

(REPRINTED WITH ADOPTED AMENDMENTS)  
SECOND REPRINT S.B. 516

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SENATE BILL NO. 516—COMMITTEE ON COMMERCE AND LABOR

MARCH 26, 2001

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Referred to Committee on Commerce and Labor

SUMMARY—Requires affidavit in support of action for professional negligence against certain design professionals. (BDR 3-1452)

FISCAL NOTE:   Effect on Local Government: Yes.  
                      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.

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AN ACT relating to real property; requiring an affidavit in support of an action for professional negligence against certain design professionals; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

**Section 1.** Chapter 40 of NRS is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this act.

**Sec. 2.** *As used in this section and sections 3 and 4 of this act, unless the context otherwise requires, “design professional” means a person who holds a professional license or certificate issued pursuant to chapter 623, 623A or 625 of NRS, or a person primarily engaged in the practice of architecture, landscape architecture, professional engineering or land surveying.*

**Sec. 3.** *1. Except as otherwise provided in subsection 2, in an action commenced pursuant to NRS 40.600 to 40.695, inclusive, and sections 2, 3 and 4 of this act for the professional negligence of a design professional, concurrently with the service of the first pleading in the action, the attorney for the complainant shall file an affidavit with the court stating that the attorney:*

*(a) Has reviewed the facts of the case;*  
*(b) Has consulted with an expert named in the affidavit;*  
*(c) Reasonably believes the expert who was consulted is knowledgeable in the relevant discipline involved in the action; and*  
*(d) Has concluded on the basis of his review and the consultation with the expert that the action has a reasonable basis in law and fact.*

*2. The attorney for the complainant may file the affidavit required pursuant to subsection 1 at a later time if he could not consult with an expert and prepare the affidavit before filing the action without causing*



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1 the action to be impaired or barred by the statute of limitations or repose,  
2 or other limitations prescribed by law. If the attorney must submit the  
3 affidavit late, he shall file an affidavit concurrently with the service of  
4 the first pleading in the action stating his reason for failing to comply  
5 with subsection 1 and the attorney shall consult with an expert and file  
6 the affidavit required pursuant to subsection 1 not later than 45 days  
7 after filing the action.

8 3. In addition to the statement included in the affidavit pursuant to  
9 subsection 1, a report must be attached to the affidavit. Except as  
10 otherwise provided in subsection 4, the report must be prepared by the  
11 expert consulted by the attorney and include, without limitation:

12 (a) The resumé of the expert;

13 (b) A statement that the expert is experienced in each discipline which  
14 is the subject of the report;

15 (c) A copy of each nonprivileged document reviewed by the expert in  
16 preparing his report, including, without limitation, each record, report  
17 and related document that the expert has determined is relevant to the  
18 allegations of negligent conduct that are the basis for the action;

19 (d) The conclusions of the expert and the basis for the conclusions;  
20 and

21 (e) A statement that the expert has concluded that there is a  
22 reasonable basis for filing the action.

23 4. In an action brought by a claimant in which an affidavit is  
24 required to be filed pursuant to subsection 1:

25 (a) The report required pursuant to subsection 3 is not required to  
26 include the information set forth in paragraphs (c) and (d) of subsection  
27 3 if the claimant or his attorney files an affidavit, at the time that the  
28 affidavit is filed pursuant to subsection 1, stating that he made  
29 reasonable efforts to obtain the nonprivileged documents described in  
30 paragraph (c) of subsection 3, but was unable to obtain such documents  
31 before filing the action;

32 (b) The claimant or his attorney shall amend the report required  
33 pursuant to subsection 3 to include any documents and information  
34 required pursuant to paragraph (c) or (d) of subsection 3 as soon as  
35 reasonably practicable after receiving the document or information; and

36 (c) The court may dismiss the action if the claimant and his attorney  
37 fail to comply with the requirements of paragraph (b).

38 5. An expert consulted by an attorney to prepare an affidavit  
39 pursuant to this section must not be a party to the action.

40 6. As used in this section, "expert" means a person who:

41 (a) Is licensed in a state to engage in the practice of architecture,  
42 landscape architecture, professional engineering or land surveying; or

43 (b) Teaches or has taught at an accredited college or university in a  
44 discipline relevant to the action.

45 **Sec. 4. 1.** The court shall dismiss any action commenced pursuant  
46 to NRS 40.600 to 40.695, inclusive, and sections 2, 3 and 4 of this act for  
47 the professional negligence of a design professional if the attorney for  
48 the complainant fails to:

49 (a) File an affidavit required pursuant to section 3 of this act;



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1     **(b) File a report required pursuant to subsection 3 of section 3 of this**  
2     **act; or**

3     **(c) Name the expert consulted in the affidavit required pursuant to**  
4     **subsection 1 of section 3 of this act.**

5     **2. The fact that an attorney for a complainant has complied or failed**  
6     **to comply with the provisions of section 3 of this act is admissible in the**  
7     **action.**

8     **Sec. 5.** NRS 40.600 is hereby amended to read as follows:  
9     40.600 As used in NRS 40.600 to 40.695, inclusive, **and sections 2, 3**  
10    **and 4 of this act**, unless the context otherwise requires, the words and  
11    terms defined in NRS 40.605 to 40.630, inclusive, have the meanings  
12    ascribed to them in those sections.

13    **Sec. 6.** 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, 3 and 4 of this act, unless the claim was initiated  
16    or the action was commenced on or after October 1, 2001.

