

SENATE BILL NO. 310—SENATOR SCHNEIDER

MARCH 9, 2001

Referred to Committee on Commerce and Labor

SUMMARY—Creates commission to review constructional defect claims and revises various provisions governing actions resulting from constructional defects. (BDR 54-448)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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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; creating a commission to review constructional defect claims; requiring certain actions involving constructional defects to be presented to the commission for review before such an action or claim may be commenced; requiring the presence of a contractor or his representative at any inspection performed by an expert of the claimant; requiring the attorney for a claimant in a constructional defect matter to maintain and report a current accounting of attorney's fees and costs; 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 624 of NRS is hereby amended by adding thereto
2 the provisions set forth as sections 2 to 20, inclusive, of this act.
3 **Sec. 2.** *As used in sections 2 to 20, inclusive, of this act, unless the*
4 *context otherwise requires, the words and terms defined in sections 3, 4*
5 *and 5 of this act have the meanings ascribed to them in those sections.*
6 **Sec. 3.** *“Commission” means the constructional defect commission*
7 *created pursuant to section 6 of this act.*
8 **Sec. 4.** *“Construction record” means a document received or*
9 *produced by a contractor, or any person employed by him, that contains*
10 *information relating to the construction of a residence or appurtenance,*
11 *including, without limitation, any report, record, plan, permit, contract,*
12 *subcontract, invoice, work order or other documents.*
13 **Sec. 5.** *“Constructional defect” has the meaning ascribed to it in*
14 *NRS 40.615.*
15 **Sec. 6.** *1. The board shall create a constructional defect*
16 *commission consisting of seven members appointed by the governor.*
17 *2. Each member who is appointed to the commission serves for a*
18 *term of 4 years. A member may be reappointed to the commission.*



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- 1 3. *The governor shall appoint to the commission:*
2 (a) *Three members who are contractors recommended by the board,*
3 *each of whom:*
4 (1) *Holds a license issued pursuant to this chapter;*
5 (2) *Is actively engaged in the contracting business and has been so*
6 *engaged for not less than 5 years preceding the date of his appointment;*
7 *and*
8 (3) *Has been a resident of this state for at least 5 years immediately*
9 *preceding his appointment; and*
10 (b) *Four members who are representatives of the general public.*
11 4. *The governor shall appoint a chairman of the commission.*
12 Sec. 7. 1. *The members of the commission:*
13 (a) *Serve without compensation; and*
14 (b) *May, upon written request to the board, receive the per diem*
15 *allowance and travel expenses provided for state officers and employees*
16 *generally while engaged in the business of the commission.*
17 2. *The governor may remove a member of the commission before the*
18 *expiration of his term for misconduct in office, incompetence or neglect*
19 *of duty.*
20 3. *If a vacancy occurs in the membership of the commission, the*
21 *governor shall appoint a person to fill the vacancy for the remainder of*
22 *the unexpired term. A vacancy on the commission must be filled in the*
23 *same manner as the original appointment.*
24 4. *Four members, at least one of whom must be a contractor,*
25 *constitute a quorum.*
26 5. *Notwithstanding any other provision of law, a member of the*
27 *commission:*
28 (a) *Is not disqualified from public employment or holding a public*
29 *office because of his membership on the commission; and*
30 (b) *Does not forfeit his public office or public employment because of*
31 *his membership on the commission.*
32 Sec. 8. 1. *The board shall arrange for courses of instruction in the*
33 *rules of procedure and substantive law appropriate for members of the*
34 *commission.*
35 2. *Each person appointed to serve on the commission shall attend the*
36 *instruction provided pursuant to subsection 1 before serving on the*
37 *commission.*
38 Sec. 9. 1. *The provisions of sections 2 to 20, inclusive, of this act*
39 *do not apply to a claim that is a complex matter.*
40 2. *The provisions of chapter 241 of NRS do not apply to any meeting*
41 *or hearing of the commission held to carry out the provisions of sections*
42 *2 to 20, inclusive, of this act or to the deliberations of the commission on*
43 *any information or evidence pursuant to sections 2 to 20, inclusive, of*
44 *this act.*
45 Sec. 10. *The commission and its members acting pursuant to*
46 *sections 2 to 20, inclusive, of this act are immune from any civil liability*
47 *for any decision or action taken in good faith and without malicious*
48 *intent in response to a complaint filed with the commission.*



Sec. 11. 1. The board:

(a) Shall develop and maintain a list of alternate members who satisfy the requirements of sections 6 and 8 of this act;

(b) Shall schedule the hearings for the commission;

(c) Shall obtain, before or after the filing of a complaint with the commission, such construction records and other materials as may be required by the parties or the commission in connection with the claim of a constructional defect;

(d) Shall charge and collect a reasonable fee for copying materials produced under subpoena;

(e) For good cause shown, may authorize a continuance for the proceedings involving the commission;

(f) To the extent necessary for the commission to carry out its duties, shall provide the commission with administrative support, equipment and office space; and

(g) May adopt such rules of practice and procedure as are necessary to carry out the provisions of sections 2 to 20, inclusive, of this act.

2. The attorney general shall serve as legal counsel for the commission.

Sec. 12. 1. A member of the commission may disqualify himself from acting in any matter upon the ground of actual or implied bias.

2. A party to a matter who seeks to disqualify a member of the commission from acting on a complaint of a constructional defect filed pursuant to section 14 of this act shall file a request for disqualification in writing with the board not later than 15 days after the expiration of the time in which to answer the complaint, specifying the facts upon which such disqualification is sought. A party may make a request for the disqualification of any member of the commission for cause on any of the grounds provided pursuant to NRS 16.050 for the challenge of jurors.

3. The board shall determine whether cause exists to disqualify a member of the commission pursuant to a request filed by a party and shall notify each party in writing of its decision not later than 15 days after the request is made.

4. Except as otherwise provided in subsection 5, the commission, less any member who has been disqualified, may proceed to review a complaint without designating a person to sit in the place of a disqualified member.

5. If the number of members who are disqualified or whose temporary absence prohibits a quorum of the commission from forming, then, upon the disqualification or temporary absence of a member of the commission, the board shall designate an alternate member from the list developed pursuant to section 11 of this act who is the same class of member as the disqualified or absent member to sit in the place of the disqualified or absent member. If an alternate member is designated, that member must be identified in the notice provided to the parties pursuant to subsection 3.

Sec. 13. 1. Except as otherwise provided in this section, no claim involving a constructional defect may be presented to the commission until the claimant provides:



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- 1 (a) Two written notices by certified mail, return receipt requested, to
2 the contractor, at the contractor's last known address, of the
3 constructional defect alleged in the complaint against the contractor; and
4 (b) A reasonable opportunity, following the written notices, for the
5 contractor to repair the alleged constructional defect.
- 6 2. The written notices required pursuant to subsection 1 must:
- 7 (a) Be mailed at least 30 days apart;
- 8 (b) Specify, in reasonable detail, the defect or any damage or injury to
9 each residence or appurtenance that is the subject of the claim;
- 10 (c) Describe in reasonable detail the cause of the defect, if the cause is
11 known, and the nature and extent that is known of the damage or injury
12 resulting from the defect; and
- 13 (d) Provide the location of each defect within each residence or
14 appurtenance to the extent known.
- 15 3. Within 45 days after the contractor receives the first notice, on his
16 written request, the contractor is entitled to inspect the property that is
17 the subject of the claim to determine the nature and cause of the defect,
18 damage or injury and the nature and extent of repairs necessary to
19 remedy the defect. The contractor shall, before carrying out the
20 inspection, provide reasonable notice of the inspection, and shall carry
21 out the inspection at a reasonable time. The contractor may take
22 reasonable steps to establish the existence of the defect, damage or
23 injury.
- 24 4. Within 15 days after a contractor receives the second notice, a
25 claimant may present a claim to the commission as set forth in section 14
26 of this act if the contractor fails to:
- 27 (a) Make an agreement that is acceptable to the claimant to make
28 repairs, if the contractor is licensed to make the repairs, or cause the
29 repairs to be made, at the contractor's expense, by another contractor
30 who is licensed to make the repairs, bonded and insured; or
- 31 (b) Make the repairs specified in an agreement between the claimant
32 and contractor pursuant to paragraph (a):
- 33 (1) Within the time specified in the agreement; and
- 34 (2) In a good and workmanlike manner.
- 35 5. A written waiver or settlement agreement executed by a claimant
36 after a contractor has corrected or otherwise repaired a constructional
37 defect pursuant to this section does not bar a claim for the constructional
38 defect if it is determined that the contractor failed to correct or repair the
39 defect properly.
- 40 **Sec. 14. 1.** A claim of a constructional defect is properly presented
41 to the commission by filing a complaint with the board. A fee of \$50 must
42 accompany the complaint.
- 43 2. The complaint must contain a clear and concise statement of the
44 facts of the case, including, without limitation, the persons involved and
45 the dates and circumstances, so far as they are known, of the alleged
46 constructional defect. The commission may dismiss a complaint if the
47 complaint is filed without an affidavit supporting the allegations of the
48 complaint submitted by an expert concerning the alleged constructional
49 defect.



- 1 3. *The person against whom a complaint is made must, within 30*
2 *days after receipt of the complaint, file an answer with the board,*
3 *accompanied by a fee of \$350. The board may authorize an extension of*
4 *the time in which an answer must be filed only if all parties to the action*
5 *stipulate to the extension.*
6 4. *Unless otherwise stipulated to by all the parties to the action, an*
7 *answer or response that is not timely filed may not be:*
8 (i) *Accepted by the board; or*
9 (ii) *Considered by the commission.*
10 5. *The claimant may respond only to the allegations of the answer or*
11 *any accompanying affidavit by filing a written response with the board*
12 *within 15 days after he receives the answer. The commission shall*
13 *disregard any portion of the response that does not address an allegation*
14 *raised in the answer or an affidavit accompanying the answer. No fee*
15 *may be charged or collected by the board for the filing of the response.*
16 *The board may authorize an extension of the time in which a response*
17 *may be filed only if all parties to the action stipulate to the extension.*
18 6. *A copy of any pleading required by this section to be filed with the*
19 *board must be delivered by the party, by certified or registered mail or by*
20 *personal service, to each opposing party or, if an opposing party is*
21 *represented in the proceedings by counsel, to his attorney.*
22 7. *The fees provided by this section must not be charged or collected*
23 *more than once:*
24 (i) *From any party; or*
25 (ii) *For the filing of any complaint, regardless of the number of*
26 *parties joined in the complaint.*
27 8. *If a person fails to pay any fee required by this section, the board*
28 *may refer the nonpayment to the office of the attorney general for*
29 *collection of the fee and any costs incurred.*
30 **Sec. 15.** 1. *The board may, by certified or registered mail, issue*
31 *subpoenas as may be required by the commission, to compel the*
32 *attendance of expert witnesses and, as may be required by the parties or*
33 *the commission, to compel the production of construction records or*
34 *other materials.*
35 2. *The board shall keep the material so produced and make it*
36 *available to the parties, upon request, for inspection or copying. If the*
37 *material is reasonably capable of being copied, the board shall provide a*
38 *copy to the parties, upon request and the receipt of a fee for the copying.*
39 3. *If an expert witness refuses to attend or testify or if a person*
40 *refuses to produce any construction records or other materials as*
41 *required by the subpoena, the board may report to the district court by*
42 *petition asking for an order of the court compelling the expert witness to*
43 *attend and testify or the other person to produce the construction records*
44 *or other materials and setting forth that:*
45 (i) *Due notice has been given of the time and place of attendance of*
46 *the expert witness or for the production of the construction records or*
47 *other materials;*



1 (b) The expert witness or the person required to produce the
2 construction records or other materials has been subpoenaed by the
3 board pursuant to this section; and

4 (c) The expert witness has failed or refused to attend or testify, to
5 produce the construction records or other materials required by the
6 subpoena, or to answer questions propounded to him.

7 4. Upon receiving such a petition, the court shall enter an order
8 directing the expert witness or other person to appear before the court at
9 a time and place to be fixed by the court in its order, which is not more
10 than 10 days after the date of the order, and show cause why he has not
11 attended, testified, or produced the construction records or other
12 materials. A certified copy of the order must be served upon the expert
13 witness or other person.

14 5. If it appears to the court that the subpoena was regularly issued by
15 the board, the court shall enter an order that the expert witness or other
16 person appear at the time and place fixed in the order and testify or
17 produce the required construction records or other materials, and upon
18 his failure to obey the order, the expert witness or other person must be
19 dealt with as for contempt of court.

20 **Sec. 16.** 1. A claim of a constructional defect must be heard by the
21 commission within 45 days after the expiration of the time in which to
22 answer the complaint filed pursuant to section 14 of this act.

23 2. The commission shall consider all the construction records or
24 other materials, including, without limitation, the complaint, answer and
25 response, construction records and the testimony of an expert witness the
26 commission considers necessary, and shall determine only, from that
27 evidence, whether there is a reasonable probability that a constructional
28 defect exists and that the claimant was damaged thereby.

29 3. Copies of the original complaint and of the findings of the
30 commission with regard to each matter considered by the commission
31 must be forwarded to the city or county building department where the
32 alleged constructional defect occurred, as appropriate.

33 4. The board shall promptly mail to each party to the claim a copy of
34 the findings of the commission concerning the complaint.

35 5. The findings must be based upon a vote of the members of the
36 commission made by written ballot, must be rendered within 5 days after
37 the hearing on the claim and must be in substantially the following form:

38 (a) Based upon a review of the materials submitted by the parties and
39 the testimony of expert witnesses, if any, we find that there is a
40 reasonable probability that a constructional defect exists and that the
41 claimant was damaged thereby;

42 (b) Based upon a review of the materials submitted by the parties and
43 the testimony of expert witnesses, if any, we find that there is no
44 reasonable probability that a constructional defect exists; or

45 (c) Based upon a review of the materials submitted by the parties and
46 the testimony of expert witnesses, if any, we are unable to reach a
47 decision on the issue of whether there is a reasonable probability that a
48 constructional defect exists or that the claimant was damaged thereby.



1 6. A finding made pursuant to paragraph (a) of subsection 5 must
2 also include the findings of the commission concerning each claim of
3 constructional defect alleged by the claimant.

4 7. Whenever four members of the commission are unable to find that
5 there is a reasonable probability that a constructional defect exists and
6 that the claimant was damaged thereby or that there is no reasonable
7 probability that a constructional defect exists, the commission shall be
8 deemed unable to reach a decision on the issue and shall make a finding
9 to that effect.

10 Sec. 17. 1. If the commission issues a finding in favor of the
11 claimant pursuant to paragraph (a) of subsection 5 of section 16 of this
12 act, the commission may order the contractor to:

13 (a) Make repairs at the contractor's expense, if the contractor is
14 licensed to make the repairs; or

15 (b) Cause the repairs to be made, at the contractor's expense and, if
16 insured, his insurer's expense, by another contractor who is licensed to
17 make the repairs, bonded and insured.

18 2. Except as otherwise provided in subsection 7, the repairs ordered
19 pursuant to this section must be completed within 90 days after the
20 contractor is served with written notice of the order.

21 3. A copy of the order must be served on each party to the claim
22 personally, or by registered or certified mail. The order is effective upon
23 such service, unless the commission orders otherwise.

24 4. A contractor may petition the board, by written request supported
25 by an affidavit of the contractor, for an extension of the time for
26 completion of repairs if completion is delayed by the claimant or by other
27 events beyond the control of the contractor, or if timely completion of the
28 repairs is not reasonably possible.

29 5. The board may grant one extension of time not to exceed 45 days
30 for a contractor to complete the repairs required by the order of the
31 commission if the extension is timely requested and supported by an
32 affidavit of the contractor. The board shall provide written notice of any
33 grant or denial of an extension of time to each party to the claim within
34 10 days after receipt of the request.

35 6. Except as otherwise provided in subsection 7, if the contractor
36 fails to comply with an order issued pursuant to this section, upon the
37 written request of the claimant made within 10 days after the expiration
38 of the period for making the repairs or causing the repairs to be made as
39 described in the order, or any authorized extension for the contractor to
40 make the repairs or cause the repairs to be made, the commission shall
41 make additional findings. A copy of the additional findings must be
42 served on each party to the claim personally, or by registered or certified
43 mail. The additional findings must be in substantially the following form:

44
45 Based upon a review of the materials submitted by the parties and
46 the testimony of expert witnesses, if any, the constructional defect
47 commission found that there was a reasonable probability that a
48 constructional defect exists and that the claimant was damaged
49 thereby.



1 On(date of order)....., the commission issued and properly
2 served an order directing the contractor to make or cause to be
3 made the repairs for each claim found, by a reasonable probability,
4 to be a constructional defect and the cause of damage to the
5 claimant.

6 We find that the date for the expiration of the period in the order
7 for the contractor to make the repairs or cause the repairs to be
8 made, or extensions thereof, has passed. We further find that the
9 contractor has failed to make the repairs or cause the repairs to be
10 made as directed in the order of the commission.

11
12 7. A contractor subject to the provisions of this section may petition
13 the district court to stay an order of the commission pending final
14 disposition of the claim pursuant to NRS 40.600 to 40.695, inclusive, and
15 sections 22 and 23 of this act, or pursuant to an action filed in court.

16 **Sec. 18.** 1. The parties involved in a claim that is not a complex
17 matter shall not proceed to carry out the requirements of NRS 40.600 to
18 40.695, inclusive, and sections 22 and 23 of this act until the claim has
19 been presented to the commission and a determination has been made by
20 the commission.

21 2. Except as otherwise provided in section 9 of this act, if the
22 claimant files a civil action for a constructional defect that is not a
23 complex matter in district court after satisfying the procedural
24 requirements of NRS 40.645 and 40.680 and sections 2 to 20, inclusive,
25 of this act, a person may not be named as a party in the action unless the
26 person was named as a party in the complaint that was filed with the
27 board and considered by the commission.

28 3. Any action involving a constructional defect that is not a complex
29 matter which is filed without satisfying the requirements of this section
30 must be dismissed without prejudice for failure to comply with this
31 section.

32 4. Except as otherwise provided in subsection 5, the findings,
33 additional findings and any order of the commission are admissible in
34 any action concerning that claim which is subsequently filed in district
35 court. No other evidence concerning the commission or its deliberations
36 is admissible and no member of the commission may be called to testify
37 in any such action.

38 5. If the commission is unable to reach a decision on the issue of
39 whether there is a reasonable probability that a constructional defect
40 exists and the claimant was damaged thereby, the findings of the
41 commission are not admissible in any action concerning that claim
42 which is subsequently filed in district court.

43 6. If the claimant files an action in court and the claimant does not
44 obtain a judgment in his favor against the contractor, the contractor
45 must be awarded reasonable costs and attorney's fees incurred after the
46 date of filing the action in court.

47 **Sec. 19.** Unless the findings of the commission are not admissible
48 pursuant to subsection 5 of section 18 of this act, in any action governed



1 by NRS 40.600 to 40.695, inclusive, and sections 22 and 23 of this act
2 that is tried before a jury, the following instructions must be given:

3 1. If testimony of an expert witness was given at the review by the
4 commission pursuant to section 16 of this act:

5
6 *During the course of this trial certain evidence was admitted
7 concerning the findings of the constructional defect commission.
8 The findings of the commission were based upon a review of
9 construction records and other materials, and the testimony of an
10 expert witness based upon his review of those records and materials.
11 These findings are to be given the same weight as any other
12 evidence, but are not conclusive on your determination of the case.*

13
14 2. If testimony of an expert witness was not given at the review by the
15 commission pursuant to section 16 of this act:

16
17 *During the course of this trial certain evidence was admitted
18 concerning the findings of the constructional defect commission.
19 The findings of the commission were based solely upon a review of
20 construction records and other materials. These findings are to be
21 given the same weight as any other evidence, but are not conclusive
22 on your determination of the case.*

23
24 3. If the commission made additional findings pursuant to section 17
25 of this act:

26
27 *During the course of this trial certain evidence was admitted
28 concerning the additional findings of the constructional defect
29 commission. The additional findings of the commission were based
30 upon the failure of the contractor to comply with the order of the
31 commission to make repairs or cause the repairs to be made of a
32 constructional defect within a certain time. These additional
33 findings are to be given the same weight as any other evidence, but
34 are not conclusive on your determination of the case.*

35
36 **Sec. 20.** *The statutes of limitation or repose applicable to a claim
37 that is not a complex matter which is based on a constructional defect
38 governed by sections 2 to 20, inclusive, of this act are tolled from the time
39 notice is given pursuant to section 13 of this act until:*

40 1. *Thirty days after a determination is rendered by the commission
41 pursuant to section 16 of this act; or*

42 2. *If the commission issues an order requiring a contractor to make
43 repairs or cause the repairs to be made pursuant to section 17 of this act,
44 45 days after the expiration of the period provided in the order or an
45 extension of the period provided in the order which is authorized by the
46 board for the contractor to make repairs or cause the repairs to be made.*

47 **Sec. 21.** Chapter 40 of NRS is hereby amended by adding thereto the
48 provisions set forth as sections 22 and 23 of this act.



1 **Sec. 22.** *A contractor or his representative must be present at any*
2 *inspection at the residence or appurtenance, if any, that is the subject of*
3 *a claim governed by NRS 40.600 to 40.695, inclusive, and this section*
4 *and section 23 of this act, which is performed by the claimant or his*
5 *representative, including, without limitation, an expert hired or retained*
6 *by the claimant to perform such an inspection.*

7 **Sec. 23.** *1. The attorney for a claimant in an action for a*
8 *constructional defect pursuant to NRS 40.600 to 40.695, inclusive, and*
9 *this section and section 22 of this act shall maintain a current and*
10 *written accounting of the:*

11 *(a) Cumulative and monthly number of hours billed;*

12 *(b) Cumulative and monthly amount of fees, costs and related*
13 *expenses accrued; and*

14 *(c) Billing rate for each attorney, paralegal or other person who*
15 *provides services for the particular matter.*

16 *2. The attorney shall, on or before the fifth day of each month,*
17 *provide a report of the accounting required by subsection 1 to all*
18 *claimants represented by the attorney in the action.*

19 *3. Upon application for an award of attorney's fees or any costs*
20 *pursuant to NRS 40.655, 40.670 or 40.687, a claimant shall:*

21 *(a) File with the court a copy of the written account required pursuant*
22 *to subsection 1 as an exhibit to the application; and*

23 *(b) Serve a copy of the application and exhibit on the contractor or his*
24 *representative.*

25 *4. A claimant who directs his attorney to seek an award of attorney's*
26 *fees or any costs pursuant to NRS 40.600 to 40.695, inclusive, and this*
27 *section and section 22 of this act, shall be deemed to authorize the*
28 *disclosure of the records set forth in subsection 1.*

29 **Sec. 24.** NRS 40.600 is hereby amended to read as follows:

30 40.600 As used in NRS 40.600 to 40.695, inclusive, *and sections 22*
31 *and 23 of this act*, unless the context otherwise requires, the words and
32 terms defined in NRS 40.605 to 40.630, inclusive, have the meanings
33 ascribed to them in those sections.

34 **Sec. 25.** NRS 40.635 is hereby amended to read as follows:

35 40.635 NRS 40.600 to 40.695, inclusive ~~†~~, *and sections 22 and 23*
36 *and 2 to 20, inclusive, of this act:*

37 1. Apply to any claim that arises before, on or after July 1, 1995, as the
38 result of a constructional defect, except a claim for personal injury or
39 wrongful death, if the claim is the subject of an action commenced on or
40 after July 1, 1995.

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

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

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

46 **Sec. 26.** NRS 40.650 is hereby amended to read as follows:

47 40.650 1. If a claimant unreasonably rejects a reasonable written
48 offer of settlement made as part of a response made pursuant to
49 NRS 40.645 or 40.682 or does not permit the contractor or independent



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1 contractor a reasonable opportunity to repair the defect pursuant to an
2 accepted offer of settlement and thereafter commences an action governed
3 by NRS 40.600 to 40.695, inclusive, *and sections 22 and 23 of this act*, the
4 court in which the action is commenced may:

- 5 (a) Deny the claimant's attorney's fees and costs; and
6 (b) Award attorney's fees and costs to the contractor.

7 Any sums paid under a homeowner's warranty, other than sums paid in
8 satisfaction of claims that are collateral to any coverage issued to or by the
9 contractor, must be deducted from any recovery.

10 2. If a contractor fails to:

- 11 (a) Make an offer of settlement;
12 (b) Make a good faith response to the claim asserting no liability;
13 (c) Complete, in a good and workmanlike manner, the repairs specified
14 in an accepted offer;
15 (d) Agree to a mediator or accept the appointment of a mediator
16 pursuant to NRS 40.680 or subsection 4 of NRS 40.682; or
17 (e) Participate in mediation,

18 the limitations on damages and defenses to liability provided in
19 NRS 40.600 to 40.695, inclusive, *and sections 22 and 23 of this act* do not
20 apply and the claimant may commence an action without satisfying any
21 other requirement of NRS 40.600 to 40.695, inclusive ~~H~~, *and sections 22*
22 *and 23 of this act*.

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

27 **Sec. 27.** NRS 40.655 is hereby amended to read as follows:

28 40.655 1. Except as otherwise provided in NRS 40.650, in a claim
29 governed by NRS 40.600 to 40.695, inclusive, *and sections 22 and 23 of*
30 *this act*, the claimant may recover only the following damages to the extent
31 proximately caused by a constructional defect:

- 32 (a) Any reasonable attorney's fees;
33 (b) The reasonable cost of any repairs already made that were necessary
34 and of any repairs yet to be made that are necessary to cure any
35 constructional defect that the contractor failed to cure and the reasonable
36 expenses of temporary housing reasonably necessary during the repair;
37 (c) The reduction in market value of the residence or accessory
38 structure, if any, to the extent the reduction is because of structural failure;
39 (d) The loss of the use of all or any part of the residence;
40 (e) The reasonable value of any other property damaged by the
41 constructional defect;
42 (f) Any additional costs reasonably incurred by the claimant, including,
43 but not limited to, any costs and fees incurred for the retention of experts
44 to:

- 45 (1) Ascertain the nature and extent of the constructional defects;
46 (2) Evaluate appropriate corrective measures to estimate the value of
47 loss of use; and
48 (3) Estimate the value of loss of use, the cost of temporary housing
49 and the reduction of market value of the residence; and



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1 (g) Any interest provided by statute.

2 2. The amount of any attorney's fees awarded pursuant to this section
3 must be approved by the court.

4 3. If a contractor complies with the provisions of NRS 40.600 to
5 40.695, inclusive, *and sections 22 and 23 of this act*, the claimant may not
6 recover from the contractor, as a result of the constructional defect,
7 anything other than that which is provided pursuant to NRS 40.600 to
8 40.695, inclusive ~~H~~, *and sections 22 and 23 of this act*.

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

12 **Sec. 28.** NRS 40.665 is hereby amended to read as follows:

13 40.665 In addition to any other method provided for settling a claim
14 pursuant to NRS 40.600 to 40.695, inclusive, *and sections 22 and 23 of*
15 *this act*, a contractor may, pursuant to a written agreement entered into
16 with a claimant, settle a claim by repurchasing the claimant's residence and
17 the real property upon which it is located. The agreement may include
18 provisions which reimburse the claimant for:

19 1. The market value of the residence as if no constructional defect
20 existed, except that if a residence is less than 2 years of age and was
21 purchased from the contractor against whom the claim is brought, the
22 market value is the price at which the residence was sold to the claimant;

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

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

26 4. Any costs, including costs and expenses for moving and costs,
27 points and fees for loans.

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

31 **Sec. 29.** NRS 40.667 is hereby amended to read as follows:

32 40.667 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 40.682 and a copy of the expert's
43 opinion; and

44 (c) The claimant and the contractor have complied with the
45 requirements for inspection and repair as provided in NRS 40.600 to
46 40.695, inclusive ~~H~~, *and sections 22 and 23 of this act*.

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



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

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

4 **Sec. 30.** NRS 40.668 is hereby amended to read as follows:

5 40.668 1. Notwithstanding the provisions of NRS 40.600 to 40.695,
6 inclusive, *and sections 22 and 23 of this act*, a claimant may not
7 commence an action against a subdivider or master developer for a
8 constructional defect in an appurtenance constructed on behalf of the
9 subdivider or master developer in a planned unit development, to the extent
10 that the appurtenance was constructed by or through a licensed general
11 contractor, unless:

12 (a) The subdivider or master developer fails to provide to the claimant
13 the name, address and telephone number of each contractor hired by the
14 subdivider or master developer to construct the appurtenance within 30
15 days of the receipt by the subdivider or master developer of a request from
16 the claimant for such information; or

17 (b) After the claimant has made a good faith effort to obtain full
18 recovery from the contractors hired by the subdivider or master developer
19 to construct the appurtenance, the claimant has not obtained a full
20 recovery.

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

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

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

29 Tolling pursuant to this subsection applies only to the subdivider or master
30 developer. Notwithstanding any applicable statute of limitation or repose,
31 the claimant may commence an action against the subdivider or master
32 developer for the claim within 1 year after the end of the tolling described
33 in this subsection.

34 3. Nothing in this section prohibits the commencement of an action
35 against a subdivider or master developer for a constructional defect in a
36 residence sold, designed or constructed by or on behalf of the subdivider or
37 master developer.

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

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

45 6. As used in this section:

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



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

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

4 **Sec. 31.** NRS 40.675 is hereby amended to read as follows:

5 40.675 1. A contractor who makes or provides for repairs under
6 NRS 40.600 to 40.695, inclusive, *and sections 22 and 23 and 2 to 20,*
7 *inclusive, of this act* may take reasonable steps to prove that the repairs
8 were made and to have them inspected.

9 2. The provisions of NRS 40.600 to 40.695, inclusive, *and sections 22*
10 *and 23 and 2 to 20, inclusive, of this act* regarding inspection and repair
11 are in addition to any rights of inspection and settlement provided by
12 common law or by another statute.

13 **Sec. 32.** NRS 40.680 is hereby amended to read as follows:

14 40.680 1. Except as otherwise provided in this chapter ~~§~~ *and*
15 *sections 2 to 20, inclusive, of this act*, before an action based on a claim
16 governed by NRS 40.600 to 40.695, inclusive, *and sections 22 and 23 of*
17 *this act* may be commenced in court, the matter must be submitted to
18 mediation, unless mediation is waived in writing by the contractor and the
19 claimant.

20 2. The claimant and contractor must select a mediator by agreement. If
21 the claimant and contractor fail to agree upon a mediator within 45 days
22 after a mediator is first selected by the claimant, either party may petition
23 the American Arbitration Association, the Nevada Arbitration Association,
24 Nevada Dispute Resolution Services or any other mediation service
25 acceptable to the parties for the appointment of a mediator. A mediator so
26 appointed may discover only those documents or records which are
27 necessary to conduct the mediation. The mediator shall convene the
28 mediation within 60 days after the matter is submitted to him, unless the
29 parties agree to extend the time. Except in a complex matter, the claimant
30 shall, before the mediation begins, deposit \$50 with the mediation service
31 and the contractor shall deposit with the mediation service the remaining
32 amount estimated by the mediation service as necessary to pay the fees and
33 expenses of the mediator for the first session of mediation, and the
34 contractor shall deposit additional amounts demanded by the mediation
35 service as incurred for that purpose. In a complex matter, each party shall
36 share equally in the deposits estimated by the mediation service. Unless
37 otherwise agreed, the total fees for each day of mediation and the mediator
38 must not exceed \$750 per day.

39 3. If the parties do not reach an agreement concerning the matter
40 during mediation or if the contractor fails to pay the required fees and
41 appear, the claimant may commence his action in court and:

42 (a) The reasonable costs and fees of the mediation are recoverable by
43 the prevailing party as costs of the action.

44 (b) Either party may petition the court in which the action is
45 commenced for the appointment of a special master.

46 4. A special master appointed pursuant to subsection 3 may:

47 (a) Review all pleadings, papers or documents filed with the court
48 concerning the action.



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1 (b) Coordinate the discovery of any books, records, papers or other
2 documents by the parties, including the disclosure of witnesses and the
3 taking of the deposition of any party.

4 (c) Order any inspections on the site of the property by a party and any
5 consultants or experts of a party.

6 (d) Order settlement conferences and attendance at those conferences by
7 any representative of the insurer of a party.

8 (e) Require any attorney representing a party to provide statements of
9 legal and factual issues concerning the action.

10 (f) Refer to the judge who appointed him or to the presiding judge of the
11 court in which the action is commenced any matter requiring assistance
12 from the court.

13 The special master shall not, unless otherwise agreed by the parties,
14 personally conduct any settlement conferences or engage in any ex parte
15 meetings regarding the action.

16 5. Upon application by a party to the court in which the action is
17 commenced, any decision or other action taken by a special master
18 appointed pursuant to this section may be appealed to the court for a
19 decision.

20 6. A report issued by a mediator or special master that indicates that
21 either party has failed to appear before him or to mediate in good faith is
22 admissible in the action, but a statement or admission made by either party
23 in the course of mediation is not admissible.

24 **Sec. 33.** NRS 40.688 is hereby amended to read as follows:

25 40.688 1. If a claimant attempts to sell a residence that is or has been
26 the subject of a claim governed by NRS 40.600 to 40.695, inclusive, *and*
27 *sections 22 and 23 and 2 to 20, inclusive, of this act*, he shall disclose, in
28 writing, to any prospective purchaser of the residence, not less than 30 days
29 before the close of escrow for the sale of the residence or, if escrow is to
30 close less than 30 days after the execution of the sales agreement, then
31 immediately upon the execution of the sales agreement or, if a claim is
32 initiated less than 30 days before the close of escrow, within 24 hours after
33 giving written notice to the contractor pursuant to subsection 1 of
34 NRS 40.645 ~~to~~, subsection 1 of NRS 40.682 ~~to~~ *or section 13 of this act*:

35 (a) All notices given by the claimant to the contractor pursuant to
36 NRS 40.600 to 40.695, inclusive, *and sections 22 and 23 and 2 to 20,*
37 *inclusive, of this act* that are related to the residence;

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

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

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

45 2. Before taking any action on a claim pursuant to NRS 40.600 to
46 40.695, inclusive, *and sections 22 and 23 and 2 to 20, inclusive, of this*
47 *act*, the attorney for a claimant shall notify the claimant in writing of the
48 provisions of this section.



1 **Sec. 34.** NRS 40.689 is hereby amended to read as follows:

2 40.689 1. Upon petition by a party:

3 (a) The court shall give preference in setting a date for the trial of an
4 action commenced pursuant to NRS 40.600 to 40.695, inclusive ~~H~~, *and*
5 *sections 22 and 23 of this act*; and

6 (b) The court may assign an action commenced pursuant to NRS 40.600
7 to 40.695, inclusive, *and sections 22 and 23 of this act* to a senior judge.

8 2. If the action is assigned to a senior judge upon petition by a party:

9 (a) Any additional expenses caused by the assignment must be borne
10 equally by each party involved; or

11 (b) The judge may distribute any additional expenses among the parties
12 as he deems appropriate.

13 **Sec. 35.** NRS 40.690 is hereby amended to read as follows:

14 40.690 1. A claim governed by NRS 40.600 to 40.695, inclusive,
15 *and sections 22 and 23 of this act* may not be brought by a claimant or
16 contractor against a government, governmental agency or political
17 subdivision of a government, during the period in which a claim for a
18 constructional defect is being settled, mediated or otherwise resolved
19 pursuant to NRS 40.600 to 40.695, inclusive ~~H~~, *and sections 22 and 23 of*
20 *this act*. The settlement of such a claim does not affect the rights or
21 obligations of the claimant or contractor in any action brought by the
22 claimant or contractor against a third party.

23 2. A contractor or claimant may require a party against whom the
24 contractor or claimant asserts a claim governed by NRS 40.600 to 40.695,
25 inclusive, *and sections 22 and 23 of this act* to appear and participate in
26 proceedings held pursuant to those sections as if the party were a contractor
27 and the party requiring him to appear were a claimant. The party must
28 receive notice of the proceedings from the contractor or claimant.

29 **Sec. 36.** NRS 40.695 is hereby amended to read as follows:

30 40.695 1. Except as otherwise provided in subsection 2, statutes of
31 limitation or repose applicable to a claim based on a constructional defect
32 governed by NRS 40.600 to 40.695, inclusive, *and sections 22 and 23 of*
33 *this act* are tolled from the time notice of the claim is given, until 30 days
34 after mediation is concluded or waived in writing pursuant to NRS 40.680
35 or subsection 4 of NRS 40.682.

36 2. Tolling under this section applies:

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

38 (b) To a third party regardless of whether the party is required to appear
39 in the proceeding.

40 **Sec. 37.** NRS 113.135 is hereby amended to read as follows:

41 113.135 1. Upon signing a sales agreement with the initial purchaser
42 of residential property that was not occupied by the purchaser for more
43 than 120 days after substantial completion of the construction of the
44 residential property, the seller shall:

45 (a) Provide to the initial purchaser a copy of NRS 11.202 to 11.206,
46 inclusive, and 40.600 to 40.695, inclusive ~~H~~, *and sections 22 and 23 and*
47 *2 to 20, inclusive, of this act*;



1 (b) Notify the initial purchaser of any soil report prepared for the
2 residential property or for the subdivision in which the residential property
3 is located; and

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

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

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

14 **Sec. 38.** The amendatory provisions of this act do not apply to a claim
15 initiated or an action commenced pursuant to NRS 40.600 to 40.695,
16 inclusive, and sections 22 and 23 of this act, or pursuant to sections 2 to 20,
17 inclusive, of this act, unless the claim was initiated or the action was
18 commenced on or after October 1, 2001.

