
SENATE BILL NO. 380—SENATORS TOWNSEND, AMODEI, RHOADS, WASHINGTON,
MATHEWS AND TITUS

MARCH 11, 1999

Referred to Committee on Judiciary

SUMMARY—Establishes screening panel to review claims for damages resulting from constructional defects caused by acts or omissions of professional engineers or professional land surveyors. (BDR 3-1144)

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 actions resulting from constructional defects; establishing a screening panel to review claims for damages resulting from a constructional defect caused by an act or omission of a professional engineer or professional land surveyor; 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.** Title 3 of NRS is hereby amended by adding thereto a new
2 chapter to consist of the provisions set forth as sections 2 to 25, inclusive,
3 of this act.
- 4 **Sec. 2.** *As used in this chapter, unless the context otherwise requires,*
5 *the words and terms defined in sections 3 to 8, inclusive, of this act have*
6 *the meanings ascribed to them in those sections.*
- 7 **Sec. 3.** *“Claim” means a claim to recover damages resulting from a*
8 *constructional defect caused by an act or omission of a professional*
9 *engineer or professional land surveyor.*
- 10 **Sec. 4.** *“Constructional defect” has the meaning ascribed to it in*
11 *NRS 40.615.*
- 12 **Sec. 5.** *“Division” means the division of insurance of the*
13 *department of business and industry.*
- 14 **Sec. 6.** *“Engineering and surveying records” means written reports,*
15 *notes, orders, photographs, plans or other written records received or*
16 *produced by a professional engineer or professional land surveyor, or a*

1 *person employed by a professional engineer or professional land*
2 *surveyor, that contains information relating to the engineering or*
3 *surveying project that is the subject of a claim.*

4 **Sec. 7.** *“Professional engineer” has the meaning ascribed to it in*
5 *NRS 625.060.*

6 **Sec. 8.** *“Professional land surveyor” has the meaning ascribed to it*
7 *in NRS 625.070.*

8 **Sec. 9. 1.** *No action involving a claim may be filed until the claim*
9 *has been submitted to a screening panel and a determination made by the*
10 *panel as provided in this chapter. Any action involving a claim that is*
11 *filed without satisfying the requirements of this chapter is subject to*
12 *dismissal without prejudice for failure to comply with this section.*

13 **2.** *The written findings of the screening panel are admissible in any*
14 *action concerning a claim that is subsequently filed in district court. No*
15 *other evidence concerning the screening panel or its deliberations is*
16 *admissible, and no member of the screening panel may be called to*
17 *testify in such an action.*

18 **Sec. 10.** *There is hereby created a tentative screening panel from*
19 *which a screening panel must be selected to hear a claim.*

20 **Sec. 11. 1.** *The board of governors of the Nevada Trial Lawyers*
21 *Association may designate 40 of its members to serve on the tentative*
22 *screening panel. Each person so designated shall serve for a term of 1*
23 *year.*

24 **2.** *The state board of professional engineers and land surveyors may*
25 *designate 40 of its members to serve on the tentative screening panel.*
26 *Each person so designated shall serve for a term of 1 year.*

27 **Sec. 12. 1.** *The commissioner of insurance shall arrange for*
28 *courses of instruction in the rules of procedure and substantive law*
29 *appropriate for members of the tentative screening panel.*

30 **2.** *A person who has been designated to serve on the tentative*
31 *screening panel must attend the instruction provided pursuant to*
32 *subsection 1 before serving on a screening panel.*

33 **Sec. 13. 1.** *The members of a screening panel shall elect one*
34 *member to serve as chairman.*

35 **2.** *A screening panel is a state agency. The rules adopted pursuant to*
36 *section 15 of this act apply to all screening panels.*

37 **Sec. 14.** *The provisions of chapter 241 of NRS do not apply to a*
38 *meeting of a screening panel.*

39 **Sec. 15.** *The division, through the commissioner of insurance:*

40 **1.** *Shall maintain a list of the names of the attorneys, professional*
41 *engineers and professional land surveyors designated as qualified to*
42 *serve on the tentative screening panel;*

43 **2.** *Shall select the members of screening panels;*

1 3. Shall schedule hearings for those panels;

2 4. Shall obtain, before or after filing of a complaint such
3 engineering and surveying records, statements of policy and procedure,
4 and other materials as may be required by the parties or the screening
5 panel in connection with the claim;

6 5. Shall charge and collect a reasonable fee for copying materials
7 produced under subpoena;

8 6. May, for good cause shown, authorize a continuance for the
9 proceedings involving a screening panel; and

10 7. May adopt rules of practice and procedure to carry out its duties
11 as set forth in this chapter.

12 **Sec. 16.** Any money received by the division pursuant to the
13 provisions of this chapter must be deposited with the state treasurer for
14 credit to the account for the division of insurance in the state general
15 fund. The administrative costs of the screening panels must be paid from
16 the account.

17 **Sec. 17.** 1. A claim is properly presented to a screening panel by
18 filing a complaint with the division. A fee of \$350 must accompany the
19 complaint.

20 2. The complaint must contain a clear and concise statement of the
21 facts of the case, showing the persons involved and the dates and
22 circumstances, so far as they are known, of the alleged acts or omissions
23 that caused the constructional defect. The screening panel may dismiss
24 the complaint if the complaint is filed without an affidavit supporting the
25 allegations of the complaint submitted by an expert in engineering or
26 land surveying.

27 3. The person against whom the complaint is made must, within 90
28 days after receipt of the complaint, file an answer with the division,
29 accompanied by a fee of \$350. The division may authorize an extension
30 of the time in which an answer must be filed only if all parties to the
31 action stipulate to the extension.

32 4. If an answer is not timely filed with the division, the respondent
33 who failed to file may not participate in any conference held pursuant to
34 section 18 of this act.

35 5. The claimant may respond only to the allegations of the answer or
36 any accompanying affidavit by filing a written response with the division
37 within 30 days after he receives the answer. The screening panel shall
38 disregard any portion of a response that does not address an allegation
39 raised in the answer or any affidavit accompanying the answer. No fee
40 may be charged or collected by the division for the filing of the response.
41 The division may authorize an extension of the time in which a response
42 may be filed only if all parties to the action stipulate to the extension.

1 6. Unless otherwise stipulated to by all the parties to the action, the
2 division shall not accept an answer or response that is not timely filed.

3 7. A copy of any pleading required by this section to be filed with the
4 division must be delivered by the party, by certified or registered mail or
5 by personal service, to each opposing party or, if he is represented in the
6 proceedings by counsel, to his attorney.

7 8. The fees required by this section must not be charged or collected
8 more than once:

9 (a) From any party; or

10 (b) For the filing of a complaint, regardless of the number of parties
11 joined in the complaint.

12 9. If a person fails to pay a fee required by this section, the
13 commissioner of insurance may refer the nonpayment to the office of the
14 attorney general for collection of the fee and any costs incurred.

15 **Sec. 18. 1.** Within 35 days after the expiration of the time in which
16 to answer the complaint filed pursuant to section 17 of this act, the
17 division shall hold a conference to resolve any issues as to challenges for
18 cause. For good cause shown, the division may continue the conference
19 once, for a period not to exceed 7 days. A party may challenge any
20 person on the tentative screening panel for cause on any of the grounds
21 provided by NRS 16.050 for the challenge of jurors.

22 2. The division shall determine whether cause exists to excuse a
23 member of the tentative screening panel and shall notify each party of
24 the excused members not later than the completion of the conference
25 required by subsection 1.

26 3. Except as otherwise provided in this subsection, each party is
27 entitled to not more than:

28 (a) Three peremptory challenges from the list of attorneys;

29 (b) Three peremptory challenges from the list of professional
30 engineers, if the respondent is a professional engineer; and

31 (c) Three peremptory challenges from the list of professional land
32 surveyors, if the respondent is a professional land surveyor.

33 If there are two or more claimants or respondents, they are collectively
34 entitled to not more than six peremptory challenges from the list of
35 members selected for the tentative screening panel. Each party asserting
36 a peremptory challenge shall notify the division of the challenge at the
37 conference required by subsection 1. If the same attorney represents
38 several parties, those parties shall be deemed to be one party for
39 determining the distribution of peremptory challenges.

40 4. The division shall randomly select from the list of members of the
41 tentative screening panel who have not been excused for cause or by a
42 peremptory challenge, the names of three professional engineers or
43 professional land surveyors, depending on whether the claim is against a

1 professional engineer or professional land surveyor, and two attorneys to
2 serve on the screening panel for review of the claim.

3 5. The division shall notify the parties and the members of the
4 tentative screening panel selected to serve on the screening panel
5 immediately after it has made the selections. If any member so selected
6 declines to serve, the division shall immediately and randomly select a
7 replacement from the list. The division shall not release or disclose to any
8 person the names of the persons selected.

9 6. If, because of the exercise of challenges for cause or peremptory
10 challenges or any other reason, fewer than three professional engineers
11 or professional land surveyors or fewer than two attorneys remain
12 available to serve on the screening panel, the division shall immediately
13 notify the Nevada Trial Lawyers Association or the state board of
14 professional engineers and land surveyors, as appropriate. The
15 association or board shall immediately designate from among its
16 members the required number of persons to serve on the screening panel.
17 No person who is not so designated may serve on the screening panel.

18 **Sec. 19. 1.** The division may, by certified or registered mail, issue
19 subpoenas as may be required by the screening panel, to compel the
20 attendance of an expert witness and, as may be required by the parties or
21 the screening panel, to compel the production of books, papers,
22 engineering or surveying records, statements of policy and procedure, or
23 other materials.

24 2. The division shall keep any materials so produced and make the
25 materials available to the parties, upon request, for inspection or
26 copying. If the materials are reasonably capable of being copied, the
27 division shall provide a copy to the parties upon request and receipt of a
28 fee for copying the materials.

29 3. If an expert witness refuses to attend or testify or if a person
30 refuses to produce the materials required by a subpoena, the division
31 may report to the district court by petition setting forth that:

32 (a) Notice was given of the time and place of attendance by the expert
33 witness or for the production of the materials;

34 (b) The expert witness or the person required to produce the materials
35 was subpoenaed by the division pursuant to this section; and

36 (c) The expert witness has failed or refused to attend or testify, or the
37 person has failed or refused to produce the materials required by the
38 subpoena or has refused to answer questions propounded to him,
39 and asking for an order of the court compelling the expert witness to
40 attend and testify or the other person to produce the materials.

41 4. Upon receiving such a petition, the court shall enter an order
42 directing the expert witness or other person to appear before the court at
43 a time and place fixed by the court in its order, the time to be not more

1 *than 10 days after the date of the order, and show cause why the expert*
2 *witness has not attended or testified or the person has not produced the*
3 *materials. A certified copy of the order must be served upon the expert*
4 *witness or other person.*

5 *5. If it appears to the court that the subpoena was regularly issued by*
6 *the division, the court shall enter an order that the expert witness or other*
7 *person appear at the time and place fixed in the order and testify or*
8 *produce the required materials. If the expert witness or other person fails*
9 *to appear and testify or produce the required materials, the expert witness*
10 *or other person is in contempt of court.*

11 **Sec. 20. 1.** *Except as otherwise provided in this section, discovery*
12 *must not be made or conducted before or during a hearing held pursuant*
13 *to section 21 of this act.*

14 *2. Before the hearing, each party may conduct a test of the property*
15 *containing the constructional defect that is not invasive or destructive.*
16 *The test must be conducted not later than 15 days after the complaint is*
17 *filed with the division pursuant to section 17 of this act at a time that is*
18 *agreeable to the parties, or as otherwise directed by the division.*

19 *3. If a person other than the professional engineer or professional*
20 *land surveyor against whom a claim has been made has conducted a test*
21 *of the property containing the constructional defect that is invasive or*
22 *destructive, the professional engineer or professional land surveyor*
23 *against whom the claim has been made may conduct a test of that*
24 *property that is similarly destructive or invasive. The test must be*
25 *conducted not later than 15 days after the complaint is filed with the*
26 *division pursuant to section 17 of this act at a time that is agreeable to*
27 *the parties, or as otherwise directed by the division.*

28 **Sec. 21. 1.** *A claim must be heard by the screening panel within 30*
29 *days after the panel is selected.*

30 *2. The screening panel shall consider the documentary material,*
31 *including the complaint, answer and response, engineering and*
32 *surveying records, and any other documentary material, and the*
33 *testimony of any witness the panel considers necessary, and shall*
34 *determine whether there is a reasonable probability that the*
35 *constructional defect was caused by an act or omission of the*
36 *professional engineer or professional land surveyor.*

37 *3. Copies of the original complaint and the findings of the screening*
38 *panel regarding each matter considered by the panel must be forwarded*
39 *to:*

40 *(a) The state board of professional engineers and land surveyors; and*

41 *(b) The county engineer or county surveyor of the county where the*
42 *property containing the constructional defect is located.*

1 4. The commissioner of insurance shall mail to the parties a copy of
2 the written findings of the screening panel concerning the complaint.

3 5. The written findings must be based upon a vote of the members of
4 the screening panel made by written ballot, must be rendered within 5
5 days after the review and must be in substantially the following form:

6 (a) Based upon a review of the materials submitted by the parties and
7 the testimony of the engineering or land surveying experts, if any were
8 called, we find that there is a reasonable probability that the
9 constructional defect was caused by an act or omission of the
10 professional engineer or professional land surveyor;

11 (b) Based upon a review of the materials submitted by the parties and
12 the testimony of engineering or land surveying experts, if any were
13 called, we find that there is not a reasonable probability that the
14 constructional defect was caused by an act or omission of the
15 professional engineer or professional land surveyor; or

16 (c) Based upon a review of the materials submitted by the parties and
17 the testimony of engineering or land surveying experts, if any were
18 called, we are unable to determine whether there is a reasonable
19 probability that the constructional defect was caused by an act or
20 omission of the professional engineer or professional land surveyor.

21 6. If three members of the screening panel are unable to determine
22 whether there is a reasonable probability that the constructional defect
23 was caused by an act or omission of the professional engineer or
24 professional land surveyor, the screening panel shall be deemed unable
25 to reach a decision on the issue and shall make a finding to that effect.

26 **Sec. 22.** 1. If a screening panel finds in favor of the claimant and
27 an action based on the claim is thereafter filed in district court, a
28 conference for settlement must be held as provided in section 23 of this
29 act.

30 2. If the determination is not in favor of the claimant, the claimant
31 may file such an action in district court. If the claimant does not obtain a
32 judgment in his favor in district court, the defendant must be awarded
33 reasonable costs and attorney's fees incurred after the date of filing the
34 action in district court.

35 3. If a screening panel is unable, for any reason, to reach a decision,
36 the claimant may file such an action in district court or proceed no
37 further with the complaint.

38 4. If the claimant files such an action in district court, a person must
39 not be named as a party in the action unless the person was named as a
40 party in the complaint that was filed with the division and considered by
41 the screening panel.

1 **Sec. 23. 1. In an action for damages caused by a constructional**
2 **defect resulting from an act or omission of a professional engineer or**
3 **professional land surveyor filed in district court after a determination by**
4 **a screening panel that there is a reasonable probability that the**
5 **constructional defect was caused by an act or omission of the**
6 **professional engineer or professional land surveyor, the plaintiff, the**
7 **defendant, the representative of the insurer of the professional engineer**
8 **or professional land surveyor, and their respective attorneys shall attend**
9 **a conference for settlement before a district judge, other than the judge**
10 **assigned to the case, to determine the amount of the damages to the**
11 **plaintiff. The judge before whom the conference is held:**

12 (a) **Must be selected randomly by the clerk of the court upon receiving**
13 **the notice described in subsection 2, except that the judge may not be the**
14 **judge assigned to the case;**

15 (b) **May, for good cause shown, waive the attendance of a party; and**

16 (c) **Shall decide the information the parties may submit at the**
17 **conference.**

18 2. **In any such action, the responsive pleading of the defendant must**
19 **be accompanied by a notice to the clerk of the court that the case must be**
20 **scheduled for a conference for settlement. If the defendant does not file**
21 **this notice, the notice may be filed by another party. The clerk of the**
22 **court shall immediately notify the judge before whom the conference will**
23 **be held of the receipt of that notice.**

24 3. **The judge shall notify the parties, within 7 days after receipt of the**
25 **notice, of the time and place of the conference for settlement, which must**
26 **not be later than 60 days after receipt of the notice. The judge shall,**
27 **before the date scheduled for the conference, cause the deposition of:**

28 (a) **The plaintiff;**

29 (b) **The defendant; and**

30 (c) **A person designated by the plaintiff to testify regarding**
31 **damages,**
32 **to be taken in the manner prescribed by rule of court for taking a**
33 **deposition in a civil action in a district court.**

34 4. **The judge before whom the conference for settlement will be held**
35 **may, for good cause shown, continue the conference for a period not to**
36 **exceed 15 days. Only one such continuance may be granted.**

37 5. **Within 15 days after the conference for settlement, the judge**
38 **before whom the conference was held shall determine, solely from the**
39 **information submitted at the conference, the reasonable value of the**
40 **claim and shall notify the parties of his determination in writing.**

41 6. **Within 14 days after the receipt of the determination of the judge**
42 **of the reasonable value of the claim, the defendant shall offer to the**
43 **plaintiff the amount determined by the judge or reject the determination.**

1 *If the defendant rejects the determination and the plaintiff is awarded an*
2 *amount greater than the amount of the determination, the plaintiff must*
3 *be awarded reasonable costs and attorney's fees incurred after the date*
4 *of rejection.*

5 *7. Within 14 days after the plaintiff receives an offer from the*
6 *defendant for the amount determined by the judge, the plaintiff shall*
7 *accept or reject the offer. If the plaintiff rejects the offer and the plaintiff*
8 *is awarded an amount that is less than the amount of the offer, the*
9 *defendant must be awarded reasonable costs and attorney's fees incurred*
10 *after the date of rejection.*

11 **Sec. 24. 1. In an action to recover damages resulting from a**
12 **constructional defect caused by an act or omission of a professional**
13 **engineer that is tried before a jury, the following instructions must be**
14 **given to the jury:**

15 **(a) If testimony of an expert in engineering was given at the review by**
16 **the screening panel:**

17
18 *During the course of this trial certain evidence was admitted*
19 *concerning the findings of a screening panel. The findings of the*
20 *panel were based upon a review of engineering records and the*
21 *testimony of an expert in engineering based upon his review of the*
22 *engineering records. These findings are to be given the same weight*
23 *as other evidence and are not to be conclusive in your determination*
24 *of the case.*

25
26 **(b) If testimony of an expert in engineering was not given at the**
27 **review by the screening panel:**

28
29 *During the course of this trial certain evidence was admitted*
30 *concerning the findings of a screening panel. The findings of the*
31 *panel were based solely upon a review of the engineering records.*
32 *These findings are to be given the same weight as other evidence*
33 *and are not to be conclusive in your determination of the case.*
34

35 **2. In an action to recover damages resulting from a constructional**
36 **defect caused by an act or omission of a professional land surveyor that**
37 **is tried before a jury, the following instructions must be given to the jury:**

38 **(a) If testimony of an expert in land surveying was given at the review**
39 **by the screening panel:**

40
41 *During the course of this trial certain evidence was admitted*
42 *concerning the findings of a screening panel. The findings of the*
43 *panel were based upon a review of surveying records and the*

1 *testimony of an expert in land surveying based upon his review of*
2 *the surveying records. These findings are to be given the same*
3 *weight as other evidence and are not to be conclusive in your*
4 *determination of the case.*

5
6 *(b) If testimony of an expert in land surveying was not given at the*
7 *review by the screening panel:*
8

9 *During the course of this trial certain evidence was admitted*
10 *concerning the findings of a screening panel. The findings of the*
11 *panel were based solely upon a review of the surveying records.*
12 *These findings are to be given the same weight as other evidence*
13 *and are not to be conclusive in your determination of the case.*

14 **Sec. 25. 1.** *In an action to recover damages resulting from a*
15 *constructional defect caused by an act or omission of a professional*
16 *engineer or professional land surveyor, the applicable statute of*
17 *limitations is tolled from the date the claimant files a complaint for*
18 *review by a screening panel until 30 days after the date the panel notifies*
19 *the claimant, in writing, of its findings.*

20 **2.** *The provisions of this section apply to an action to recover*
21 *damages resulting from a constructional defect caused by an act or*
22 *omission of a professional engineer or professional land surveyor and to*
23 *an action against a person, government or political subdivision of a*
24 *government that is alleged by the claimant to be liable vicariously for*
25 *damages resulting from a constructional defect caused by an act or*
26 *omission of a professional engineer or professional land surveyor, if the*
27 *professional engineer, professional land surveyor, other person,*
28 *government or political subdivision has received timely notice of the*
29 *filing of a complaint for review by a screening panel pursuant to section*
30 *17 of this act.*

31 **Sec. 26.** *The provisions of this act do not apply to a cause of action to*
32 *recover damages resulting from a constructional defect, as that term is*
33 *defined in section 4 of this act, before January 1, 2000.*

34 **Sec. 27.** *This act becomes effective on January 1, 2000.*