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SENATE BILL NO. 191—SENATOR SCHNEIDER

MARCH 17, 2005

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Referred to Committee on Judiciary

**SUMMARY**—Requires affidavit and report in action against certain design professionals involving nonresidential construction. (BDR 2-897)

**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 civil actions; requiring an affidavit and a report in an action against certain design professionals involving nonresidential construction; requiring a court to dismiss such an action if the attorney filing the action fails to file the affidavit or report or fails to name the expert consulted in the affidavit; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

1 Existing law requires an attorney who files a civil action against certain design  
2 professionals for a constructional defect in a residence on behalf of the plaintiff to  
3 file an affidavit with the court at the same time the attorney serves the first pleading  
4 in the action. The affidavit must state that the attorney has reviewed the facts of the  
5 case, has consulted with an expert who the attorney believes is knowledgeable in  
6 the discipline relevant to the action and has concluded that the action has a  
7 reasonable basis in law and fact. In addition to the affidavit, the attorney must  
8 submit a report prepared by the expert that includes, among other things, the  
9 expert’s resume, a copy of each nonprivileged document reviewed by the expert in  
10 preparing the report, the expert’s conclusions and a statement that the expert has  
11 concluded that there is a reasonable basis for filing the action. (NRS 40.6884) If the  
12 attorney fails to file the affidavit or report or fails to name in the affidavit the expert  
13 consulted, the court is required to dismiss the action. (NRS 40.6885)

14 This bill establishes similar requirements for an attorney in an action against  
15 certain design professionals involving nonresidential construction.

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

1       **Section 1.** Chapter 11 of NRS is hereby amended by adding  
2 thereto the provisions set forth as sections 2 to 6, inclusive, of this  
3 act.

4       **Sec. 2.** *As used in sections 2 to 6, inclusive, of this act,*  
5 *unless the context otherwise requires, the words and terms defined*  
6 *in sections 3 and 4 of this act have the meanings ascribed to them*  
7 *in those sections.*

8       **Sec. 3. 1.** *“Action involving nonresidential construction”*  
9 *means an action that:*

10       (a) *Is commenced against a design professional; and*

11       (b) *Involves the design, construction, manufacture, repair or*  
12 *landscaping of a nonresidential building or structure, of an*  
13 *alteration of or addition to an existing nonresidential building or*  
14 *structure, or of an appurtenance, including, without limitation, the*  
15 *design, construction, manufacture, repair or landscaping of a new*  
16 *nonresidential building or structure, of an alteration of or addition*  
17 *to an existing nonresidential building or structure, or of an*  
18 *appurtenance.*

19       ↳ *The term includes, without limitation, an action for*  
20 *professional negligence.*

21       2. *As used in this section:*

22       (a) *“Appurtenance” means a structure, installation, facility,*  
23 *amenity or other improvement that is appurtenant to or benefits*  
24 *one or more nonresidential buildings or structures, but is not a*  
25 *part of the nonresidential building or structure. The term includes,*  
26 *without limitation, the parcel of real property, recreational*  
27 *facilities, walls, sidewalks, driveways, landscaping and other*  
28 *structures, installations, facilities and amenities associated with or*  
29 *benefiting one or more nonresidential buildings or structures.*

30       (b) *“Design professional” means a person who holds a*  
31 *professional license or certificate issued pursuant to chapter 623,*  
32 *623A or 625 of NRS or a person primarily engaged in the practice*  
33 *of professional engineering, land surveying, architecture or*  
34 *landscape architecture.*

35       **Sec. 4.** *“Complainant” means a person who files an action*  
36 *involving nonresidential construction.*

37       **Sec. 5. 1.** *Except as otherwise provided in subsection 2, in*  
38 *an action involving nonresidential construction, the attorney for*  
39 *the complainant shall file an affidavit with the court concurrently*  
40 *with the service of the first pleading in the action stating that the*  
41 *attorney:*



- 1       (a) *Has reviewed the facts of the case;*
- 2       (b) *Has consulted with an expert;*
- 3       (c) *Reasonably believes the expert who was consulted is*
- 4 *knowledgeable in the relevant discipline involved in the action;*
- 5 *and*
- 6       (d) *Has concluded on the basis of his review and the*
- 7 *consultation with the expert that the action has a reasonable basis*
- 8 *in law and fact.*

9       2. *The attorney for the complainant may file the affidavit*  
10 *required pursuant to subsection 1 at a later time if he could not*  
11 *consult with an expert and prepare the affidavit before filing the*  
12 *action without causing the action to be impaired or barred by the*  
13 *statute of limitations or repose, or other limitations prescribed by*  
14 *law. If the attorney must submit the affidavit late, he shall file an*  
15 *affidavit concurrently with the service of the first pleading in the*  
16 *action stating his reason for failing to comply with subsection 1*  
17 *and the attorney shall consult with an expert and file the affidavit*  
18 *required pursuant to subsection 1 not later than 45 days after*  
19 *filing the action.*

20       3. *In addition to the statement included in the affidavit*  
21 *pursuant to subsection 1, a report must be attached to the*  
22 *affidavit. Except as otherwise provided in subsection 4, the report*  
23 *must be prepared by the expert consulted by the attorney and must*  
24 *include, without limitation:*

- 25       (a) *The resume of the expert;*
- 26       (b) *A statement that the expert is experienced in each*
- 27 *discipline which is the subject of the report;*
- 28       (c) *A copy of each nonprivileged document reviewed by the*
- 29 *expert in preparing his report, including, without limitation, each*
- 30 *record, report and related document that the expert has*
- 31 *determined is relevant to the allegations of negligent conduct that*
- 32 *are the basis for the action;*
- 33       (d) *The conclusions of the expert and the basis for the*
- 34 *conclusions; and*
- 35       (e) *A statement that the expert has concluded that there is a*
- 36 *reasonable basis for filing the action.*

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

- 39       (a) *The report required pursuant to subsection 3 is not*
- 40 *required to include the information set forth in paragraphs (c) and*
- 41 *(d) of subsection 3 if the claimant or his attorney files an affidavit,*
- 42 *at the time that the affidavit is filed pursuant to subsection 1,*
- 43 *stating that he made reasonable efforts to obtain the nonprivileged*



1 *documents described in paragraph (c) of subsection 3, but was*  
2 *unable to obtain such documents before filing the action;*

3 *(b) The claimant or his attorney shall amend the report*  
4 *required pursuant to subsection 3 to include any documents and*  
5 *information required pursuant to paragraph (c) or (d) of*  
6 *subsection 3 as soon as reasonably practicable after receiving the*  
7 *document or information; and*

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

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

12 *6. As used in this section, "expert" means a person who is*  
13 *licensed in a state to engage in the practice of professional*  
14 *engineering, land surveying, architecture or landscape*  
15 *architecture.*

16 **Sec. 6. 1.** *The court shall dismiss an action involving*  
17 *nonresidential construction if the attorney for the complainant*  
18 *fails to:*

19 *(a) File an affidavit required pursuant to section 5 of this act;*

20 *(b) File a report required pursuant to subsection 3 of section*  
21 *5 of this act; or*

22 *(c) Name the expert consulted in the affidavit required*  
23 *pursuant to subsection 1 of section 5 of this act.*

24 *2. The fact that an attorney for a complainant has complied*  
25 *or failed to comply with the provisions of sections 2 to 6, inclusive,*  
26 *of this act is admissible in the action.*

27 **Sec. 7.** *The provisions of this act apply to an action*  
28 *commenced on or after October 1, 2005.*

