

SENATE BILL NO. 286—SENATOR SCHNEIDER

MARCH 1, 1999

Referred to Committee on Commerce and Labor

SUMMARY—Makes various changes to provisions governing recovery of losses resulting from certain defects to real property. (BDR 57-368)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: 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; authorizing an insurer who issues policies of insurance for home protection to invest additional assets in tangible personal property; authorizing such an insurer to engage in business other than furnishing insurance for home protection; requiring a claimant in an action resulting from a constructional defect to property to make certain disclosures upon the sale of the property; revising the definition of “constructional defect”; revising the requirements for a notice of defects, damages or injuries to property that is required to be given to a contractor in such an action; limiting further the damages that may be recovered in such an action; reducing the statute of limitations for such an action and certain other causes of action related to deficiencies in the construction of improvements to real property; 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.** NRS 690B.100 is hereby amended to read as follows:
- 2 690B.100 As used in NRS 690B.100 to 690B.180, inclusive, unless the
- 3 context otherwise requires:
- 4 1. “Home” means a structure used primarily for residential purposes
- 5 and includes ~~a single-family dwelling, a~~, ***without limitation:***
- 6 ***(a) A single-family dwelling;***
- 7 ***(b) A unit in a multiple-family structure ~~and a~~;***
- 8 ***(c) A mobile home ~~;~~ ; and***
- 9 ***(d) The common elements of a common-interest community, as***
- 10 ***defined in NRS 116.110318, and any appurtenance thereto.***

2. "Insurance for home protection" means a contract of insurance, which affords coverage over a specified term for a predetermined fee, under which a person, other than the manufacturer, builder, seller or lessor of the home, agrees to repair, replace or indemnify from the cost of repair or replacement based upon the failure of any structure, component, system or appliance of the home. The term does not include a contract which insures against any consequential losses caused by the defects or failures.

Sec. 2. NRS 690B.140 is hereby amended to read as follows:

690B.140 An insurer who issues policies of insurance for home protection, other than casualty insurance, may make investments in tangible personal property for use in fulfilling its obligations to repair or replace components, systems or appliances of the home under its contracts of insurance for home protection, in an amount not to exceed ~~25~~ 50 percent of its assets, as determined pursuant to NRS 681B.010, unless the commissioner, whenever he deems it appropriate, waives this limitation by regulation.

Sec. 3. NRS 690B.160 is hereby amended to read as follows:

690B.160 1. A contract of insurance for home protection must specify:

(a) The structures, components, systems and appliances covered by the provisions of the contract.

(b) Any exclusions from and limitations on coverage.

(c) The period during which the contract will be in effect, and the renewal terms, if any.

(d) The services to be performed by the insurer and the terms and conditions of his performance.

(e) The *copayment*, service fee or deductible charge, if any, to be charged ~~for his services.~~ *to the insured.*

(f) All limitations regarding the performance of services, including any restrictions as to the time during or geographical area within which services may be requested or will be performed.

(g) That ~~services will be performed upon a telephoned request to~~ *an investigation of a claim will be commenced if a request therefor is received by* the insurer *from the insured by telephone*, without any requirement that claim forms or applications be filed before the ~~performance of service.~~ *commencement of the investigation.*

(h) That services will be initiated by or under the direction of the insurer within 48 hours after ~~proper request is made for services.~~ *the conclusion of an investigation of a claim.*

(i) Other conditions and provisions pertaining to the coverage as required by the insurance laws of this state or regulations adopted by the commissioner.

2. Insurance for home protection may not be canceled during the term for which it is issued, except:

(a) For nonpayment of the fee for the contract.

(b) For fraud or misrepresentation of facts material to the issuance or renewal of the contract.

(c) Insurance which provides coverage before the home is sold if the sale is not made. The cancellation must be made in accordance with the contract provisions.

3. Insurance for home protection is not renewable unless its terms provide otherwise.

Sec. 4. NRS 690B.180 is hereby amended to read as follows:

690B.180 An insurer who issues policies of insurance for home protection, other than casualty insurance, shall not ~~be~~:

~~1. Engage in any business other than the furnishing of insurance for home protection.~~

~~2. Assume~~ *assume* reinsurance from any other insurer.

Sec. 5. NRS 11.202 is hereby amended to read as follows:

11.202 1. ~~[An]~~ *Except as otherwise provided in NRS 40.695, an* action may be commenced against the owner, occupier or any person performing or furnishing the design, planning, supervision or observation of construction, or the construction of an improvement to real property at any time after the substantial completion of such an improvement, for the recovery of damages for:

(a) Any deficiency in the design, planning, supervision or observation of construction or the construction of such an improvement which is the result of his willful misconduct or which he fraudulently concealed;

(b) Injury to real or personal property caused by any such deficiency; or

(c) Injury to or the wrongful death of a person caused by any such deficiency.

2. The provisions of this section do not apply in an action brought against:

(a) The owner or keeper of any hotel, inn, motel, motor court, boardinghouse or lodginghouse in this state on account of his liability as an innkeeper.

(b) Any person on account of a defect in a product.

Sec. 6. NRS 11.203 is hereby amended to read as follows:

11.203 1. Except as otherwise provided in NRS 11.202 ~~[A]~~ *and 40.695*, no action may be commenced against the owner, occupier or any person performing or furnishing the design, planning, supervision or observation of construction, or the construction of an improvement to real property more than 10 years after the substantial completion of such an improvement, for the recovery of damages

for:

1 (a) Any deficiency in the design, planning, supervision or observation of
2 construction or the construction of such an improvement which is ~~{known~~
3 ~~or through the use of reasonable diligence should have been known to him;}~~
4 *the result of his gross negligence;*

5 (b) Injury to real or personal property caused by any such deficiency; or

6 (c) Injury to or the wrongful death of a person caused by any such
7 deficiency.

8 2. Notwithstanding the provisions of NRS 11.190 and subsection 1 of
9 this section, where injury occurs in the tenth year after the substantial
10 completion of such an improvement, an action for damages for injury to
11 property or person, damages for wrongful death resulting from such injury
12 or damages for breach of contract may be commenced within 2 years after
13 the date of such injury, irrespective of the date of death, but in no event
14 may an action be commenced more than 12 years after the substantial
15 completion of the improvement.

16 **Sec. 7.** NRS 11.204 is hereby amended to read as follows:

17 11.204 1. Except as otherwise provided in NRS 11.202 ~~{and 11.203,}~~
18 *, 11.203 and 40.695,* no action may be commenced against the owner,
19 occupier or any person performing or furnishing the design, planning,
20 supervision or observation of construction, or the construction, of an
21 improvement to real property more than 8 years after the substantial
22 completion of such an improvement, for the recovery of damages for:

23 (a) Any latent deficiency in the design, planning, supervision or

24 observation of construction or the construction of such an improvement;

25 (b) Injury to real or personal property caused by any such deficiency; or

26 (c) Injury to or the wrongful death of a person caused by any such
27 deficiency.

28 2. Notwithstanding the provisions of NRS 11.190 and subsection 1 of
29 this section, where injury occurs in the eighth year after the substantial
30 completion of such an improvement, an action for damages for injury to
31 property or person, damages for wrongful death resulting from such injury
32 or damages for breach of contract may be commenced within 2 years after
33 the date of such injury, irrespective of the date of death, but in no event
34 may an action be commenced more than 10 years after the substantial
35 completion of the improvement.

36 3. For the purposes of this section, "latent deficiency" means a
37 deficiency which is not apparent by reasonable inspection.

38 **Sec. 8.** NRS 11.205 is hereby amended to read as follows:

39 11.205 1. Except as otherwise provided in NRS 11.202 ~~{and 11.203,}~~
40 *, 11.203 and 40.695,* no action may be commenced against the owner,

41 occupier or any person performing or furnishing the design, planning,

42 supervision or observation of construction, or the construction of an

1 improvement to real property more than 6 years after the substantial
2 completion of such an improvement, for the recovery of damages for:

- 3 (a) Any patent deficiency in the design, planning, supervision or
4 observation of construction or the construction of such an improvement;
5 (b) Injury to real or personal property caused by any such deficiency; or
6 (c) Injury to or the wrongful death of a person caused by any such
7 deficiency.

8 2. Notwithstanding the provisions of NRS 11.190 and subsection 1 of
9 this section, where injury occurs in the sixth year after the substantial
10 completion of such an improvement, an action for damages for injury to
11 property or person, damages for wrongful death resulting from such injury
12 or damages for breach of contract may be commenced within 2 years after
13 the date of such injury, irrespective of the date of death, but in no event
14 may an action be commenced more than 8 years after the substantial
15 completion of the improvement.

16 3. For the purposes of this section, "patent deficiency" means a
17 deficiency which is apparent by reasonable inspection.

18 **Sec. 9.** NRS 11.206 is hereby amended to read as follows:

19 11.206 The limitations respectively prescribed by NRS 11.203, 11.204
20 , ~~and~~ 11.205 **and 40.695** are not a defense in an action brought against:

21 1. The owner or keeper of any hotel, inn, motel, motor court,
22 boardinghouse or lodginghouse in this state on account of his liability as an
23 innkeeper.

24 2. Any person on account of a defect in a product.

25 **Sec. 10.** Chapter 40 of NRS is hereby amended by adding thereto the
26 provisions set forth as sections 11 and 12 of this act.

27 **Sec. 11. "Commence an action" means to file a complaint in a court**
28 **of competent jurisdiction to recover damages resulting from a**
29 **construction defect.**

30 **Sec. 12. 1. If a claimant attempts to sell property that is or was the**
31 **subject of a claim governed by NRS 40.600 to 40.695, inclusive, he shall**
32 **disclose, in writing, to any prospective purchaser of the property, not less**
33 **than 30 days before the close of escrow for the sale of the property or, if**
34 **the claim is initiated less than 30 days before the close of escrow, within**
35 **24 hours after giving written notice to the contractor pursuant to**
36 **subsection 1 of NRS 40.645:**

37 **(a) All notices required to be given by the claimant to the contractor**
38 **pursuant to NRS 40.600 to 40.695, inclusive;**

39 **(b) All opinions the claimant has obtained from experts regarding the**
40 **construction defects that are the subject of the claim, which must include**
41 **any disclosures made pursuant to subsection 5 of NRS 40.640;**

42 **(c) The terms of any settlement, order or judgment relating to the**
43 **claim; and**

1 (d) A detailed report of all repairs made to the property by or on
2 behalf of the claimant as a result of the construction defects that are the
3 subject of the claim.

4 2. If a claim is initiated pursuant to NRS 40.600 to 40.695, inclusive,
5 the claimant shall disclose, in writing, to each holder of record of a
6 security interest in the property:

7 (a) Any notice required to be given by the claimant to the contractor
8 pursuant to NRS 40.600 to 40.695, inclusive, within 30 days after the
9 notice is given to the contractor;

10 (b) Any opinion the claimant has obtained from experts regarding the
11 construction defects that are the subject of the claim, which must include
12 any disclosures made pursuant to subsection 5 of NRS 40.640, within 30
13 days after the date on which the opinion is received by the claimant or his
14 attorney;

15 (c) The terms of any settlement, order or judgment relating to the
16 claim, within 10 days after the date on which a copy of the settlement,
17 order or judgment is received by the claimant or his attorney; and

18 (d) A detailed report of all repairs made to the property by or on
19 behalf of the claimant as a result of the construction defects that are the
20 subject of the claim, within 10 days after the completion of those repairs.

21 3. Before taking any action on a claim that has been or will be
22 initiated pursuant to NRS 40.600 to 40.695, inclusive, the attorney for the
23 claimant shall give notice, in writing, to the claimant of the provisions of
24 this section.

25 **Sec. 13.** NRS 40.600 is hereby amended to read as follows:

26 40.600 As used in NRS 40.600 to 40.695, inclusive, **and sections 11**
27 **and 12 of this act**, unless the context otherwise requires, the words and
28 terms defined in NRS 40.605 to 40.630, inclusive, **and section 11 of this**
29 **act**, have the meanings ascribed to them in those sections.

30 **Sec. 14.** NRS 40.605 is hereby amended to read as follows:

31 40.605 "Appurtenance" means a structure, installation, facility, ~~for~~
32 amenity **or other improvement** that is appurtenant to ~~a residence,~~ **or**
33 **benefits one or more residences**, but is not a part of the dwelling unit. The
34 term includes, without limitation, the parcel of real property, recreational
35 facilities, golf courses, walls, sidewalks, driveways, landscaping and other
36 structures, installations, facilities and amenities associated with ~~a~~
37 ~~residence,~~ **or benefiting one or more residences**.

38 **Sec. 15.** NRS 40.615 is hereby amended to read as follows:

39 40.615 ~~["Construction"]~~

40 1. "**Construction** defect" includes a defect in the design, construction,
41 manufacture, repair or landscaping of a new residence, of an alteration of or
42 addition to an existing residence, or of an appurtenance ~~to~~ **, that is**

1 *described in accordance with paragraph (a) of subsection 1 of NRS*
2 *40.645.*

3 2. The term includes physical damage to the residence, an
4 appurtenance or the real property to which the residence or appurtenance is
5 affixed that is proximately caused by a ~~constructional~~ *construction*
6 defect.

7 3. *The term does not include any construction, alteration, repair or*
8 *improvement of a residence or appurtenance that:*

9 (a) *Is in substantial compliance with any applicable building code in*
10 *effect at the time the building permit for the construction, alteration,*
11 *repair or improvement was issued; and*

12 (b) *Has not caused damage or injury.*

13 *Approval of any portion of the construction, alteration, repair or*
14 *improvement by a building inspector employed by a governmental body*
15 *with jurisdiction is prima facie evidence that the residence or*
16 *appurtenance was constructed, altered, repaired or improved in*
17 *compliance with applicable building codes.*

18 **Sec. 16.** NRS 40.620 is hereby amended to read as follows:

19 40.620 "Contractor" means a person who, with or without a license
20 issued pursuant to chapter 624 of NRS, by himself or through his agents ~~;~~
21 ~~employees or subcontractors;~~ *or employees:*

22 1. Develops, constructs, alters, repairs, improves or landscapes a
23 residence, appurtenance or any part thereof;

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

25 3. Sells a residence or appurtenance, any part of which the person, by
26 himself or through his agents ~~;~~ ~~employees or subcontractors;~~ *or*
27 *employees,* has developed, constructed, altered, repaired, improved or
28 landscaped.

29 **Sec. 17.** NRS 40.625 is hereby amended to read as follows:

30 40.625 "Homeowner's warranty" means a warranty or policy of
31 insurance:

32 1. Issued or purchased by or on behalf of a contractor for the protection
33 of a claimant; or

34 2. Purchased by a claimant pursuant to NRS 690B.100 to 690B.180,
35 inclusive.

36 The term includes a warranty contract issued by a risk retention group that
37 operates in compliance with chapter 695E of NRS and insures all or any
38 part of the liability of a contractor for the cost to repair a ~~constructional~~
39 *construction* defect in a residence.

40 **Sec. 18.** NRS 40.635 is hereby amended to read as follows:

41 40.635 NRS 40.600 to 40.695, inclusive:

42 1. Apply to any claim that arises before, on or after July 1, 1995, as the
43 result of a ~~constructional~~ *construction* defect, except a claim for personal

1 injury or wrongful death, if the claim is the subject of an action commenced
2 on or after July 1, 1995.

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

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

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

8 **Sec. 19.** NRS 40.640 is hereby amended to read as follows:

9 40.640 In a claim to recover damages resulting from a ~~{construction}~~
10 **construction** defect, a contractor is liable for his acts or omissions or the
11 acts or omissions of his agents ~~{, employees or subcontractors}~~ **and**
12 **employees** and is not liable for any damages caused by:

13 1. The acts or omissions of a person other than the contractor or his
14 agent ~~{, employee or subcontractor;}~~ **or employee;**

15 2. The failure of a person other than the contractor or his agent ~~{,~~
16 ~~employee or subcontractor}~~ **or employee** to take reasonable action to
17 reduce the damages or maintain the residence;

18 3. Normal wear, tear or deterioration;

19 4. Normal shrinkage, swelling, expansion or settlement; or

20 5. Any ~~{construction}~~ **construction** defect disclosed to an owner
21 before his purchase of the residence, if the disclosure was provided in
22 language that is understandable and was written in underlined and
23 boldfaced type with capital letters.

24 **Sec. 20.** NRS 40.645 is hereby amended to read as follows:

25 40.645 Except as otherwise provided in this section and NRS 40.670:

26 1. At least 60 days before a claimant commences an action against a
27 contractor for damages arising from a ~~{construction}~~ **construction** defect,
28 the claimant must give written notice by certified mail, return receipt
29 requested, to the contractor, at the contractor's last known address,
30 specifying in reasonable detail **for each residence or each unit within a**
31 **multiple-unit residence,** the defects or any damages or injuries ~~{to each~~
32 ~~residence or each unit within a multiple-unit residence that is}~~ **that are** the
33 subject of the claim. The notice must ~~{describe}~~ :

34 **(a) Describe** in reasonable detail the cause of ~~{the defects if the cause is~~
35 ~~known, and the nature and extent that is known of the damage or injury~~
36 ~~resulting from the defects. In a complex matter, an expert opinion~~
37 ~~concerning the cause of the defects and the nature and extent of the damage~~
38 ~~or injury resulting from the defects based on a representative sample of the~~
39 ~~residences or of the units of each multiple-unit residence involved in the~~
40 ~~action satisfies the requirements of this section.}~~ **each defect, its specific**
41 **location, the date it was first known to the claimant, and the nature and**
42 **extent of the damage or injury resulting therefrom, to the extent known;**

1 (b) *Be accompanied by a written opinion of an expert or experts which*
2 *contains details of the existence, extent and causes of each defect, if such*
3 *an opinion has been rendered; and*

4 (c) *Be recorded at the office of the county recorder in the county in*
5 *which the property is situated.*

6 2. During the ~~{35-day}~~ *60-day* period after the contractor receives the
7 notice, on his written request, the contractor ~~{is entitled to inspect}~~ *may*
8 *cause to be conducted:*

9 (a) *Independent inspections of* the property that is the subject of the
10 ~~{claim to determine the nature and cause of the defect,}~~ *complaint in order*
11 *to evaluate the defects described in the written notice; and*

12 (b) *Such tests as are reasonably necessary to determine the nature and*
13 *causes of the defects,* damage or injury and the nature and extent of repairs
14 necessary to remedy the ~~{defect.}~~ *defects.* The contractor shall, before
15 ~~{making the inspection,}~~ *conducting such tests,* provide reasonable notice
16 of the ~~{inspection and must make the inspection}~~ *tests to the claimant and*
17 *conduct the tests* at a reasonable time. ~~{The contractor may take reasonable~~
18 ~~steps to establish the existence of the defect.~~

19 ~~—2.}~~ 3. If the residence is covered by a homeowner's warranty ~~{, a}~~ *that*
20 *is purchased by a claimant pursuant to NRS 690B.110 to 690B.180,*
21 *inclusive, the* claimant must *first* diligently pursue a claim under the
22 warranty. ~~{or contract.}~~

23 ~~—3.}~~ 4. Within 45 days after the ~~{contractor receives the notice,}~~ *60-day*
24 *period for inspections and testing set forth in subsection 2,* the contractor
25 may make a written offer of settlement to the claimant. The offer:

26 (a) Must be served ~~{to}~~ *upon* the claimant by certified mail, return
27 receipt requested, at the claimant's last known address.

28 (b) Must respond to each ~~{constructional}~~ *construction* defect set forth
29 in the claimant's notice, and ~~{describe in reasonable detail}~~ *include an*
30 *initial review of* the cause of the defect, if known, *and* the nature and extent
31 of the damage or injury resulting from the defect. ~~{, and, unless the offer is~~
32 ~~limited to a proposal for monetary compensation, the method, adequacy~~
33 ~~and estimated cost of the proposed repair.}~~

34 (c) May include:

35 (1) A proposal for monetary compensation ~~{,}~~ *to repair the defects;*
36 *or*

37 (2) *A proposal to repair the defects.* If the contractor is licensed to
38 make the repairs, *the proposal may include* an agreement by the contractor
39 to make the repairs.

40 ~~{(3)—An}~~ *In the alternative, the proposal may include an* agreement
41 by the contractor to cause the repairs to be made, at the contractor's
42 expense, by another contractor who is licensed to make the repairs, bonded
43 and insured. *The proposal must include, in reasonable detail, the method*

1 *by which the repairs will be made and the adequacy of the proposed*
2 *repairs.* The repairs must be ~~made~~ *commenced* within 45 days after the
3 contractor receives written notice of acceptance of the offer, unless
4 ~~completion~~ *the commencement of the repairs* is delayed by the claimant
5 or by other events beyond the control of the contractor. The claimant and
6 the contractor may agree in writing to extend the periods prescribed by this
7 section.

8 ~~4.~~ 5. The periods provided in subsections 1, 2 and ~~3 must be~~ *4 are*
9 *hereby* extended by ~~60~~ *90* days if the claim is a complex matter. The
10 parties may stipulate to ~~a further extension.~~

11 ~~5. Not later than 15 days before the mediation required pursuant to~~
12 ~~NRS 40.680 and upon providing 15 days' notice, each party shall provide~~
13 ~~the other party, or shall make a reasonable effort to assist the other party to~~
14 ~~obtain, all relevant reports, photos, correspondence, plans, specifications,~~
15 ~~warranties, contracts, subcontracts, work orders for repair, videotapes and~~
16 ~~soil and other engineering reports that are not privileged.] any further~~
17 *extensions, if necessary.*

18 6. If the claimant is a representative of a homeowner's association, the
19 ~~association shall~~ *contractor may* submit any offer of settlement made by
20 the contractor, *in writing*, to each member of the association.

21 7. *The claimant shall respond to any offer of settlement made by the*
22 *contractor within 30 days after the offer is mailed to the claimant*
23 *pursuant to paragraph (a) of subsection 4.*

24 8. *Money that a claimant recovers by accepting an offer of settlement*
25 *made pursuant to subparagraph (1) of paragraph (c) of subsection 4:*

26 (a) *Must be placed in an escrow that is administered by a person*
27 *designated in the settlement agreement; and*

28 (b) *May be disbursed only to pay for the repair of the construction*
29 *defect.*

30 **Sec. 21.** NRS 40.655 is hereby amended to read as follows:

31 40.655 1. Except as otherwise provided in NRS *40.645 and* 40.650,
32 in a claim governed by NRS 40.600 to 40.695, inclusive, the claimant may
33 recover only the following damages to the extent proximately caused by a
34 ~~constructional~~ *construction* defect:

35 (a) ~~Any reasonable attorney's fees;~~

36 ~~(b)] The reasonable cost of any repairs already made that were~~
37 ~~necessary and of any repairs yet to be made] that are necessary to cure any~~
38 ~~constructional~~ *construction* defect that the contractor failed to cure ~~and~~
39 ~~the reasonable expenses of temporary housing reasonably necessary during~~
40 ~~the repair;~~

41 ~~(c) The] or the~~ reduction in market value of the residence or ~~accessory~~
42 ~~structure.] appurtenance,~~ if any, ~~to the extent the reduction is because of~~
43 ~~structural~~ *failure;*

~~—(d) The loss of the use of all or any part of the residence;
—(e) resulting from a construction defect that has not been repaired by
the contractor, whichever is less;~~

(b) The reasonable value of any other property damaged by the
~~constructional defect;~~

~~—(f) Any additional costs reasonably incurred by the claimant, including,
but not limited to, any costs and fees incurred for the retention of experts
to;~~

~~—(1) Ascertain the nature and extent of the constructional defects;~~

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

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

~~—(g) construction defect;~~

(c) Any interest provided by statute ~~[-~~

~~2. The amount of any attorney's fees awarded pursuant to this section
must be approved by] ; and~~

**(d) Reasonable expenses of temporary housing reasonably necessary
during the repair.**

**2. Attorney's fees and costs may be awarded to either party as
provided by rule or statute applicable to** the court.

3. If a contractor complies with the provisions of NRS 40.600 to
40.695, inclusive, the claimant may not recover from the contractor, as a
result of the ~~constructional~~ **construction** defect, anything other than that
which is provided pursuant to NRS 40.600 to 40.695, inclusive.

~~[4. As used in this section, "structural failure" means physical damage
to the load-bearing portion of a residence or appurtenance caused by a
failure of the load-bearing portion of the residence or appurtenance.]~~

Sec. 22. NRS 40.660 is hereby amended to read as follows:

40.660 An offer of settlement that is not accepted within ~~[25]~~ **30** days
after the offer is ~~received by~~ **mailed to** the claimant is considered rejected
if the offer contains a clear and understandable statement notifying the
claimant of the consequences of his failure to respond or otherwise accept
or reject the offer of settlement. An affidavit certifying rejection of an offer
of settlement under this section may be filed with the court.

Sec. 23. NRS 40.665 is hereby amended to read as follows:

40.665 In addition to any other method provided for settling a claim
pursuant to NRS 40.600 to 40.695, inclusive, a contractor may, pursuant to
a written agreement entered into with a claimant, settle a claim by
repurchasing the claimant's residence and the real property upon which it is
located. The agreement may include provisions which reimburse the
claimant

for:

1 1. The market value of the residence as if no ~~{construction}~~
2 **construction** defect existed, except that if a residence is less than 2 years of
3 age and was purchased from the contractor against whom the claim is
4 brought, the market value is the price at which the residence was sold to the
5 claimant;

6 2. The value of any improvements made to the property by a person
7 other than the contractor;

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

9 4. Any costs, including costs and expenses for moving and costs, points
10 and fees for loans.

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

14 **Sec. 24.** NRS 40.670 is hereby amended to read as follows:

15 40.670 1. A contractor who receives written notice of a
16 ~~{construction}~~ **construction** defect resulting from work performed by the
17 contractor or his agent ~~{, employee or subcontractor}~~ **or employee** which
18 creates an imminent threat to the health or safety of the inhabitants of the
19 residence shall take reasonable steps to cure the defect as soon as
20 practicable. The contractor shall not cure the defect by making any repairs
21 for which he is not licensed or by causing any repairs to be made by a
22 person who is not licensed to make those repairs. If the contractor fails to
23 cure the defect in a reasonable time, the owner of the residence may have
24 the defect cured and may recover from the contractor the reasonable cost of
25 the repairs plus reasonable attorney's fees and costs in addition to any other
26 damages recoverable under any other law.

27 2. A contractor who does not cure a defect pursuant to this section
28 because he has determined, in good faith and after a reasonable inspection,
29 that there is not an imminent threat to the health or safety of the inhabitants
30 is not liable for attorney's fees and costs pursuant to this section, except
31 that if a building inspector employed by a governmental body with
32 jurisdiction certifies that there is an imminent threat to the health and safety
33 of the inhabitants of the residence, the contractor is subject to the
34 provisions of subsection 1.

35 **Sec. 25.** NRS 40.685 is hereby amended to read as follows:

36 40.685 1. Except as otherwise provided in subsection 2, a written
37 waiver or settlement agreement executed by a claimant after a contractor
38 has corrected or otherwise repaired a ~~{construction}~~ **construction** defect
39 does not bar a claim for the ~~{construction}~~ **construction** defect if it is
40 determined that the contractor failed to correct or repair the defect
41 properly.

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

- 1 (a) The claimant has obtained the opinion of an expert concerning the
2 ~~{construction}~~ **construction** defect;
3 (b) The claimant has provided the contractor with a written notice of the
4 defect pursuant to NRS 40.645 and a copy of the expert's opinion; and
5 (c) The claimant and the contractor have complied with the requirements
6 for inspection and repair as provided in NRS 40.600 to 40.695, inclusive.
7 3. If a claimant does not prevail in any action which is not barred
8 pursuant to this section, the court may:

9 (a) Deny the claimant's ~~{attorney's fees,}~~ fees for an expert witness or
10 costs; and

11 (b) Award attorney's fees and costs to the contractor ~~{,}~~ **, including,**
12 **without limitation, fees and costs associated with the retention of any**
13 **expert witnesses.**

14 **Sec. 26.** NRS 40.690 is hereby amended to read as follows:

15 40.690 1. A claim governed by NRS 40.600 to 40.695, inclusive,
16 may not be brought by a claimant or contractor against any ~~{third parties,~~
17 ~~including a}~~ government, governmental agency or political subdivision of a
18 government, during the period in which a claim for a ~~{construction}~~
19 **construction** defect is being settled, mediated or otherwise resolved
20 pursuant to NRS 40.600 to 40.695, inclusive. The settlement of such a
21 claim does not affect the rights or obligations ~~{of any person who is not a~~
22 ~~party to the settlement, and the failure to reach such a settlement does not~~
23 ~~affect the rights or obligations}~~ of the claimant or contractor in any action
24 brought by the claimant or contractor against a third party.

25 2. A ~~{contractor may require any third party except an insurer,~~
26 ~~government, governmental agency or political subdivision of a government~~
27 ~~to}~~ **third party against whom a contractor asserts a claim governed by**
28 **NRS 40.600 to 40.695, inclusive, shall** appear and participate in
29 proceedings **held** pursuant to ~~{NRS 40.600 to 40.695, inclusive,}~~ **those**
30 **sections** as if the third party were a contractor ~~{,}~~ **if the third party receives**
31 **prior notice of those proceedings from the contractor or the claimant.**

32 **Sec. 27.** NRS 40.695 is hereby amended to read as follows:

33 40.695 1. ~~{All statutes of limitation or}~~ **No action governed by NRS**
34 **40.600 to 40.695, inclusive, may be commenced against a contractor**
35 **more than 4 years after the substantial completion of the design,**
36 **construction, manufacture, repair or landscaping of a residence or**
37 **appurtenance.**

38 2. **The statute of limitation set forth in subsection 1 or any statute of**
39 **repose applicable to a claim based on a ~~{construction}~~ construction**
40 **defect governed by NRS 40.600 to 40.695, inclusive, ~~{are}~~ is tolled from**
41 **the time notice of the claim is given, until 30 days after mediation is**
42 **concluded or waived in writing pursuant to NRS 40.680.**

1 ~~[2-]~~ 3. Tolling under this section applies to a third party regardless of
2 whether the party is required to appear in the proceeding.

3 **Sec. 28.** NRS 624.300 is hereby amended to read as follows:

4 624.300 1. Except as otherwise provided in subsection 6, the board
5 may:

6 (a) Suspend or revoke licenses already issued;

7 (b) Refuse renewals of licenses;

8 (c) Impose limits on the field, scope and monetary limit of the license;

9 (d) Impose an administrative fine of not more than \$10,000;

10 (e) Order the licensee to take action to correct a condition resulting from
11 an act which constitutes a cause for disciplinary action, at the licensee's
12 cost; or

13 (f) Reprimand or take other less severe disciplinary action, including,
14 without limitation, increasing the amount of the surety bond or cash deposit
15 of the licensee,
16 if the licensee commits any act which constitutes a cause for disciplinary
17 action.

18 2. If the board suspends or revokes the license of a contractor for
19 failure to establish financial responsibility, the board may, in addition to
20 any other conditions for reinstating or renewing the license, require that
21 each contract undertaken by the licensee for a period to be designated by
22 the board, not to exceed 12 months, be separately covered by a bond or
23 bonds approved by the board and conditioned upon the performance of and
24 the payment of labor and materials required by the contract.

25 3. If a licensee commits a fraudulent act which is a cause for
26 disciplinary action under NRS 624.3016, the correction of any condition
27 resulting from the act does not preclude the board from taking disciplinary
28 action.

29 4. If the board finds that a licensee has engaged in repeated acts that
30 would be cause for disciplinary action, the correction of any resulting
31 conditions does not preclude the board from taking disciplinary action
32 pursuant to this section.

33 5. The expiration of a license by operation of law or by order or
34 decision of the board or a court, or the voluntary surrender of a license by a
35 licensee, does not deprive the board of jurisdiction to proceed with any
36 investigation of, or action or disciplinary proceeding against, the licensee
37 or to render a decision suspending or revoking the license.

38 6. The board shall not take any disciplinary action pursuant to this
39 section regarding a ~~[econstruction]~~ **construction** defect, as that term is
40 defined in NRS 40.615, during the period in which any claim arising out of
41 that defect is being settled, mediated or otherwise resolved pursuant to NRS
42 40.600 to 40.695, inclusive, unless the disciplinary action is necessary to
43 protect the public health or safety.

1 7. If discipline is imposed pursuant to this section, the costs of the
2 proceeding, including investigative costs and attorney’s fees, may be
3 recovered by the board.

4 **Sec. 29.** NRS 624.3011 is hereby amended to read as follows:

5 624.3011 1. The following acts, among others, constitute cause for
6 disciplinary action under NRS 624.300:

7 (a) Willful and prejudicial departure from or disregard of plans or
8 specifications in any material respect without the consent of the owner or
9 his authorized representative and the person entitled to have the particular
10 construction project or operation completed in accordance with the plans
11 and specifications.

12 (b) Failure to respond to a claim arising out of a ~~constructional~~
13 **construction** defect, as that term is defined in NRS 40.615.

14 (c) Willful or deliberate disregard and violation of:

15 (1) The building laws of the state or of any political subdivision
16 thereof.

17 (2) The safety laws or labor laws of the state.

18 (3) Any provision of the Nevada health and safety laws or the
19 regulations adopted thereunder relating to the digging, boring or drilling of
20 water wells.

21 (4) The laws of this state regarding industrial insurance.

22 2. If a contractor performs construction without obtaining any
23 necessary building permit, there is a rebuttable presumption that the
24 contractor willfully and deliberately violated the building laws of this state
25 or of its political subdivisions. The board shall not require the contractor to
26 obtain that permit more than 90 days after the construction is completed.