

ASSEMBLY BILL NO. 3—JOINT RULES COMMITTEE

PREFILED JUNE 13, 2001

Referred to Committee of the Whole

SUMMARY—Requires affidavit in support of action concerning constructional defects against design professional. (BDR 3-11)

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; requiring an affidavit in support of an action concerning constructional defects against a design professional; 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 thereto
- 2 the provisions set forth as sections 2 to 6, inclusive, of this act.
- 3 **Sec. 2.** *As used in sections 2 to 6, inclusive, of this act, unless the*
- 4 *context otherwise requires, the words and terms defined in sections 3 and*
- 5 *4 of this act have the meanings ascribed to them in those sections.*
- 6 **Sec. 3.** *“Complainant” means a person who makes a claim or files*
- 7 *an action against a design professional pursuant to NRS 40.600 to*
- 8 *40.695, inclusive, and sections 2 to 6, inclusive, of this act.*
- 9 **Sec. 4.** *“Design professional” means a person who holds a*
- 10 *professional license or certificate issued pursuant to chapter 623, 623A*
- 11 *or 625 of NRS.*
- 12 **Sec. 5.** *1. Except as otherwise provided in subsection 2, in an*
- 13 *action governed by NRS 40.600 to 40.695, inclusive, and sections 2 to 6,*
- 14 *inclusive, of this act that is commenced against a design professional or a*
- 15 *person primarily engaged in the practice of professional engineering,*
- 16 *land surveying, architecture or landscape architecture, including,*
- 17 *without limitation, an action for professional negligence, the attorney for*
- 18 *the complainant shall file an affidavit with the court concurrently with*
- 19 *the service of the first pleading in the action stating that the attorney:*
- 20 *(a) Has reviewed the facts of the case;*
- 21 *(b) Has consulted with an expert;*
- 22 *(c) Reasonably believes the expert who was consulted is*
- 23 *knowledgeable in the relevant discipline involved in the action; and*



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- 1 (d) Has concluded on the basis of his review and the consultation with
2 the expert that the action has a reasonable basis in law and fact.
- 3 2. The attorney for the complainant may file the affidavit required
4 pursuant to subsection 1 at a later time if he could not consult with an
5 expert and prepare the affidavit before filing the action without causing
6 the action to be impaired or barred by the statute of limitations or repose,
7 or other limitations prescribed by law. If the attorney must submit the
8 affidavit late, he shall file an affidavit concurrently with the service of
9 the first pleading in the action stating his reason for failing to comply
10 with subsection 1 and the attorney shall consult with an expert and file
11 the affidavit required pursuant to subsection 1 not later than 45 days
12 after filing the action.
- 13 3. In addition to the statement included in the affidavit pursuant to
14 subsection 1, a report must be attached to the affidavit. Except as
15 otherwise provided in subsection 4, the report must be prepared by the
16 expert consulted by the attorney and include, without limitation:
- 17 (a) The resumé of the expert;
- 18 (b) A statement that the expert is experienced in each discipline which
19 is the subject of the report;
- 20 (c) A copy of each nonprivileged document reviewed by the expert in
21 preparing his report, including, without limitation, each record, report
22 and related document that the expert has determined is relevant to the
23 allegations of negligent conduct that are the basis for the action;
- 24 (d) The conclusions of the expert and the basis for the conclusions;
25 and
- 26 (e) A statement that the expert has concluded that there is a
27 reasonable basis for filing the action.
- 28 4. In an action brought by a claimant in which an affidavit is
29 required to be filed pursuant to subsection 1:
- 30 (a) The report required pursuant to subsection 3 is not required to
31 include the information set forth in paragraphs (c) and (d) of subsection
32 3 if the claimant or his attorney files an affidavit, at the time that the
33 affidavit is filed pursuant to subsection 1, stating that he made
34 reasonable efforts to obtain the nonprivileged documents described in
35 paragraph (c) of subsection 3, but was unable to obtain such documents
36 before filing the action;
- 37 (b) The claimant or his attorney shall amend the report required
38 pursuant to subsection 3 to include any documents and information
39 required pursuant to paragraph (c) or (d) of subsection 3 as soon as
40 reasonably practicable after receiving the document or information; and
- 41 (c) The court may dismiss the action if the claimant and his attorney
42 fail to comply with the requirements of paragraph (b).
- 43 5. An expert consulted by an attorney to prepare an affidavit
44 pursuant to this section must not be a party to the action.
- 45 6. As used in this section, "expert" means a person who is licensed in
46 a state to engage in the practice of professional engineering, land
47 surveying, architecture or landscape architecture.
- 48 Sec. 6. 1. The court shall dismiss an action governed by NRS
49 40.600 to 40.695, inclusive, and sections 2 to 6, inclusive, of this act that



1 *is commenced against a design professional or a person primarily*
2 *engaged in the practice of professional engineering, land surveying,*
3 *architecture or landscape architecture, including, without limitation, an*
4 *action for professional negligence, if the attorney for the complainant*
5 *fails to:*
6 *(a) File an affidavit required pursuant to section 5 of this act;*
7 *(b) File a report required pursuant to subsection 3 of section 5 of this*
8 *act; or*
9 *(c) Name the expert consulted in the affidavit required pursuant to*
10 *subsection 1 of section 5 of this act.*
11 *2. The fact that an attorney for a complainant has complied or failed*
12 *to comply with the provisions of section 5 of this act is admissible in the*
13 *action.*
14 **Sec. 7.** NRS 40.600 is hereby amended to read as follows:
15 40.600 As used in NRS 40.600 to 40.695, inclusive, *and sections 2 to*
16 *6, inclusive, of this act*, unless the context otherwise requires, the words
17 and terms defined in NRS 40.605 to 40.630, inclusive, have the meanings
18 ascribed to them in those sections.
19 **Sec. 8.** The amendatory provisions of this act do not apply to a claim
20 initiated or an action commenced pursuant to NRS 40.600 to 40.695,
21 inclusive, and sections 2 to 6, inclusive, of this act, unless the claim was
22 initiated or the action was commenced on or after October 1, 2001.

