
6 relevant to the allegations of negligent conduct that are the basis for  
7 the action;

8 (d) The conclusions of the expert and the basis for the  
9 conclusions; and

10 (e) A statement that the expert has concluded that there is a  
11 reasonable basis for filing the action.

12 4. In an action brought by a claimant in which an affidavit is  
13 required to be filed pursuant to subsection 1:

14 (a) The report required pursuant to subsection 3 is not required  
15 to include the information set forth in paragraphs (c) and (d) of  
16 subsection 3 if the claimant or his attorney files an affidavit, at the  
17 time that the affidavit is filed pursuant to subsection 1, stating that  
18 he made reasonable efforts to obtain the nonprivileged documents  
19 described in paragraph (c) of subsection 3, but was unable to obtain  
20 such documents before filing the action;

21 (b) The claimant or his attorney shall amend the report required  
22 pursuant to subsection 3 to include any documents and information  
23 required pursuant to paragraph (c) or (d) of subsection 3 as soon as  
24 reasonably practicable after receiving the document or information;  
25 and

26 (c) The court may dismiss the action if the claimant and his  
27 attorney fail to comply with the requirements of paragraph (b).

28 5. An expert consulted by an attorney to prepare an affidavit  
29 pursuant to this section must not be a party to the action.

30 6. As used in this section, "expert" means a person who is  
31 licensed in a state to engage in the practice of professional  
32 engineering, land surveying, architecture or landscape architecture.

33 **Sec. 14.** NRS 40.6885 is hereby amended to read as follows:

34 40.6885 1. The court shall dismiss an action governed by  
35 NRS 40.600 to 40.695, inclusive, *and section 1 of this act* that is  
36 commenced against a design professional or a person primarily  
37 engaged in the practice of professional engineering, land surveying,  
38 architecture or landscape architecture, including, without limitation,  
39 an action for professional negligence, if the attorney for the  
40 complainant fails to:

41 (a) File an affidavit required pursuant to NRS 40.6884;

42 (b) File a report required pursuant to subsection 3 of NRS  
43 40.6884; or

44 (c) Name the expert consulted in the affidavit required pursuant  
45 to subsection 1 of NRS 40.6884.



1       2. The fact that an attorney for a complainant has complied or  
2 failed to comply with the provisions of NRS 40.6884 is admissible  
3 in the action.

4       **Sec. 15.** NRS 40.689 is hereby amended to read as follows:

5       40.689 1. Upon petition by a party:

6       (a) The court shall give preference in setting a date for the trial  
7 of an action commenced pursuant to NRS 40.600 to 40.695,  
8 inclusive, ~~§~~ and *section 1 of this act; and*

9       (b) The court may assign an action commenced pursuant to NRS  
10 40.600 to 40.695, inclusive, *and section 1 of this act* to a senior  
11 judge.

12       2. If the action is assigned to a senior judge upon petition by a  
13 party:

14       (a) Any additional expenses caused by the assignment must be  
15 borne equally by each party involved; or

16       (b) The judge may distribute any additional expenses among the  
17 parties as he deems appropriate.

18       **Sec. 16.** NRS 40.690 is hereby amended to read as follows:

19       40.690 1. A claim governed by NRS 40.600 to 40.695,  
20 inclusive, *and section 1 of this act* may not be brought by a  
21 claimant or contractor against a government, governmental agency  
22 or political subdivision of a government, during the period in which  
23 a claim for a constructional defect is being settled, mediated or  
24 otherwise resolved pursuant to NRS 40.600 to 40.695, inclusive ~~§~~,  
25 *and section 1 of this act*. The settlement of such a claim does not  
26 affect the rights or obligations of the claimant or contractor in any  
27 action brought by the claimant or contractor against a third party.

28       2. A contractor or claimant may require a party against whom  
29 the contractor or claimant asserts a claim governed by NRS 40.600  
30 to 40.695, inclusive, *and section 1 of this act* to appear and  
31 participate in proceedings held pursuant to those sections as if the  
32 party were a contractor and the party requiring him to appear were a  
33 claimant. The party must receive notice of the proceedings from the  
34 contractor or claimant.

35       **Sec. 17.** NRS 40.695 is hereby amended to read as follows:

36       40.695 1. Except as otherwise provided in subsection 2,  
37 statutes of limitation or repose applicable to a claim based on a  
38 constructional defect governed by NRS 40.600 to 40.695, inclusive,  
39 *and section 1 of this act* are tolled from the time notice of the claim  
40 is given, until 30 days after mediation is concluded or waived in  
41 writing pursuant to NRS 40.680 or subsection 4 of NRS 40.682.

42       2. Tolling under this section applies:

43       (a) Only to a claim that is not a complex matter.

44       (b) To a third party regardless of whether the party is required to  
45 appear in the proceeding.



1       **Sec. 18.** NRS 113.135 is hereby amended to read as follows:  
2       113.135 1. Upon signing a sales agreement with the initial  
3 purchaser of residential property that was not occupied by the  
4 purchaser for more than 120 days after substantial completion of the  
5 construction of the residential property, the seller shall:  
6       (a) Provide to the initial purchaser a copy of NRS 11.202 to  
7 11.206, inclusive, and 40.600 to 40.695, inclusive ~~[§]~~, *and section 1*  
8 *of this act*;  
9       (b) Notify the initial purchaser of any soil report prepared for the  
10 residential property or for the subdivision in which the residential  
11 property is located; and  
12       (c) If requested in writing by the initial purchaser not later than  
13 5 days after signing the sales agreement, provide to the purchaser  
14 without cost each report described in paragraph (b) not later than 5  
15 days after the seller receives the written request.  
16       2. Not later than 20 days after receipt of all reports pursuant to  
17 paragraph (c) of subsection 1, the initial purchaser may rescind the  
18 sales agreement.  
19       3. The initial purchaser may waive his right to rescind the sales  
20 agreement pursuant to subsection 2. Such a waiver is effective only  
21 if it is made in a written document that is signed by the purchaser.  
22       **Sec. 19.** The amendatory provisions of this act do not apply to  
23 a claim initiated or an action commenced pursuant to NRS 40.600 to  
24 40.695, inclusive, and section 1 of this act, unless the claim was  
25 initiated or the action was commenced on or after October 1, 2003.

