

SENATE BILL NO. 32—COMMITTEE ON COMMERCE AND LABOR

PREFILED JANUARY 25, 1999

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions concerning constructional defects and insurance for home protection. (BDR 3-22)

FISCAL NOTE: Effect on Local Government: Yes.
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; revising certain provisions governing claims against contractors for constructional defects in residences; revising the statutes of limitation and statutes of repose relating to certain actions on real property; requiring specified disclosures on the sale of certain residences; revising certain provisions governing insurance for home protection; 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
3 the provisions set forth as sections 2 to 6, inclusive, of this act.
4 **Sec. 2.** *Except as otherwise provided in this section and NRS 40.670:*
5 **1.** *Notwithstanding the provisions of subsection 1 of NRS 40.680, a*
6 *claimant may commence an action in district court in a complex matter.*
7 *If the claimant commences an action in district court he shall:*
8 **(a)** *File and serve the summons and complaint as required by law;*
9 *and*
10 **(b)** *At the same time and in the same manner as the claimant serves*
11 *the summons and complaint upon the contractor, serve upon the*
12 *contractor a written notice specifying in reasonable detail to the extent*
13 *known the defects, and any damages or injuries to each residence or*
14 *appurtenance that is the subject of the claim. The notice must describe in*
15 *reasonable detail each defect, the specific location of each defect, and the*
16 *nature and extent that is known of the damage or injury resulting from*
17 *each defect. If an expert opinion has been rendered concerning the*

1 *existence or extent of the defects, a written copy of the opinion must*
2 *accompany the notice. An expert opinion that specifies each defect to the*
3 *extent known, the specific location of each defect to the extent known,*
4 *and the nature and extent that is known of the damage or injury*
5 *resulting from each defect, based on a valid and reliable representative*
6 *sample of the residences and appurtenances involved in the action,*
7 *satisfies the requirements of this section.*

8 *2. The contractor shall file and serve an answer to the complaint as*
9 *required by law.*

10 *3. Not later than 30 days after the date of service of the answer to the*
11 *complaint, the contractor and claimant shall meet to establish a schedule*
12 *for:*

13 *(a) The exchange of or reasonable access for the other party to all*
14 *relevant reports, photos, correspondence, plans, specifications,*
15 *warranties, contracts, subcontracts, work orders for repair, videotapes,*
16 *technical reports, soil and other engineering reports and other*
17 *documents or materials relating to the claim that are not privileged;*

18 *(b) The inspection of the residence or appurtenance that is the subject*
19 *of the claim to evaluate the defects set forth in the notice served pursuant*
20 *to subsection 1; and*

21 *(c) The conduct of any tests that are reasonably necessary to*
22 *determine the nature and cause of a defect or any damage or injury, and*
23 *the nature and extent of repairs necessary to remedy a defect or any*
24 *damage or injury. The party conducting the test shall provide reasonable*
25 *notice of the test to all other parties and conduct the test at a reasonable*
26 *time.*

27 *4. At the meeting held pursuant to subsection 3, the claimant and*
28 *contractor shall:*

29 *(a) Establish a schedule for the addition of any additional parties to*
30 *the complaint or to file any third-party complaint against an additional*
31 *party who may be responsible for all or a portion of the defects set forth*
32 *in the notice served pursuant to subsection 1;*

33 *(b) Unless the claimant and contractor agree otherwise in writing,*
34 *select a mediator and proceed with mediation as provided in subsections*
35 *2 to 6, inclusive, of NRS 40.680; and*

36 *(c) If the claimant and contractor agree, select a special master and*
37 *jointly petition the court for his appointment pursuant to subsection 7.*

38 *5. Each party added to the complaint or against whom a third-party*
39 *complaint is filed pursuant to subsection 4 shall file and serve an answer*
40 *as required by law.*

41 *6. If the claimant or contractor adds a party to the complaint or files*
42 *a third-party complaint, then not later than 60 days after the date*
43 *determined pursuant to paragraph (a) of subsection 4, the contractor,*

1 *claimant and each party added to the complaint or against whom a*
2 *third-party complaint is filed shall meet to establish a schedule for the*
3 *activities set forth in paragraphs (a), (b) and (c) of subsection 3.*

4 *7. If a special master has not been appointed, the contractor,*
5 *claimant or a party added to the complaint or against whom a third-party*
6 *complaint is filed may petition the court for the appointment of a special*
7 *master at any time after the meeting held pursuant to subsection 3. The*
8 *special master may:*

9 *(a) Take any action set forth in subsection 4 of NRS 40.680;*

10 *(b) Exercise any power set forth in Rule 53 of the Nevada Rules of*
11 *Civil Procedure; and*

12 *(c) Subject to the provisions of NRS 40.680, if the parties fail to*
13 *establish a schedule or determine a date as required in subsection 3, 4 or*
14 *6, establish the schedule or determine the date.*

15 *8. Unless the mediation required pursuant to paragraph (b) of*
16 *subsection 4 is completed or the contractor and claimant have agreed in*
17 *writing not to mediate the claim pursuant to paragraph (b) of subsection*
18 *4, a party shall not propound interrogatories or requests for admission,*
19 *take a deposition or file a motion that is dispositive of the action except:*

20 *(a) Upon agreement of the parties; or*

21 *(b) With the prior approval of the court or special master.*

22 *9. If a residence or appurtenance that is the subject of the claim is*
23 *covered by a homeowner's warranty that is purchased by or on behalf of*
24 *a claimant pursuant to NRS 690B.100 to 690B.180, inclusive, a claimant*
25 *shall diligently pursue a claim under the contract.*

26 *10. Unless the parties agree otherwise, not less than 60 days before*
27 *the date of the mediation pursuant to paragraph (b) of subsection 4 is*
28 *convened, the contractor shall make a written response to the claimant*
29 *that meets the requirements set forth in subsection 3 of NRS 40.645.*

30 *11. If the claimant is a representative of a homeowner's association,*
31 *the association shall submit any response made by the contractor to each*
32 *member of the association in writing not more than 30 days after the date*
33 *the claimant receives the response.*

34 *12. The claimant shall respond to the written response of the*
35 *contractor within 45 days after the response of the contractor is mailed to*
36 *the claimant.*

37 **Sec. 3.** *Except as otherwise provided in NRS 40.670, if a contractor*
38 *receives written notice of a constructional defect that is not part of a*
39 *complex matter not more than 1 year after the close of escrow of the*
40 *initial purchase of the residence, the contractor shall make the repairs*
41 *within 45 days after the contractor receives the written notice unless*
42 *completion is delayed by the claimant or by other events beyond the*
43 *control of the contractor, or timely completion of repairs is not*

1 *reasonably possible. The contractor and claimant may agree in writing to*
2 *extend the period prescribed by this section. If the contractor fails to*
3 *comply with this section, he is immediately subject to discipline pursuant*
4 *to NRS 624.300.*

5 **Sec. 4.** *If, after complying with the procedural requirements of NRS*
6 *40.645 and 40.680, or section 2 of this act, a claimant proceeds with an*
7 *action for damages arising from a constructional defect:*

8 *1. The claimant and each contractor who is named in the original*
9 *complaint when the action is commenced are not required, while the*
10 *action is pending, to comply with the requirements of NRS 40.645 or*
11 *40.680, or section 2 of this act, for any constructional defect that the*
12 *claimant includes in an amended complaint, if the constructional defect:*

13 *(a) Is attributable, in whole or in part, to such a contractor;*

14 *(b) Is located on the same property described in the original*
15 *complaint; and*

16 *(c) Was not discovered before the action was commenced provided*
17 *that a good faith effort had been undertaken by the claimant.*

18 *2. The claimant is not required to give written notice of a defect*
19 *pursuant to subsection 1 of NRS 40.645 or subsection 1 of section 2 of*
20 *this act to any person who is joined to or intervenes in the action as a*
21 *party after it is commenced. If such a person becomes a party to the*
22 *action:*

23 *(a) For the purposes of subsection 1 of NRS 40.645 or subsection 1 of*
24 *section 2 of this act, the person shall be deemed to have been given notice*
25 *of the defect by the claimant on the date on which the person becomes a*
26 *party to the action; and*

27 *(b) The provisions of NRS 40.600 to 40.695, inclusive, and sections 2*
28 *to 6, inclusive, of this act apply to the person after that date.*

29 **Sec. 5.** *1. Notwithstanding the provisions of NRS 40.600 to 40.695,*
30 *inclusive, and sections 2, 3, 4 and 6 of this act, a claimant may not*
31 *commence an action against a subdivider or master developer for a*
32 *constructional defect in an appurtenance constructed on behalf of the*
33 *subdivider or master developer in a planned unit development, to the*
34 *extent that the appurtenance was constructed by or through a licensed*
35 *general contractor, unless:*

36 *(a) The subdivider or master developer fails to provide to the claimant*
37 *the name, address and telephone number of each contractor hired by the*
38 *subdivider or master developer to construct the appurtenance within 30*
39 *days of the receipt by the subdivider or master developer of a request*
40 *from the claimant for such information; or*

41 *(b) After the claimant has made a good faith effort to obtain full*
42 *recovery from the contractors hired by the subdivider or master developer*

1 to construct the appurtenance, the claimant has not obtained a full
2 recovery.

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

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

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

11 Tolling pursuant to this subsection applies only to the subdivider or
12 master developer. Notwithstanding any applicable statute of limitation or
13 repose, the claimant may commence an action against the subdivider or
14 master developer for the claim within 1 year after the end of the tolling
15 described in this subsection.

16 3. Nothing in this section prohibits the commencement of an action
17 against a subdivider or master developer for a constructional defect in a
18 residence sold, designed or constructed by or on behalf of the subdivider
19 or master developer.

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

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

27 6. As used in this section:

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

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

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

34 **Sec. 6. 1.** If a claimant attempts to sell a residence that is or has
35 been the subject of a claim governed by NRS 40.600 to 40.695, inclusive,
36 and sections 2 to 6, inclusive, of this act, he shall disclose, in writing, to
37 any prospective purchaser of the residence, not less than 30 days before
38 the close of escrow for the sale of the residence or, if escrow is to close
39 less than 30 days after the execution of the sales agreement, then
40 immediately upon the execution of the sales agreement or, if a claim is
41 initiated less than 30 days before the close of escrow, within 24 hours
42 after giving written notice to the contractor pursuant to subsection 1 of
43 NRS 40.645 or subsection 1 of section 2 of this act:

1 (a) All notices given by the claimant to the contractor pursuant to
2 NRS 40.600 to 40.695, inclusive, and sections 2 to 6, inclusive, of this act
3 that are related to the residence;

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

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

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

11 2. Before taking any action on a claim pursuant to NRS 40.600 to
12 40.695, inclusive, and sections 2 to 6, inclusive, of this act, the attorney
13 for a claimant shall notify the claimant in writing of the provisions of
14 this section.

15 Sec. 7. NRS 40.600 is hereby amended to read as follows:

16 40.600 As used in NRS 40.600 to 40.695, inclusive, **and sections 2 to**
17 **6, inclusive, of this act**, unless the context otherwise requires, the words
18 and terms defined in NRS 40.605 to 40.630, inclusive, have the meanings
19 ascribed to them in those sections.

20 Sec. 8. NRS 40.605 is hereby amended to read as follows:

21 40.605 1. "Appurtenance" means a structure, installation, facility ~~for~~
22 amenity **or other improvement** that is appurtenant to ~~a residence,~~ **or**
23 **benefits one or more residences**, but is not a part of the dwelling unit. The
24 term includes, without limitation, the parcel of real property, recreational
25 facilities, golf courses, walls, sidewalks, driveways, landscaping, **common**
26 **elements and limited common elements other than those described in**
27 **NRS 116.2102**, and other structures, installations, facilities and amenities
28 associated with ~~a residence,~~ **or benefiting one or more residences.**

29 2. As used in this section:

30 (a) "Common elements" has the meaning ascribed to it in NRS
31 116.110318.

32 (b) "Limited common element" has the meaning ascribed to it in NRS
33 116.110355.

34 Sec. 8.5. NRS 40.625 is hereby amended to read as follows:

35 40.625 "Homeowner's warranty" means a warranty or policy of
36 insurance:

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

39 2. Purchased by **or on behalf of** a claimant pursuant to NRS 690B.100
40 to 690B.180, inclusive.

41 The term includes a warranty contract issued by a risk retention group that
42 operates in compliance with chapter 695E of NRS and insures all or any

1 part of the liability of a contractor for the cost to repair a constructional
2 defect in a residence.

3 **Sec. 9.** NRS 40.645 is hereby amended to read as follows:

4 40.645 Except as otherwise provided in this section and NRS 40.670:

5 1. ~~{At}~~ *For a claim that is not a complex matter, at* least 60 days
6 before a claimant commences an action against a contractor for damages
7 arising from a constructional defect, the claimant must give written notice
8 by certified mail, return receipt requested, to the contractor, at the
9 contractor's last known address, specifying in reasonable detail the defects
10 or any damages or injuries to each residence or ~~{each unit within a~~
11 ~~multiple-unit residence}~~ *appurtenance* that is the subject of the claim. The
12 notice must describe in reasonable detail the cause of the defects if the
13 cause is known, ~~{and}~~ the nature and extent that is known of the damage or
14 injury resulting from the defects ~~{. In a complex matter, an}~~ *and the*
15 *location of each defect within each residence or appurtenance to the*
16 *extent known. An* expert opinion concerning the cause of the defects and
17 the nature and extent of the damage or injury resulting from the defects
18 based on a representative sample of the *components of the* residences ~~{or~~
19 ~~of the units of each multiple-unit residence}~~ *and appurtenances* involved in
20 the action satisfies the requirements of this section. During the ~~{35-day}~~
21 *45-day* period after the contractor receives the notice, on his written
22 request, the contractor is entitled to inspect the property that is the subject
23 of the claim to determine the nature and cause of the defect, damage or
24 injury and the nature and extent of repairs necessary to remedy the defect.
25 The contractor shall, before making the inspection, provide reasonable
26 notice of the inspection and ~~{must}~~ *shall* make the inspection at a
27 reasonable time. The contractor may take reasonable steps to establish the
28 existence of the defect.

29 2. If ~~{the}~~ *a residence or appurtenance that is the subject of the claim*
30 is covered by a homeowner's warranty ~~{,}~~ *that is purchased by or on*
31 *behalf of a claimant pursuant to NRS 690B.100 to 690B.180, inclusive,* a
32 claimant ~~{must}~~ *shall* diligently pursue a claim under the ~~{warranty or}~~
33 contract.

34 3. Within ~~{45}~~ *60* days after the contractor receives the notice, the
35 contractor ~~{may}~~ *shall* make a written ~~{offer of settlement}~~ *response* to the
36 claimant. The ~~{offer:}~~ *response:*

37 (a) Must be served to the claimant by certified mail, return receipt
38 requested, at the claimant's last known address.

39 (b) Must respond to each constructional defect set forth in the claimant's
40 notice, and describe in reasonable detail the cause of the defect, if known,
41 the nature and extent of the damage or injury resulting from the defect, and,
42 unless the ~~{offer}~~ *response* is limited to a proposal for monetary

1 compensation, the method, adequacy and estimated cost of ~~{the}~~ any
2 proposed repair.

3 (c) May include:

4 (1) A proposal for monetary compensation ~~{-}~~ , *which may include a*
5 *contribution from a subcontractor.*

6 (2) If the contractor *or his subcontractor* is licensed to make the
7 repairs, an agreement by the contractor *or subcontractor* to make the
8 repairs.

9 (3) An agreement by the contractor to cause the repairs to be made, at
10 the contractor's expense, by another contractor who is licensed to make the
11 repairs, bonded and insured.

12 The repairs must be made within 45 days after the contractor receives
13 written notice of acceptance of the ~~{offer,}~~ *response*, unless completion is
14 delayed by the claimant or by other events beyond the control of the
15 contractor ~~{-}~~ , *or timely completion of the repairs is not reasonably*
16 *possible.* The claimant and the contractor may agree in writing to extend
17 the periods prescribed by this section.

18 4. ~~{The periods provided in subsections 1 and 3 must be extended by~~
19 ~~60 days if the claim is a complex matter. The parties may stipulate to a~~
20 ~~further extension.~~

21 ~~-5-}~~ Not later than 15 days before the mediation required pursuant to
22 NRS 40.680 and upon providing 15 days' notice, each party shall provide
23 the other party, or shall make a reasonable effort to assist the other party to
24 obtain, all relevant reports, photos, correspondence, plans, specifications,
25 warranties, contracts, subcontracts, work orders for repair, videotapes ~~{and}~~
26 *, technical reports*, soil and other engineering reports *and other documents*
27 *or materials relating to the claim* that are not privileged.

28 ~~{6-}~~ 5. If the claimant is a representative of a homeowner's association,
29 the association shall submit any ~~{offer of settlement}~~ *response* made by the
30 contractor to each member of the association.

31 6. *As used in this section, "subcontractor" means a contractor who*
32 *performs work on behalf of another contractor in the construction of a*
33 *residence or appurtenance.*

34 **Sec. 10.** NRS 40.650 is hereby amended to read as follows:

35 40.650 1. If a claimant unreasonably rejects a reasonable written
36 offer of settlement *made as part of a response* made pursuant to NRS
37 40.645 *or section 2 of this act* or does not permit the contractor or
38 independent contractor a reasonable opportunity to repair the defect
39 pursuant to an accepted offer of settlement and thereafter commences an
40 action governed by NRS 40.600 to 40.695, inclusive, *and sections 2 to 6,*
41 *inclusive, of this act*, the court in which the action is commenced may:

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

1 (b) Award attorney's fees and costs to the contractor.
2 Any sums paid under a homeowner's warranty, other than sums paid in
3 satisfaction of claims that are collateral to any coverage issued to or by the
4 contractor, must be deducted from any recovery.

5 2. If a contractor fails to:

6 (a) Make an offer of settlement;

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

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

10 (d) Agree to a mediator or accept the appointment of a mediator
11 pursuant to NRS 40.680 ~~H~~ *or subsection 4 of section 2 of this act*; or

12 (e) Participate in mediation,
13 the limitations on damages and defenses to liability provided in NRS
14 40.600 to 40.695, inclusive, *and sections 2 to 6, inclusive, of this act* do
15 not apply and the claimant may commence an action without satisfying any
16 other requirement of NRS 40.600 to 40.695, inclusive ~~H~~, *and sections 2*
17 *to 6, inclusive, of this act*.

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

22 **Sec. 11.** NRS 40.660 is hereby amended to read as follows:

23 40.660 An offer of settlement that is not accepted within :

24 *1. In a complex matter, 45 days; or*

25 *2. In a matter that is not a complex matter, 25 days ,*

26 after the offer is received by the claimant is considered rejected if the offer
27 contains a clear and understandable statement notifying the claimant of the
28 consequences of his failure to respond or otherwise accept or reject the
29 offer of settlement. An affidavit certifying rejection of an offer of
30 settlement under this section may be filed with the court.

31 **Sec. 12.** NRS 40.685 is hereby amended to read as follows:

32 40.685 1. Except as otherwise provided in subsection 2, a written
33 waiver or settlement agreement executed by a claimant after a contractor
34 has corrected or otherwise repaired a constructional defect does not bar a
35 claim for the constructional defect if it is determined that the contractor
36 failed to correct or repair the defect properly.

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

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

41 (b) The claimant has provided the contractor with a written notice of the
42 defect pursuant to NRS 40.645 *or section 2 of this act* and a copy of the
43 expert's opinion; and

(c) The claimant and the contractor have complied with the requirements for inspection and repair as provided in NRS 40.600 to 40.695, inclusive ~~§~~, and sections 2 to 6, inclusive, of this act.

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

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

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

Sec. 12.5. NRS 40.687 is hereby amended to read as follows:

40.687 Notwithstanding any other provision of law:

1. A claimant shall, within 10 days after commencing an action against a contractor, disclose to the contractor all information about any homeowner's warranty that is applicable to the claim.

2. The contractor shall, no later than 10 days after ~~any settlement offer~~ a response is made pursuant to this chapter, disclose to the claimant any information about insurance agreements that may be obtained by discovery pursuant to rule 26(b)(2) of the Nevada Rules of Civil Procedure. Such disclosure does not affect the admissibility at trial of the information disclosed.

3. Except as otherwise provided in subsection 4, if either party fails to provide the information required pursuant to subsection 1 or 2 within the time allowed, the other party may petition the court to compel production of the information. Upon receiving such a petition, the court may order the party to produce the required information and may award the petitioning party reasonable attorney's fees and costs incurred in petitioning the court pursuant to this subsection.

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

5. For the purposes of this section, "information about insurance agreements" is limited to any declaration sheets, endorsements and contracts of insurance issued to the contractor from the commencement of construction of the residence of the claimant to the date on which the request for the information is made and does not include information concerning any disputes between the contractor and an insurer or information concerning any reservation of rights by an insurer.

Sec. 13. NRS 40.690 is hereby amended to read as follows:

40.690 1. A claim governed by NRS 40.600 to 40.695, inclusive, and sections 2 to 6, inclusive, of this act may not be brought by a claimant or contractor against ~~any third parties, including~~ a government, governmental agency or political subdivision of a government, during the period in which a claim for a constructional defect is being settled, mediated or otherwise resolved pursuant to NRS 40.600 to 40.695, inclusive ~~§~~, and sections 2 to 6, inclusive, of this act. The settlement of

1 such a claim does not affect the rights or obligations ~~[of any person who is~~
2 ~~not a party to the settlement, and the failure to reach such a settlement does~~
3 ~~not affect the rights or obligations]~~ of the claimant or contractor in any
4 action brought by the claimant or contractor against a third party.

5 2. A contractor **or claimant** may require ~~[any third party except an~~
6 ~~insurer, government, governmental agency or political subdivision of a~~
7 ~~government]~~ **a party against whom the contractor or claimant asserts a**
8 **claim governed by NRS 40.600 to 40.695, inclusive, and sections 2 to 6,**
9 **inclusive, of this act** to appear and participate in proceedings **held** pursuant
10 to ~~[NRS 40.600 to 40.695, inclusive,]~~ **those sections** as if the ~~[third]~~ party
11 were a contractor ~~[.]~~ **and the party requiring him to appear were a**
12 **claimant. The party must receive notice of the proceedings from the**
13 **contractor or claimant.**

14 **Sec. 14.** NRS 40.695 is hereby amended to read as follows:

15 40.695 1. ~~[All]~~ **Except as otherwise provided in subsection 2,**
16 statutes of limitation or repose applicable to a claim based on a
17 constructional defect governed by NRS 40.600 to 40.695, inclusive, **and**
18 **sections 2 to 6, inclusive, of this act** are tolled from the time notice of the
19 claim is given, until 30 days after mediation is concluded or waived in
20 writing pursuant to NRS 40.680 ~~[.]~~ **or subsection 4 of section 2 of this act.**

21 2. Tolling under this section applies ~~[to]~~ :

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

23 **(b) To a third party regardless of whether the party is required to appear**
24 **in the proceeding.**

25 **Sec. 15.** Chapter 11 of NRS is hereby amended by adding thereto a
26 new section to read as follows:

27 **1. Except as otherwise provided in subsection 2, for the purposes of**
28 **this section and NRS 11.202 to 11.206, inclusive, the date of substantial**
29 **completion of an improvement to real property shall be deemed to be the**
30 **date on which:**

31 **(a) The final building inspection of the improvement is conducted;**

32 **(b) A notice of completion is issued for the improvement; or**

33 **(c) A certificate of occupancy is issued for the improvement,**
34 **whichever occurs later.**

35 **2. If none of the events described in subsection 1 occurs, the date of**
36 **substantial completion of an improvement to real property must be**
37 **determined by the rules of the common law.**

38 **Sec. 16.** NRS 11.203 is hereby amended to read as follows:

39 11.203 1. Except as otherwise provided in NRS 11.202 ~~[.]~~ **and**
40 **11.206,** no action may be commenced against the owner, occupier or any
41 person performing or furnishing the design, planning, supervision or
42 observation of construction, or the construction of an improvement to real

1 property more than 10 years after the substantial completion of such an
2 improvement, for the recovery of damages for:

3 (a) Any deficiency in the design, planning, supervision or observation of
4 construction or the construction of such an improvement which is known or
5 through the use of reasonable diligence should have been known to him;

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

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

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

17 *3. The provisions of this section do not apply to a claim for*
18 *indemnity or contribution.*

19 **Sec. 17.** NRS 11.204 is hereby amended to read as follows:

20 11.204 1. Except as otherwise provided in NRS 11.202 ~~{and 11.203,}~~
21 *, 11.203 and 11.206*, no action may be commenced against the owner,
22 occupier or any person performing or furnishing the design, planning,
23 supervision or observation of construction, or the construction, of an
24 improvement to real property more than 8 years after the substantial
25 completion of such an improvement, for the recovery of damages for:

26 (a) Any latent deficiency in the design, planning, supervision or
27 observation of construction or the construction of such an improvement;

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

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

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

39 *3. The provisions of this section do not apply to a claim for*
40 *indemnity or contribution.*

41 *4.* For the purposes of this section, "latent deficiency" means a
42 deficiency which is not apparent by reasonable inspection.

1 **Sec. 18.** NRS 11.205 is hereby amended to read as follows:

2 11.205 1. Except as otherwise provided in NRS 11.202 ~~{and 11.203,}~~
3 , **11.203 and 11.206**, no action may be commenced against the owner,
4 occupier or any person performing or furnishing the design, planning,
5 supervision or observation of construction, or the construction of an
6 improvement to real property more than 6 years after the substantial
7 completion of such an improvement, for the recovery of damages for:

8 (a) Any patent deficiency in the design, planning, supervision or
9 observation of construction or the construction of such an improvement;

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

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

13 2. Notwithstanding the provisions of NRS 11.190 and subsection 1 of
14 this section, ~~{where}~~ **if an** injury occurs in the sixth year after the
15 substantial completion of such an improvement, an action for damages for
16 injury to property or person, damages for wrongful death resulting from
17 such injury or damages for breach of contract may be commenced within 2
18 years after the date of such injury, irrespective of the date of death, but in
19 no event may an action be commenced more than 8 years after the
20 substantial completion of the improvement.

21 3. ***The provisions of this section do not apply to a claim for***
22 ***indemnity or contribution.***

23 4. For the purposes of this section, "patent deficiency" means a
24 deficiency which is apparent by reasonable inspection.

25 **Sec. 19.** Chapter 113 of NRS is hereby amended by adding thereto a
26 new section to read as follows:

27 ***1. Upon signing a sales agreement with the initial purchaser of***
28 ***residential property that was not occupied by the purchaser for more***
29 ***than 120 days after substantial completion of the construction of the***
30 ***residential property, the seller shall:***

31 ***(a) Provide to the initial purchaser a copy of NRS 11.202 to 11.206,***
32 ***inclusive, and section 15 of this act and NRS 40.600 to 40.695, inclusive,***
33 ***and sections 2 to 6, inclusive, of this act;***

34 ***(b) Notify the initial purchaser of any soil report prepared for the***
35 ***residential property or for the subdivision in which the residential***
36 ***property is located; and***

37 ***(c) If requested in writing by the initial purchaser not later than 5***
38 ***days after signing the sales agreement, provide to the purchaser without***
39 ***cost each report described in paragraph (b) not later than 5 days after the***
40 ***seller receives the written request.***

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

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

4 **Sec. 20.** NRS 113.100 is hereby amended to read as follows:

5 113.100 As used in NRS 113.100 to 113.150, inclusive, **and section**
6 **19 of this act**, unless the context otherwise requires:

7 1. "Defect" means a condition that materially affects the value or use
8 of residential property in an adverse manner.

9 2. "Disclosure form" means a form that complies with the regulations
10 adopted pursuant to NRS 113.120.

11 3. "Dwelling unit" means any building, structure or portion thereof
12 which is occupied as, or designed or intended for occupancy as, a residence
13 by one person who maintains a household or by two or more persons who
14 maintain a common household.

15 4. "Residential property" means any land in this state to which is
16 affixed not less than one nor more than four dwelling units.

17 5. "Seller" means a person who sells or intends to sell any residential
18 property.

19 **Sec. 21.** NRS 624.300 is hereby amended to read as follows:

20 624.300 1. Except as otherwise provided in subsection 6, the board
21 may:

22 (a) Suspend or revoke licenses already issued;

23 (b) Refuse renewals of licenses;

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

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

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

29 (f) Reprimand or take other less severe disciplinary action, including,
30 without limitation, increasing the amount of the surety bond or cash deposit
31 of the licensee,
32 if the licensee commits any act which constitutes a cause for disciplinary
33 action.

34 2. If the board suspends or revokes the license of a contractor for
35 failure to establish financial responsibility, the board may, in addition to
36 any other conditions for reinstating or renewing the license, require that
37 each contract undertaken by the licensee for a period to be designated by
38 the board, not to exceed 12 months, be separately covered by a bond or
39 bonds approved by the board and conditioned upon the performance of and
40 the payment of labor and materials required by the contract.

41 3. If a licensee commits a fraudulent act which is a cause for
42 disciplinary action under NRS 624.3016, the correction of any condition

1 resulting from the act does not preclude the board from taking disciplinary
2 action.

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

7 5. The expiration of a license by operation of law or by order or
8 decision of the board or a court, or the voluntary surrender of a license by a
9 licensee, does not deprive the board of jurisdiction to proceed with any
10 investigation of, or action or disciplinary proceeding against, the licensee
11 or to render a decision suspending or revoking the license.

12 6. ~~{The}~~ *Except as otherwise provided in section 3 of this act, the*
13 board shall not take any disciplinary action pursuant to this section
14 regarding a constructional defect, as that term is defined in NRS 40.615,
15 during the period in which any claim arising out of that defect is being
16 settled, mediated or otherwise resolved pursuant to NRS 40.600 to 40.695,
17 inclusive, *and sections 2 to 6, inclusive, of this act*, unless the disciplinary
18 action is necessary to protect the public health or safety.

19 7. If discipline is imposed pursuant to this section, the costs of the
20 proceeding, including investigative costs and attorney's fees, may be
21 recovered by the board.

22 **Sec. 22.** NRS 690B.100 is hereby amended to read as follows:

23 690B.100 As used in NRS 690B.100 to 690B.180, inclusive, unless
24 the context otherwise requires:

25 1. "Home" means a structure used primarily for residential purposes
26 and includes ~~{a single-family dwelling, a}~~, *without limitation:*

27 *(a) A single-family dwelling;*

28 *(b) A unit in a multiple-family structure ~~{and a}~~;*

29 *(c) A mobile home ~~{.}~~; and*

30 *(d) The common elements of a common-interest community, as*
31 *defined in NRS 116.110318, and any appurtenance to the common*
32 *elements.*

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

40 **Sec. 23.** NRS 690B.140 is hereby amended to read as follows:

41 690B.140 An insurer who issues policies of insurance for home
42 protection, other than casualty insurance, may make investments in tangible
43 personal property for use in fulfilling its obligations to repair or replace

1 components, systems or appliances of the home under its contracts of
2 insurance for home protection, in an amount not to exceed ~~25~~ 35 percent
3 of its assets, as determined pursuant to NRS 681B.010, unless the
4 commissioner, whenever he deems it appropriate, waives this limitation by
5 regulation.

6 **Sec. 24.** NRS 690B.160 is hereby amended to read as follows:

7 690B.160 1. A contract of insurance for home protection must
8 specify:

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

11 (b) Any exclusions from and limitations on coverage.

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

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

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

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

21 (g) That ~~services will be performed upon a telephoned request to~~ the
22 insurer *will commence an investigation of a claim upon a request from*
23 *the insured by telephone*, without any requirement that claim forms or
24 applications be filed before the ~~performance of service.~~ *commencement*
25 *of the investigation.*

26 (h) That *, except in an emergency, including, without limitation, the*
27 *loss of heating, cooling, plumbing or electrical service by the insured,*
28 *services will be initiated by or under the direction of the insurer within 48*
29 *hours after* ~~proper request is made for services.~~ *the conclusion of an*
30 *investigation of a claim. Work must commence on an emergency not*
31 *later than 24 hours after the report of the claim. The commissioner may*
32 *adopt regulations to define “emergency” for the purposes of this*
33 *paragraph.*

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

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

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

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

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

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

6 **Sec. 25.** NRS 690B.180 is hereby amended to read as follows:

7 690B.180 An insurer who issues policies of insurance for home
8 protection, other than casualty insurance, shall not:

9 1. Engage in any *other* business ~~{other than the furnishing}~~ of
10 insurance ~~{for home protection.}~~ *or real estate pursuant to chapters 645 to*
11 *645D, inclusive, of NRS.*

12 2. Assume reinsurance from any other insurer.

13 **Sec. 26.** The amendatory provisions of this act do not apply to a claim
14 initiated or an action commenced pursuant to NRS 40.600 to 40.695,
15 inclusive, and sections 2 to 6, inclusive, of this act, unless the claim was
16 initiated or the action was commenced on or after July 1, 1999.

17 **Sec. 27.** This act becomes effective on July 1, 1999.