

**THE NINETEENTH DAY**

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CARSON CITY (Friday), February 20, 2015

Senate called to order at 11:27 a.m.

President Hutchison presiding.

Roll called.

All present except Senators Segerblom and Smith, who were excused.

Prayer by the Chaplain, Dr. Ken Haskins.

Father of lights, You are the true Light and in You there is no darkness. You continue to light our path with the lamp of Your word. Shine forth Your rays of truth, knowledge, understanding and wisdom. Enable these Senators to see clearly the issues before them, and help them to make good and wise decisions.

I pray in the Name of the One who is the Light of the World, Jesus.

AMEN.

Pledge of Allegiance to the Flag.

By previous order of the Senate, the reading of the Journal is dispensed with, and the President and Secretary are authorized to make the necessary corrections and additions.

REPORTS OF COMMITTEES

*Mr. President:*

Your Committee on Natural Resources, to which was referred Senate Bill No. 20, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

DONALD G. GUSTAVSON, *Chair*

*Mr. President:*

Your Committee on Transportation, to which was referred Senate Bill No. 42, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

SCOTT HAMMOND, *Chair*

MESSAGES FROM THE ASSEMBLY

ASSEMBLY CHAMBER, Carson City, February 19, 2015

*To the Honorable the Senate:*

I have the honor to inform your honorable body that the Assembly on this day passed Assembly Bill No. 15.

CAROL AIELLO-SALA

*Assistant Chief Clerk of the Assembly*

INTRODUCTION, FIRST READING AND REFERENCE

By Senators Parks and Segerblom:

Senate Bill No. 179—AN ACT relating to vehicles; revising provisions exempting certain manufacturers of electric passenger cars from the requirements relating to franchises for the sale of motor vehicles and repairs or maintenance of motor vehicles; and providing other matters properly relating thereto.

Senator Parks moved that the bill be referred to the Committee on Transportation.

Motion carried.

By Senators Parks, Segerblom, Atkinson, Spearman; Assemblymen Ohrenschall and Swank:

Senate Bill No. 180—AN ACT relating to employment practices; requiring a court to award certain relief to an employee injured by certain unlawful employment practices under certain circumstances; and providing other matters properly relating thereto.

Senator Parks moved that the bill be referred to the Committee on Commerce, Labor and Energy.

Motion carried.

By Senators Hardy, Ford, Farley, Atkinson; Assemblymen Nelson, Oscarson and Kirkpatrick:

Senate Bill No. 181—AN ACT relating to anesthesiology; providing for the licensure and regulation of anesthesiologist assistants by the Board of Medical Examiners and the State Board of Osteopathic Medicine; requiring anesthesiologist assistants to work under the medically direct supervision of a supervising anesthesiologist; establishing the maximum fees for the licensure of anesthesiologist assistants and the renewal or registration of such licenses; providing penalties; and providing other matters properly relating thereto.

Senator Hardy moved that the bill be referred to the Committee on Commerce, Labor and Energy.

Motion carried.

Assembly Bill No. 15.

Senator Kieckhefer moved that the bill be referred to the Committee on Government Affairs.

Motion carried.

#### SECOND READING AND AMENDMENT

Senate Bill No. 14.

Bill read second time and ordered to third reading.

Senate Bill No. 88.

Bill read second time and ordered to third reading.

Mr. President announced that if there were no objections, the Senate would recess subject to the call of the Chair.

Senate in recess at 11:33 a.m.

#### SENATE IN SESSION

At 11:38 a.m.

President Hutchison presiding.

Quorum present.

## GENERAL FILE AND THIRD READING

Senate Bill No. 41.

Bill read third time.

Remarks by Senator Goicoechea.

Senate Bill No. 41 provides an exception, as authorized by federal law, to the requirement that a person carry a physical federal migratory bird hunting stamp at the time of hunting.

The exception provided by Senate Bill No. 41 allows a person hunting migratory waterfowl to carry the receipt verifying purchase of an electronic stamp if the State is authorized under federal law to sell electronic stamps. This bill is effective on July 1, 2015.

Roll call on Senate Bill No. 41.

YEAS—19.

NAYS—None.

EXCUSED—Segerblom, Smith—2.

Senate Bill No. 41 having received a constitutional majority, Mr. President declared it passed.

Bill ordered transmitted to the Assembly.

Senate Bill No. 45.

Bill read third time.

Senator Kieckhefer moved that the bill be taken from the General File and re-referred to the Committee on Finance.

Motion carried.

Assembly Bill No. 33.

Bill read third time.

Remarks by Senator Harris.

Assembly Bill No. 33 changes the name of the Division of Library and Archives of the Department of Administration to the Division of Library, Archives and Public Records. The change is necessitated by increased responsibilities granted to the Division in previous legislative sessions. This bill is effective on July 1, 2015.

Roll call on Assembly Bill No. 33:

YEAS—19.

NAYS—None.

EXCUSED—Segerblom, Smith—2.

Assembly Bill No. 33 having received a constitutional majority, Mr. President declared it passed.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 125.

Bill read third time.

The following amendment was by proposed by Senator Kihuen:

Amendment No. 22.

SUMMARY—Revises provisions relating to constructional defects.  
(BDR 3-588)

AN ACT relating to constructional defects; enacting provisions governing the indemnification of a controlling party by a subcontractor for certain constructional defects; enacting provisions governing wrap-up insurance

policies or consolidated insurance programs covering certain claims for constructional defects; authorizing the parties to a claim for a constructional defect to agree to have a judgment entered before the filing of a civil action under certain circumstances; revising the definition of "constructional defect"; revising provisions governing the information required to be provided in a notice of constructional defect; removing provisions authorizing claimants to give notice of common constructional defects in residences or appurtenances; requiring a claimant to pursue a claim under a homeowner's warranty under certain circumstances; revising provisions governing the damages recovered by a claimant; providing that the prevailing party in a claim for a constructional defect is entitled to recover attorney's fees; revising the ~~statutes~~ statute of repose regarding actions for damages resulting from certain deficiencies in construction; revising provisions governing the tolling of statutes of limitation and repose regarding actions for constructional defects; prohibiting a homeowners' association from pursuing an action for a constructional defect unless the action pertains exclusively to the common elements of the association; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, before an owner of a residence or appurtenance or certain other persons may commence a civil action against a contractor, subcontractor, supplier or design professional for certain defects in the residence or appurtenance, the claimant must provide notice of the defect to the contractor. Not later than 30 days after the date on which the contractor receives the notice, the contractor must forward a copy of the notice to each subcontractor, supplier or design professional whom the contractor reasonably believes is responsible for a defect specified in the notice. The subcontractor, supplier or design professional who receives the notice must inspect the alleged constructional defect and may elect to repair the defect. (NRS 40.645, 40.646, 40.647)

Section 2 of this bill establishes the circumstances under which a provision in a residential construction contract requiring a subcontractor to indemnify, defend or otherwise hold harmless a controlling party for the negligence or intentional acts or omissions of the controlling party is void and unenforceable. Section 2 also enacts provisions governing: (1) when a subcontractor's duty to defend a controlling party arises; (2) the manner in which a controlling party may pursue indemnification from a subcontractor when the controlling party is named as an additional insured in the commercial general liability insurance policy of the subcontractor; and (3) wrap-up insurance policies or consolidated insurance programs that cover two or more contractors or subcontractors who perform work on residential construction for risks associated with the construction.

Existing law establishes a procedure by which the parties in a civil action may agree to have a judgment entered in the action in accordance with the terms and conditions of an offer of judgment. A court is prohibited from

awarding costs or attorney's fees to a party who rejects such an offer of judgment and fails to obtain a more favorable judgment at trial. (NRS 17.115; N.R.C.P. 68) Section 3 of this bill establishes a similar procedure under which a person who has given notice of a constructional defect and a contractor, subcontractor, supplier or design professional who has received such a notice may agree to have a judgment entered before a civil action for the constructional defect is commenced.

Section 6 of this bill amends the existing definition of "constructional defect" to provide that a constructional defect is a defect: (1) which presents an unreasonable risk of injury to a person or property; or (2) which is not completed in a good and workmanlike manner and proximately causes physical damage to the residence or appurtenance.

Section 8 of this bill amends the provision of existing law requiring certain information to be included in a notice of constructional defect to require the notice to: (1) state in specific detail, rather than in reasonable detail, each defect, damage and injury to each residence or appurtenance that is subject to the notice; (2) state the exact location of each defect, damage and injury, rather than describe in reasonable detail the location of the defect; and (3) include a statement signed by the owner of the residence or appurtenance in the notice that the owner verifies that each defect, damage and injury exists in the residence or appurtenance.

Sections 5, 8-13 and 22 of this bill remove a provision of existing law which authorizes one notice to be sent concerning similarly situated owners of residences or appurtenances within a single development that allegedly have common constructional defects.

Section 11 of this bill requires a claimant and an expert who provided an opinion concerning an alleged constructional defect, or a representative of the expert who has knowledge of the alleged defect, to: (1) be present when a contractor, subcontractor, supplier or design professional conducts the required inspection of the alleged defect; and (2) identify the exact location of the alleged defect.

Under existing law, if a residence or appurtenance is covered by a homeowner's warranty that is purchased by or on behalf of the claimant, the claimant must diligently pursue a claim under the contract. (NRS 40.650)

Section 14 of this bill: (1) prohibits a claimant from filing a notice of constructional defect or pursuing a claim for a constructional defect unless the claimant has submitted a claim under the homeowner's warranty and the insurer has denied the claim; and (2) provides that a claim for a constructional defect may include only the claims that have been denied under the homeowner's warranty. Section 14 further provides that statutes of limitation or repose are tolled from the time the claimant submits a claim under the homeowner's warranty until 30 days after the insurer denies the claim, in whole or in part.

Section 15 of this bill removes the provision of existing law that provides that a claimant may recover reasonable attorney's fees as part of the claimant's

damages in a cause of action for constructional defects. Section 15 also provides that certain costs recoverable as damages must have been incurred for constructional defects proven by the claimant. Finally, section 15 provides that a prevailing party in a claim for a constructional defect is entitled to recover attorney's fees.

Existing law provides that the statutes of limitation and repose applicable to a claim for constructional defects are tolled from the time that a claimant gives notice of a claim for constructional defects until 30 days after the mediation required by existing law is concluded or waived. (NRS 40.695)

Section 16 of this bill provides that the period for which the statutes of limitation and repose are tolled may not exceed 1 year. Section 16 further authorizes a court to extend the tolling period if the claimant demonstrates good cause for such an extension.

Existing law generally limits the period in which an action for damages caused by a deficiency in construction of improvements to real property may be commenced after substantial completion of the improvement. These periods of limitation are known as statutes of repose, and the period set forth in each statute of repose during which an action must be commenced is: (1) for a known deficiency, 10 years after substantial completion of the improvement; (2) for a latent deficiency, 8 years after substantial completion of the improvement; and (3) for a patent deficiency, 6 years after substantial completion of the improvement. However, if a deficiency was a result of willful misconduct or was fraudulently concealed, an action may be commenced at any time after substantial completion of the improvement. (NRS 11.202-11.205) ~~{Sections 17-19 and 22 of this bill provide that the statute of repose for all actions for damages caused by a deficiency in construction of improvement to real property is 6 years after substantial completion of the improvement. Sections 17-19 and 22 also eliminate existing provisions of law that allow such actions to be commenced within 2 years after the date of an injury which occurs during the final year of the particular period of limitation.}~~ Section 17 of this bill provides that if a deficiency was a result of willful misconduct or was fraudulently concealed, the statute of repose is 15 years after substantial completion of the improvement. Section 21 of this bill: (1) provides that the revised ~~{statutes}~~ statute of repose set forth in ~~{sections 17-19 apply}~~ section 17 applies retroactively under certain circumstances; and (2) establishes a 1-year grace period during which a person may commence an action under the existing ~~{statutes of repose,}~~ statute, if the action accrued before the effective date of this bill.

Existing law authorizes a homeowners' association to institute, defend or intervene in litigation or in arbitration, mediation or administrative proceedings in its own name on behalf of itself or two or more units' owners on matters affecting the common-interest community. (NRS 116.3102) In *D.R. Horton, Inc. v. Eighth Judicial District Court*, 125 Nev. 449 (2009), the Nevada Supreme Court held that existing law grants standing to a

homeowners' association to pursue constructional defect claims on behalf of units' owners with respect to constructional defects in individual units.

Sections 5 and 20 of this bill provide that an association may not pursue a constructional defect claim on behalf of itself or units' owners, unless the claim pertains exclusively to the common elements of the association.

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 and 3 of this act.

Sec. 2. 1. *In any action or other proceeding involving a constructional defect asserted by a claimant and governed by NRS 40.600 to 40.695, inclusive, and sections 2 and 3 of this act:*

*(a) Except as otherwise provided in paragraph (b), any provision in a contract entered into on or after the effective date of this act for residential construction that requires a subcontractor to indemnify, defend or otherwise hold harmless a controlling party from any liability, claim, action or cause of action resulting from a constructional defect caused by the negligence, whether active or passive, or intentional act or omission of the controlling party is against public policy and is void and unenforceable.*

*(b) Except as otherwise provided in paragraph (c), a provision in a contract entered into on or after the effective date of this act for residential construction is not against public policy and is not void and unenforceable under paragraph (a) to the extent that the provision requires a subcontractor to indemnify, defend or otherwise hold harmless a controlling party from any liability, claim, action or cause of action resulting from a constructional defect arising out of, related to or connected with the subcontractor's scope of work, negligence, or intentional act or omission.*

*(c) A provision in a contract entered into on or after the effective date of this act for residential construction is against public policy and is void and unenforceable under paragraph (a) to the extent that it requires a subcontractor to defend, indemnify or otherwise hold harmless a controlling party from any liability, claim, action or cause of action resulting from a constructional defect arising out of, related to or connected with that portion of the subcontractor's work which has been altered or modified by another trade or the controlling party.*

*(d) Except as otherwise provided in paragraph (e), if a provision of a contract entered into on or after the effective date of this act for residential construction that requires a subcontractor to indemnify, defend or otherwise hold harmless a controlling party is not against public policy and is not void and unenforceable under this subsection, the duty of the subcontractor to defend the controlling party arises upon presentment of a notice pursuant to subsection 1 of NRS 40.646 containing a particular claim, action or cause of action from which it can be reasonably inferred that an alleged constructional defect was caused by or attributable to the subcontractor's work, negligence, or wrongful act or omission.*

*(e) If a controlling party gives a notice to a subcontractor pursuant to NRS 40.646 that contains a claim, action or cause of action from which it can be reasonably inferred that an alleged constructional defect was caused by or attributable to the subcontractor's work, negligence, or wrongful act or omission, the claim, action or cause of action is covered by the subcontractor's commercial general liability policy of insurance issued by an insurer, and the controlling party is named as an additional insured under that policy of insurance:*

*(1) The controlling party, as an additional insured, must pursue available means of recovery of its defense fees and costs under the policy before the controlling party is entitled to pursue a claim against the subcontractor.*

*(2) Upon the final settlement of or issuance of a final judgment in an action involving a claim for a constructional defect, if the insurer has not assumed the controlling party's defense and reimbursed the controlling party for the defense obligation of the subcontractor, or if the defense obligation is not otherwise resolved by the settlement or final judgment, the controlling party has the right to pursue a claim against the subcontractor for reimbursement of that portion of the attorney's fees and costs incurred by the controlling party which are attributable to the claims, actions or causes of action arising out of, related to or connected with the subcontractor's scope of work, negligence, or intentional act or omission.*

*(3) The provisions of subparagraphs (1) and (2) do not prohibit a controlling party from:*

*(I) Following the requirements of NRS 40.600 to 40.695, inclusive, and sections 2 and 3 of this act relating to providing notice of an alleged constructional defect or any other procedures set forth in those provisions; or*

*(II) Filing a third-party complaint against the subcontractor if a claimant commences an action or amends a complaint to add a cause of action for a constructional defect against a controlling party which arises out of, relates to or is otherwise connected with the subcontractor's scope of work, negligence, or wrongful act or omission.*

*2. For any wrap-up insurance policy or other consolidated insurance program that covers a subcontractor who performs work on residential construction for which a contract is entered into on or after the effective date of this act, for claims, actions or causes of action for a constructional defect governed by NRS 40.600 to 40.695, inclusive, and sections 2 and 3 of this act:*

*(a) The controlling party obtaining the wrap-up insurance policy or other consolidated insurance program shall disclose the total amount or method of calculation of any credit or compensation for the premium required from a subcontractor or other participant for that wrap-up insurance policy in the contract documents.*



(b) Except as otherwise provided in paragraph (c), the contract documents must disclose, if and to the extent known:

- (1) The policy limits;
- (2) The scope of policy coverage;
- (3) The policy term;
- (4) The basis upon which the deductible or occurrence is triggered by the insurer;

(5) If the policy covers more than one work of improvement, the number of units, if any, indicated on the application for the insurance policy; and

(6) A good faith estimate of the amount of available limits remaining under the policy as of a date indicated in the disclosure obtained from the insurer.

(c) The disclosure requirements of subparagraphs (1) to (4), inclusive, of paragraph (b) may be satisfied by providing the participant with a copy of the binder or declaration.

(d) The disclosures made pursuant to subparagraphs (5) and (6) of paragraph (b):

(1) May be based upon information available at the time the disclosure is made and are not inaccurate or made in bad faith solely because the disclosures do not accurately reflect the actual number of units covered by the policy or the amount of insurance available, if any, when a later claim is made.

(2) Are presumptively made in good faith if:

(I) The disclosure pursuant to subparagraph (5) of paragraph (b) is the same as that contained in the application to the wrap-up insurance policy insurer; and

(II) The disclosure pursuant to subparagraph (6) of paragraph (b) was obtained from the wrap-up insurance policy insurer or broker.

↳ The presumptions stated in subparagraph (2) may be overcome only by a showing that the insurer, broker or controlling party intentionally misrepresented the facts identified in subparagraph (5) or (6) of paragraph (b).

(e) Upon the written request of any participant in the wrap-up insurance policy or consolidated insurance program, a copy of the insurance policy must be provided, if available, that shows the coverage terms and items in subparagraphs (1) to (5), inclusive, of paragraph (b). If the policy is not available at the time of the request, a copy of the insurance binder or declaration of coverage may be provided in lieu of the actual policy.

(f) Any party receiving a copy of the policy, binder or declaration shall not disclose it to third parties other than the participant's insurance broker or attorney unless required to do so by law. The participant's insurance broker or attorney may not disclose the policy, binder or declaration to any third party unless required to do so by law.

(g) If the controlling party obtaining the wrap-up insurance policy or other consolidated insurance program does not disclose the total amount or method

*of calculation of the premium credit or compensation to be charged to the participant before the time the participant submits its bid, the participant is not legally bound by the bid unless that participant has the right to increase the bid up to the amount equal to the difference between the amount the participant included, if any, for insurance in the original bid and the amount of the actual bid credit required by the controlling party obtaining the wrap-up insurance policy or other consolidated insurance program. This paragraph does not apply if the controlling party obtaining the wrap-up insurance policy or other consolidated insurance program did not require the subcontractor to offset the original bid amount with a deduction for the wrap-up insurance policy or program.*

*(h) The subcontractor's monetary obligation for enrollment in the wrap-up insurance policy or consolidated insurance program ceases upon the subcontractor's satisfaction of its agreed contribution percentage, which may have been paid either as a lump sum or on a pro rata basis throughout the subcontractor's performance of the work.*

*(i) In the event of an occurrence, the dollar amount required to be paid by a subcontractor as a self-insured retention or deductible must not be greater than the amount that the subcontractor would have otherwise been required to pay as a self-insured retention or deductible under a commercial general liability policy of comparable insurance in force during the relevant period for that particular subcontractor and within the specific market at the time the subcontract is entered into.*

*3. As used in this section:*

*(a) "Controlling party" means a person who owns real property involved in residential construction, a contractor or any other person who is to be indemnified by a provision in a contract entered into on or after the effective date of this act for residential construction.*

*(b) "Residential construction" means the construction of a new residence, of an alteration of or addition to an existing residence, or of an appurtenance.*

*(c) "Wrap-up insurance policy" is an insurance policy, or series of policies, written to cover risks associated with the construction, repair or landscaping of a new residence, of an alteration of or addition to an existing residence, or of an appurtenance, and covering two or more of the contractors or subcontractors that work on that construction, repair or landscaping.*

*Sec. 3. 1. At any time after a claimant has given notice pursuant to NRS 40.645 and before the claimant commences an action or amends a complaint to add a cause of action for a constructional defect against a contractor, subcontractor, supplier or design professional, the claimant or any contractor, subcontractor, supplier or design professional who has received notice pursuant to NRS 40.645 or 40.646 may serve upon one or more other parties a written offer to allow judgment to be entered without action in accordance with the terms and conditions of the offer of judgment.*

2. Except as otherwise provided in subsection 7, if, within 10 days after the date of service of an offer of judgment, the party to whom the offer was made serves written notice that the offer is accepted, the party who made the offer or the party who accepted the offer may file the offer, the notice of acceptance and proof of service with the clerk of the district court. Upon receipt by the clerk, the clerk shall enter a judgment according to the terms of the offer. Any judgment entered pursuant to this section shall be deemed a compromise settlement. The judgment, the offer, the notice of acceptance and proof of service, with the judgment endorsed, become the judgment roll.

3. If the offer of judgment is not accepted pursuant to subsection 2 within 10 days after the date of service, the offer shall be deemed rejected by the party to whom it was made and withdrawn by the party who made it. The rejection of an offer does not preclude any party from making another offer pursuant to this section. Evidence of a rejected offer is not admissible in any proceeding other than a proceeding to determine costs and fees.

4. Except as otherwise provided in this section, if a party who rejects an offer of judgment fails to obtain a more favorable judgment in an action for a constructional defect, the court:

- (a) May not award to the party any costs or attorney's fees;
- (b) May not award to the party any interest on the judgment for the period from the date of service of the offer to the date of entry of the judgment;
- (c) Shall order the party to pay the taxable costs incurred by the party who made the offer; and
- (d) May order the party to pay to the party who made the offer any or all of the following:
  - (1) A reasonable sum to cover any costs incurred by the party who made the offer for each expert witness whose services were reasonably necessary to prepare for and conduct the trial of the case.
  - (2) Any applicable interest on the judgment for the period from the date of service of the offer to the date of entry of the judgment.
  - (3) Reasonable attorney's fees incurred by the party who made the offer for the period from the date of service of the offer to the date of entry of the judgment. If the attorney of the party who made the offer is collecting a contingent fee, the amount of any attorney's fees awarded to the party pursuant to this subparagraph must be deducted from that contingent fee.

5. To determine whether a party who rejected an offer of judgment failed to obtain a more favorable judgment:

- (a) If the offer provided that the court would award costs, the court must compare the amount of the offer with the principal amount of the judgment, without inclusion of costs.
- (b) If the offer precluded a separate award of costs, the court must compare the amount of the offer with the sum of:
  - (1) The principal amount of the judgment; and
  - (2) The amount of taxable costs that the claimant who obtained the judgment incurred before the date of service of the offer.

6. *Multiple parties may make a joint offer of judgment pursuant to this section.*

7. *A party may make to two or more other parties pursuant to this section an apportioned offer of judgment that is conditioned upon acceptance by all the parties to whom the apportioned offer is made. Each party to whom such an offer is made may serve upon the party who made the offer a separate written notice of acceptance of the offer. If any party rejects the apportioned offer:*

(a) *The action must proceed as to all parties to whom the apportioned offer was made, whether or not the other parties accepted or rejected the offer; and*

(b) *The sanctions set forth in subsection 4:*

(1) *Apply to each party who rejected the apportioned offer.*

(2) *Do not apply to any party who accepted the apportioned offer.*

8. *The sanctions set forth in subsection 4 do not apply to:*

(a) *An offer of judgment made to multiple parties who received a notice pursuant to NRS 40.645 or 40.646 unless the same person is authorized to decide whether to settle the claims against all the parties to whom the offer is made and:*

(1) *There is a single common theory of liability against all the parties to whom the offer is made;*

(2) *The liability of one or more of the parties to whom the offer is made is entirely derivative of the liability of the remaining parties to whom the offer is made; or*

(3) *The liability of all the parties to whom the offer is made is entirely derivative of a common act or omission by another person.*

(b) *An offer of judgment made to multiple claimants unless the same person is authorized to decide whether to settle the claims of all the claimants to whom the offer is made and:*

(1) *There is a single common theory of liability claimed by all the claimants to whom the offer is made;*

(2) *The damages claimed by one or more of the claimants to whom the offer is made are entirely derivative of an injury to the remaining claimants to whom the offer is made; or*

(3) *The damages claimed by all the claimants to whom the offer is made are entirely derivative of an injury to another person.*

Sec. 4. NRS 40.600 is hereby amended to read as follows:

40.600 As used in NRS 40.600 to 40.695, inclusive, and sections 2 and 3 of this act, unless the context otherwise requires, the words and terms defined in NRS 40.603 to 40.634, inclusive, have the meanings ascribed to them in those sections.

Sec. 5. NRS 40.610 is hereby amended to read as follows:

40.610 "Claimant" means:

1. An owner of a residence or appurtenance; or

2. A representative of a homeowners' association ~~[that is responsible for a residence or appurtenance and is]~~ acting within the scope of the representative's duties pursuant to chapter 116 or 117 of NRS . ~~†~~ or

~~3. Each owner of a residence or appurtenance to whom a notice applies pursuant to subsection 4 of NRS 40.645.]~~

Sec. 6. NRS 40.615 is hereby amended to read as follows:

40.615 "Constructional defect" means a defect in the design, construction, manufacture, repair or landscaping of a new residence, of an alteration of or addition to an existing residence, or of an appurtenance and includes, without limitation, the design, construction, manufacture, repair or landscaping of a new residence, of an alteration of or addition to an existing residence, or of an appurtenance:

1. Which ~~[is done in violation of law, including, without limitation, in violation of local codes or ordinances;~~

~~2. Which] presents an unreasonable risk of injury to a person or property;~~  
or

2. Which is not completed in a good and workmanlike manner and proximately causes physical damage to the residence, an appurtenance or the real property to which the residence or appurtenance is affixed . ~~†~~

~~3. Which is not completed in a good and workmanlike manner in accordance with the generally accepted standard of care in the industry for that type of design, construction, manufacture, repair or landscaping; or~~

~~4. Which presents an unreasonable risk of injury to a person or property.]~~

Sec. 7. NRS 40.635 is hereby amended to read as follows:

40.635 NRS 40.600 to 40.695, inclusive ~~†~~, and sections 2 and 3 of this act:

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

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

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

4. Do not create a new theory upon which liability may be based, except as otherwise provided in those sections.

Sec. 8. NRS 40.645 is hereby amended to read as follows:

40.645 1. Except as otherwise provided in this section and NRS 40.670, before a claimant commences an action or amends a complaint to add a cause of action for a constructional defect against a contractor, subcontractor, supplier or design professional, the claimant:

(a) Must give written notice by certified mail, return receipt requested, to the contractor, at the contractor's address listed in the records of the State Contractors' Board or in the records of the office of the county or city clerk or

at the contractor's last known address if the contractor's address is not listed in those records; and

(b) May give written notice by certified mail, return receipt requested, to any subcontractor, supplier or design professional known to the claimant who may be responsible for the constructional defect, if the claimant knows that the contractor is no longer licensed in this State or that the contractor no longer acts as a contractor in this State.

2. The notice given pursuant to subsection 1 must:

(a) Include a statement that the notice is being given to satisfy the requirements of this section;

(b) ~~[Specify in reasonable detail the defects or any damages or injuries]~~ *Identify in specific detail each defect, damage and injury to each residence or appurtenance that is the subject of the claim [; and] , including, without limitation, the exact location of each such defect, damage and injury;*

(c) Describe in reasonable detail the cause of the defects if the cause is known [;] *and* the nature and extent that is known of the damage or injury resulting from the defects ~~[and the location of each defect within each residence or appurtenance to the extent known.~~

~~3. Notice that includes an expert opinion concerning the cause of the constructional defects and the nature and extent of the damage or injury resulting from the defects which is based on a valid and reliable representative sample of the components of the residences or appurtenances may be used as notice of the common constructional defects within the residences or appurtenances to which the expert opinion applies.~~

~~4. Except as otherwise provided in subsection 5, one notice may be sent relating to all similarly situated owners of residences or appurtenances within a single development that allegedly have common constructional defects if:~~

~~(a) An expert opinion is obtained concerning the cause of the common constructional defects and the nature and extent of the damage or injury resulting from the common constructional defects;~~

~~(b) That expert opinion concludes that based on a valid and reliable representative sample of the components of the residences and appurtenances included in the notice, it is the opinion of the expert that those similarly situated residences and appurtenances may have such common constructional defects; and~~

~~(c) A copy of the expert opinion is included with the notice.~~

~~5.] ; and~~

*(d) Include a signed statement, by each named owner of a residence or appurtenance in the notice, that each such owner verifies that each such defect, damage and injury specified in the notice exists in the residence or appurtenance owned by him or her. If a notice is sent on behalf of a homeowners' association, the statement required by this paragraph must be signed under penalty of perjury by a member of the executive board or an officer of the homeowners' association.*

3. A representative of a homeowners' association may send notice pursuant to this section on behalf of an association ~~{that is responsible for a residence or appurtenance}~~ if the representative is acting within the scope of the representative's duties pursuant to chapter 116 or 117 of NRS.

~~{6.}~~ 4. Notice is not required pursuant to this section before commencing an action if:

(a) The contractor, subcontractor, supplier or design professional has filed an action against the claimant; or

(b) The claimant has filed a formal complaint with a law enforcement agency against the contractor, subcontractor, supplier or design professional for threatening to commit or committing an act of violence or a criminal offense against the claimant or the property of the claimant.

Sec. 9. NRS 40.646 is hereby amended to read as follows:

40.646 1. Except as otherwise provided in subsection 2, not later than 30 days after the date on which a contractor receives notice of a constructional defect pursuant to NRS 40.645, the contractor shall forward a copy of the notice by certified mail, return receipt requested, to the last known address of each subcontractor, supplier or design professional whom the contractor reasonably believes is responsible for a defect specified in the notice.

2. If a contractor does not provide notice as required pursuant to subsection 1, the contractor may not commence an action against the subcontractor, supplier or design professional related to the constructional defect unless the contractor demonstrates that, after making a good faith effort, the contractor was unable to identify the subcontractor, supplier or design professional whom the contractor believes is responsible for the defect within the time provided pursuant to subsection 1.

3. ~~{Except as otherwise provided in subsection 4, not}~~ Not later than 30 days after receiving notice from the contractor pursuant to this section, the subcontractor, supplier or design professional shall inspect the alleged constructional defect in accordance with ~~{subsection 1 of}~~ NRS 40.6462 and provide the contractor with a written statement indicating:

(a) Whether the subcontractor, supplier or design professional has elected to repair the defect for which the contractor believes the subcontractor, supplier or design professional is responsible; and

(b) If the subcontractor, supplier or design professional elects to repair the defect, an estimate of the length of time required for the repair, and at least two proposed dates on and times at which the subcontractor, supplier or design professional is able to begin making the repair.

4. ~~{If the notice of a constructional defect forwarded by the contractor was given pursuant to subsection 4 of NRS 40.645 and the contractor provides a disclosure of the notice of the alleged common constructional defects to the unnamed owners to whom the notice may apply pursuant to NRS 40.6452.}~~

~~(a) The contractor shall, in addition to the notice provided pursuant to subsection 1, upon receipt of a request for an inspection, forward a copy of the request to or notify each subcontractor, supplier or design professional who may be responsible for the alleged defect of the request not later than 5 working days after receiving such a request; and~~

~~(b) Not later than 20 days after receiving notice from the contractor of such a request, the subcontractor, supplier or design professional shall inspect the alleged constructional defect in accordance with subsection 2 of NRS 40.6462 and provide the contractor with a written statement indicating:~~

~~(1) Whether the subcontractor, supplier or design professional has elected to repair the defect for which the contractor believes the subcontractor, supplier or design professional is responsible; and~~

~~(2) If the subcontractor, supplier or design professional elects to repair the defect, an estimate of the length of time required for the repair, and at least two proposed dates on and times at which the subcontractor, supplier or design professional is able to begin making the repair.~~

~~5.] If a subcontractor, supplier or design professional elects to repair the constructional defect, the contractor or claimant may hold the subcontractor liable for any repair which does not eliminate the defect.~~

Sec. 10. NRS 40.6462 is hereby amended to read as follows:

40.6462 ~~{1.—Except as otherwise provided in subsection 2, after}~~ *After* notice of a constructional defect is given to a contractor pursuant to NRS 40.645, the claimant shall, upon reasonable notice, allow the contractor and each subcontractor, supplier or design professional who may be responsible for the alleged defect reasonable access to the residence or appurtenance that is the subject of the notice to determine the nature and extent of a constructional defect and the nature and extent of repairs that may be necessary. To the extent possible, the persons entitled to inspect shall coordinate and conduct the inspections in a manner which minimizes the inconvenience to the claimant.

~~{2.—If notice is given to the contractor pursuant to subsection 4 of NRS 40.645, the contractor and each subcontractor, supplier or design professional who may be responsible for the defect do not have the right to inspect the residence or appurtenance of an owner who is not named in the notice unless the owner requests the inspection in the manner set forth in NRS 40.6452. If the owner does not request the inspection, the owner shall be deemed not to have provided notice pursuant to NRS 40.645.}~~

Sec. 11. NRS 40.647 is hereby amended to read as follows:

40.647 1. ~~{Except as otherwise provided in NRS 40.6452, after}~~ *After* notice of a constructional defect is given pursuant to NRS 40.645, before a claimant may commence an action or amend a complaint to add a cause of action for a constructional defect against a contractor, subcontractor, supplier or design professional, the claimant must:

(a) Allow an inspection of the alleged constructional defect to be conducted pursuant to NRS 40.6462; ~~{and}~~



(b) *Be present at an inspection conducted pursuant to NRS 40.6462 and identify the exact location of each alleged constructional defect specified in the notice and, if the notice includes an expert opinion concerning the alleged constructional defect, the expert, or a representative of the expert who has knowledge of the alleged constructional defect, must also be present at the inspection and identify the exact location of each alleged constructional defect for which the expert provided an opinion; and*

(c) Allow the contractor, subcontractor, supplier or design professional a reasonable opportunity to repair the constructional defect or cause the defect to be repaired if an election to repair is made pursuant to NRS 40.6472.

2. If a claimant commences an action without complying with subsection 1 or NRS 40.645, the court shall:

(a) Dismiss the action without prejudice and compel the claimant to comply with those provisions before filing another action; or

(b) If dismissal of the action would prevent the claimant from filing another action because the action would be procedurally barred by the statute of limitations or statute of repose, the court shall stay the proceeding pending compliance with those provisions by the claimant.

Sec. 12. NRS 40.6472 is hereby amended to read as follows:

40.6472 1. Except as otherwise provided in NRS ~~[40.6452,]~~ 40.670 and 40.672, a written response must be sent by certified mail, return receipt requested, to a claimant who gives notice of a constructional defect pursuant to NRS 40.645:

(a) By the contractor not later than 90 days after the contractor receives the notice; and

(b) If notice was sent to a subcontractor, supplier or design professional, by the subcontractor, supplier or design professional not later than 90 days after the date that the subcontractor, supplier or design professional receives the notice.

2. The written response sent pursuant to subsection 1 must respond to each constructional defect in the notice and:

(a) Must state whether the contractor, subcontractor, supplier or design professional has elected to repair the defect or cause the defect to be repaired. If an election to repair is included in the response and the repair will cause the claimant to move from the claimant's home during the repair, the election must also include monetary compensation in an amount reasonably necessary for temporary housing or for storage of household items, or for both, if necessary.

(b) May include a proposal for monetary compensation, which may include contribution from a subcontractor, supplier or design professional.

(c) May disclaim liability for the constructional defect and state the reasons for such a disclaimer.

3. If the claimant is a homeowners' association, the association shall send a copy of the response to each member of the association not later than 30 days after receiving the response.

4. If the contractor, subcontractor, supplier or design professional has elected not to repair the constructional defect, the claimant or contractor may bring a cause of action for the constructional defect or amend a complaint to add a cause of action for the constructional defect.

5. If the contractor, subcontractor, supplier or design professional has elected to repair the constructional defect, the claimant must provide the contractor, subcontractor, supplier or design professional with a reasonable opportunity to repair the constructional defect.

Sec. 13. NRS 40.648 is hereby amended to read as follows:

40.648 1. If the response provided pursuant to NRS 40.6472 includes an election to repair the constructional defect:

(a) The repairs may be performed by the contractor, subcontractor, supplier or design professional, if such person is properly licensed, bonded and insured to perform the repairs and, if such person is not, the repairs may be performed by another person who meets those qualifications.

(b) The repairs must be performed:

(1) On reasonable dates and at reasonable times agreed to in advance with the claimant;

(2) In compliance with any applicable building code and in a good and workmanlike manner in accordance with the generally accepted standard of care in the industry for that type of repair; and

(3) In a manner which will not increase the cost of maintaining the residence or appurtenance than otherwise would have been required if the residence or appurtenance had been constructed without the constructional defect, unless the contractor and the claimant agree in writing that the contractor will compensate the claimant for the increased cost incurred as a result of the repair.

(c) Any part of the residence or appurtenance that is not defective but which must be removed to correct the constructional defect must be replaced. (d)

The contractor, subcontractor, supplier or design professional shall prevent, remove and indemnify the claimant against any mechanics' liens and materialmen's liens.

2. Unless the claimant and the contractor, subcontractor, supplier or design professional agree to extend the time for repairs, the repairs must be completed:

(a) ~~If the notice was sent pursuant to subsection 4 of NRS 40.645 and there are four or fewer owners named in the notice, for the named owners, not later than 105 days after the date on which the contractor received the notice.~~

(b) ~~If the notice was sent pursuant to subsection 4 of NRS 40.645 and there are five or more owners named in the notice, for the named owners, not later than 150 days after the date on which the contractor received the notice.~~

(c) ~~If the notice was sent pursuant to subsection 4 of NRS 40.645, not later than 105 days after the date on which the contractor provides a disclosure of the notice to the unnamed owners to whom the notice applies pursuant to NRS 40.6452.~~

~~(d) If the notice was not sent pursuant to subsection 4 of NRS 40.645:~~

~~(1)~~ Not later than 105 days after the date on which the notice of the constructional defect was received by the contractor, subcontractor, supplier or design professional if the notice of a constructional defect was received from four or fewer owners; or

~~(2)~~ (b) Not later than 150 days after the date on which the notice of the constructional defect was received by the contractor, subcontractor, supplier or design professional if the notice was received from five or more owners or from a representative of a homeowners' association.

3. If repairs reasonably cannot be completed within the time set forth in subsection 2, the claimant and the contractor, subcontractor, supplier or design professional shall agree to a reasonable time within which to complete the repair. If the claimant and contractor, subcontractor, supplier or design professional cannot agree on such a time, any of them may petition the court to establish a reasonable time for completing the repair.

4. Any election to repair made pursuant to NRS 40.6472 may not be made conditional upon a release of liability.

5. Not later than 30 days after the repairs are completed, the contractor, subcontractor, supplier or design professional who repaired or caused the repair of a constructional defect shall provide the claimant with a written statement describing the nature and extent of the repair, the method used to repair the constructional defect and the extent of any materials or parts that were replaced during the repair.

Sec. 14. NRS 40.650 is hereby amended to read as follows:

40.650 1. If a claimant unreasonably rejects a reasonable written offer of settlement made as part of a response pursuant to paragraph (b) of subsection 2 of NRS 40.6472 and thereafter commences an action governed by NRS 40.600 to 40.695, inclusive, *and sections 2 and 3 of this act*, the court in which the action is commenced may:

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

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

2. If a contractor, subcontractor, supplier or design professional fails to:

- (a) Comply with the provisions of NRS 40.6472;
- (b) Make an offer of settlement;
- (c) Make a good faith response to the claim asserting no liability;
- (d) Agree to a mediator or accept the appointment of a mediator pursuant to NRS 40.680; or
- (e) Participate in mediation,

↪ the limitations on damages and defenses to liability provided in NRS 40.600 to 40.695, inclusive, *and sections 2 and 3 of this act* do not apply and the claimant may commence an action or amend a complaint to add a cause of

action for a constructional defect without satisfying any other requirement of NRS 40.600 to 40.695, inclusive ~~[ ]~~, and sections 2 and 3 of this act.

3. If a residence or appurtenance that is the subject of the claim is covered by a homeowner's warranty that is purchased by or on behalf of a claimant pursuant to NRS 690B.100 to 690B.180, inclusive ~~[a claimant shall diligently pursue a claim under the contract.]~~ :

(a) *A claimant may not send a notice pursuant to NRS 40.645 or pursue a claim pursuant to NRS 40.600 to 40.695, inclusive, and sections 2 and 3 of this act unless the claimant has first submitted a claim under the homeowner's warranty and the insurer has denied the claim.*

(b) *A claimant may include in a notice given pursuant to NRS 40.645 only claims for the constructional defects that were denied by the insurer.*

(c) If coverage under a homeowner's warranty is denied by an insurer in bad faith, the homeowner and the contractor, subcontractor, supplier or design professional have a right of action for the sums that would have been paid if coverage had been provided, plus reasonable attorney's fees and costs.

(d) *Statutes of limitation or repose applicable to a claim based on a constructional defect governed by NRS 40.600 to 40.695, inclusive, and sections 2 and 3 of this act are tolled from the time notice of the claim under the homeowner's warranty is submitted to the insurer until 30 days after the insurer rejects the claim, in whole or in part, in writing.*

4. Nothing in this section prohibits an offer of judgment pursuant to Rule 68 of the Nevada Rules of Civil Procedure or NRS 17.115 ~~[if the offer of judgment includes all damages to which the claimant is entitled pursuant to NRS 40.655.]~~ or section 3 of this act.

Sec. 15. NRS 40.655 is hereby amended to read as follows:

40.655 1. Except as otherwise provided in NRS 40.650, in a claim governed by NRS 40.600 to 40.695, inclusive, and sections 2 and 3 of this act, the claimant may recover only the following damages to the extent proximately caused by a constructional defect:

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

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

~~(c)]~~ (b) The reduction in market value of the residence or accessory structure, if any, to the extent the reduction is because of structural failure;

~~(d)]~~ (c) The loss of the use of all or any part of the residence;

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

~~(f)]~~ (e) Any additional costs reasonably incurred by the claimant ~~[ ]~~ for constructional defects proven by the claimant, including, but not limited to, any costs and fees incurred for the retention of experts to:

(1) Ascertain the nature and extent of the constructional defects;  
 (2) Evaluate appropriate corrective measures to estimate the value of loss of use; and

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

~~[(g)]~~ (f) Any interest provided by statute.

2. A prevailing party in a claim governed by NRS 40.600 to 40.695, inclusive, and sections 2 and 3 of this act is entitled to recover reasonable attorney's fees. The amount of any attorney's fees awarded pursuant to this section must be approved by the court.

3. If a contractor complies with the provisions of NRS 40.600 to 40.695, inclusive, and sections 2 and 3 of this act, the claimant may not recover from the contractor, as a result of the constructional defect, ~~[anything]~~ any damages other than ~~[that which is provided]~~ damages authorized pursuant to NRS 40.600 to 40.695, inclusive ~~[-~~

~~4-]~~, and sections 2 and 3 of this act.

~~3-]~~ 4. This section must not be construed as impairing any contractual rights between a contractor and a subcontractor, supplier or design professional.

5. ~~4-]~~ As used in this section, "structural failure" means physical damage to the load-bearing portion of a residence or appurtenance caused by a failure of the load-bearing portion of the residence or appurtenance.

Sec. 16. NRS 40.695 is hereby amended to read as follows:

40.695 1. Except as otherwise provided in ~~[subsection]~~ subsections 2 ~~[-]~~ and 3, statutes of limitation or repose applicable to a claim based on a constructional defect governed by NRS 40.600 to 40.695, inclusive, and sections 2 and 3 of this act are tolled from the time notice of the claim is given, until ~~[-30]~~ the earlier of:

(a) One year after notice of the claim is given; or

(b) Thirty days after mediation is concluded or waived in writing pursuant to NRS 40.680.

2. Statutes of limitation and repose may be tolled under this section for a period longer than 1 year after notice of the claim is given only if, in an action for a constructional defect brought by a claimant after the applicable statute of limitation or repose has expired, the claimant demonstrates to the satisfaction of the court that good cause exists to toll the statutes of limitation and repose under this section for a longer period.

3. Tolling under this section applies to a third party regardless of whether the party is required to appear in the proceeding.

Sec. 17. NRS 11.202 is hereby amended to read as follows:

11.202 1. ~~[An]~~ No action may be commenced against the owner, occupier or any person performing or furnishing the design, planning, supervision or observation of construction, or the construction of an improvement to real property ~~[at any time]~~ more than ~~[-6]~~ 15 years after the

substantial completion of such an improvement, for the recovery of damages for:

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

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

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

2. The provisions of this section do not apply in ~~to~~

~~(a) To a claim for indemnity or contribution.~~

~~(b) In~~ an action brought against:

(a) ~~1~~ The owner or keeper of any hotel, inn, motel, motor court, boardinghouse or lodging house in this State on account of his or her liability as an innkeeper.

(b) ~~2~~ Any person on account of a defect in a product.

Sec. 18. ~~[NRS 11.2055 is hereby amended to read as follows:~~

~~11.2055 1. Except as otherwise provided in subsection 2, for the purposes of this section and NRS 11.202, [to 11.206, inclusive,] the date of substantial completion of an improvement to real property shall be deemed to be the date on which:~~

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

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

~~(c) A certificate of occupancy is issued for the improvement;~~

~~whichever occurs later.~~

~~2. If none of the events described in subsection 1 occurs, the date of substantial completion of an improvement to real property must be determined by the rules of the common law.] (Deleted by amendment.)~~

Sec. 19. NRS 113.135 is hereby amended to read as follows:

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

(a) Provide to the initial purchaser a copy of NRS 11.202 to 11.206, inclusive, ~~11.2055~~ and 40.600 to 40.695, inclusive ~~1~~, and sections 2 and 3 of this act;

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

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

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

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

Sec. 20. NRS 116.3102 is hereby amended to read as follows:

116.3102 1. Except as otherwise provided in this chapter, and subject to the provisions of the declaration, the association:

(a) Shall adopt and, except as otherwise provided in the bylaws, may amend bylaws and may adopt and amend rules and regulations.

(b) Shall adopt and may amend budgets in accordance with the requirements set forth in NRS 116.31151, may collect assessments for common expenses from the units' owners and may invest funds of the association in accordance with the requirements set forth in NRS 116.311395.

(c) May hire and discharge managing agents and other employees, agents and independent contractors.

(d) May institute, defend or intervene in litigation or in arbitration, mediation or administrative proceedings in its own name on behalf of itself or two or more units' owners on matters affecting the common-interest community. *The association may not institute, defend or intervene in litigation or in arbitration, mediation or administrative proceedings in its own name on behalf of itself or units' owners with respect to an action for a constructional defect pursuant to NRS 40.600 to 40.695, inclusive, and sections 2 and 3 of this act unless the action pertains exclusively to common elements.*

(e) May make contracts and incur liabilities. Any contract between the association and a private entity for the furnishing of goods or services must not include a provision granting the private entity the right of first refusal with respect to extension or renewal of the contract.

(f) May regulate the use, maintenance, repair, replacement and modification of common elements.

(g) May cause additional improvements to be made as a part of the common elements.

(h) May acquire, hold, encumber and convey in its own name any right, title or interest to real estate or personal property, but:

(1) Common elements in a condominium or planned community may be conveyed or subjected to a security interest only pursuant to NRS 116.3112; and

(2) Part of a cooperative may be conveyed, or all or part of a cooperative may be subjected to a security interest, only pursuant to NRS 116.3112.

(i) May grant easements, leases, licenses and concessions through or over the common elements.

(j) May impose and receive any payments, fees or charges for the use, rental or operation of the common elements, other than limited common elements described in subsections 2 and 4 of NRS 116.2102, and for services provided to the units' owners, including, without limitation, any services provided pursuant to NRS 116.310312.

(k) May impose charges for late payment of assessments pursuant to NRS 116.3115.

(l) May impose construction penalties when authorized pursuant to NRS 116.310305.

(m) May impose reasonable fines for violations of the governing documents of the association only if the association complies with the requirements set forth in NRS 116.31031.

(n) May impose reasonable charges for the preparation and recordation of any amendments to the declaration or any statements of unpaid assessments, and impose reasonable fees, not to exceed the amounts authorized by NRS 116.4109, for preparing and furnishing the documents and certificate required by that section.

(o) May provide for the indemnification of its officers and executive board and maintain directors and officers liability insurance.

(p) May assign its right to future income, including the right to receive assessments for common expenses, but only to the extent the declaration expressly so provides.

(q) May exercise any other powers conferred by the declaration or bylaws.

(r) May exercise all other powers that may be exercised in this State by legal entities of the same type as the association.

(s) May direct the removal of vehicles improperly parked on property owned or leased by the association, as authorized pursuant to NRS 487.038, or improperly parked on any road, street, alley or other thoroughfare within the common-interest community in violation of the governing documents. In addition to complying with the requirements of NRS 487.038 and any requirements in the governing documents, if a vehicle is improperly parked as described in this paragraph, the association must post written notice in a conspicuous place on the vehicle or provide oral or written notice to the owner or operator of the vehicle at least 48 hours before the association may direct the removal of the vehicle, unless the vehicle:

(1) Is blocking a fire hydrant, fire lane or parking space designated for the handicapped; or

(2) Poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community.

(t) May exercise any other powers necessary and proper for the governance and operation of the association.

2. The declaration may not limit the power of the association to deal with the declarant if the limit is more restrictive than the limit imposed on the power of the association to deal with other persons.



3. The executive board may determine whether to take enforcement action by exercising the association's power to impose sanctions or commence an action for a violation of the declaration, bylaws or rules, including whether to compromise any claim for unpaid assessments or other claim made by or against it. The executive board does not have a duty to take enforcement action if it determines that, under the facts and circumstances presented:

(a) The association's legal position does not justify taking any or further enforcement action;

(b) The covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with current law;

(c) Although a violation may exist or may have occurred, it is not so material as to be objectionable to a reasonable person or to justify expending the association's resources; or

(d) It is not in the association's best interests to pursue an enforcement action.

4. The executive board's decision under subsection 3 not to pursue enforcement under one set of circumstances does not prevent the executive board from taking enforcement action under another set of circumstances, but the executive board may not be arbitrary or capricious in taking enforcement action.

5. Notwithstanding any provision of this chapter or the governing documents to the contrary, an association may not impose any assessment pursuant to this chapter or the governing documents on the owner of any property in the common-interest community that is exempt from taxation pursuant to NRS 361.125. For the purposes of this subsection, "assessment" does not include any charge for any utility services, including, without limitation, telecommunications, broadband communications, cable television, electricity, natural gas, sewer services, garbage collection, water or for any other service which is delivered to and used or consumed directly by the property in the common-interest community that is exempt from taxation pursuant to NRS 361.125.

Sec. 21. 1. Section 2 of this act applies only to residential construction for which a contract is entered into on or after the effective date of this act.

2. The provisions of NRS 40.615 and 40.655, as amended by sections 6 and 15 of this act, apply to any claim that arises on or after the effective date of this act.

3. The provisions of NRS 40.645, 40.650 and 40.695, as amended by sections 8, 14 and 16 of this act, apply to a notice of a constructional defect given on or after the effective date of this act.

4. The provisions of NRS 40.647, as amended by section 11 of this act, apply only to an inspection conducted pursuant to NRS 40.6462, as amended by section 10 of this act, on or after the effective date of this act.

5. Except as otherwise provided in subsection 6, the period of limitations on actions set forth in NRS 11.202, as amended by section 17 of this act,

applies retroactively to actions in which the substantial completion of the improvement to the real property occurred before the effective date of this act.

6. The provisions of subsection 5 do not limit an action:

(a) That accrued before the effective date of this act, and was commenced within 1 year after the effective date of this act; or

(b) If doing so would constitute an impairment of the obligation of contracts under the Constitution of the United States or the Constitution of the State of Nevada.

7. The provisions of NRS 116.3102, as amended by section 20 of this act, do not apply if a unit-owners' association has given notice of a constructional defect pursuant to NRS 40.600 to 40.695, inclusive, and sections 2 and 3 of this act on or before the effective date of this act.

8. As used in this section:

(a) "Residential construction" means the construction of a new residence, of an alteration of or addition to an existing residence, or of an appurtenance.

(b) "Unit-owners' association" has the meaning ascribed to it in NRS 116.011.

Sec. 22. NRS [~~11.203, 11.204, 11.205, 11.206 and~~] 40.6452 [~~are~~] *is* hereby repealed.

Sec. 23. This act becomes effective upon passage and approval.

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#### LEADLINES OF REPEALED SECTIONS

~~11.203 Actions for damages for injury or wrongful death caused by deficiency in construction of improvements to real property: Known deficiencies.~~

~~11.204 Actions for damages for injury or wrongful death caused by deficiency in construction of improvements to real property: Latent deficiencies.~~

~~11.205 Actions for damages for injury or wrongful death caused by deficiency in construction of improvements to real property: Patent deficiencies.~~

~~11.206 Actions for damages for injury or wrongful death caused by deficiency in construction of improvements to real property: Limitation of actions not a defense in actions based on liability as innkeeper or for defect in product.~~

~~40.6452 Common constructional defects within single development: Response to notice of defect by contractor; disclosure to unnamed owners; effect of contractor failing to provide disclosure to unnamed owners.]~~

#### TEXT OF REPEALED SECTION

40.6452 Common constructional defects within single development: Response to notice of defect by contractor; disclosure to unnamed owners; effect of contractor failing to provide disclosure to unnamed owners.

1. Except as otherwise provided in subsection 2, not later than 60 days after a contractor receives a notice pursuant to subsection 4 of NRS 40.645 which alleges common constructional defects to residences or appurtenances

within a single development and which complies with the requirements of subsection 4 of NRS 40.645 for giving such notice, the contractor may respond to the named owners of the residences or appurtenances in the notice in the manner set forth in NRS 40.6472.

2. The contractor may provide a disclosure of the notice of the alleged common constructional defects to each unnamed owner of a residence or appurtenance within the development to whom the notice may apply in the manner set forth in this section. The disclosure must be sent by certified mail, return receipt requested, to the home address of each such owner. The disclosure must be mailed not later than 60 days after the contractor receives the notice of the alleged common constructional defects, except that if the common constructional defects may pose an imminent threat to health and safety, the disclosure must be mailed as soon as reasonably practicable, but not later than 20 days after the contractor receives the notice.

3. The disclosure of a notice of alleged common constructional defects provided by a contractor to the unnamed owners to whom the notice may apply pursuant to subsection 2 must include, without limitation:

(a) A description of the alleged common constructional defects identified in the notice that may exist in the residence or appurtenance;

(b) A statement that notice alleging common constructional defects has been given to the contractor which may apply to the owner;

(c) A statement advising the owner that the owner has 30 days within which to request the contractor to inspect the residence or appurtenance to determine whether the residence or appurtenance has the alleged common constructional defects;

(d) A form which the owner may use to request such an inspection or a description of the manner in which the owner may request such an inspection;

(e) A statement advising the owner that if the owner fails to request an inspection pursuant to this section, no notice shall be deemed to have been given by the owner for the alleged common constructional defects; and

(f) A statement that if the owner chooses not to request an inspection of the owner's residence or appurtenance, the owner is not precluded from sending a notice pursuant to NRS 40.645 individually or commencing an action or amending a complaint to add a cause of action for a constructional defect individually after complying with the requirements set forth in NRS 40.600 to 40.695, inclusive.

4. If an unnamed owner requests an inspection of the owner's residence or appurtenance in accordance with subsection 3, the contractor must provide the response required pursuant to NRS 40.6472 not later than 45 days after the date on which the contractor receives the request.

5. If a contractor who receives a notice pursuant to subsection 4 of NRS 40.645 does not provide a disclosure to unnamed owners as authorized pursuant to this section, the owners of the residences or appurtenances to whom the notice may apply may commence an action for the constructional defect without complying with any other provision set forth in NRS 40.600 to

40.695, inclusive. This subsection does not establish or prohibit the right to maintain a class action.

6. If a contractor fails to provide a disclosure to an unnamed owner to whom the notice of common constructional defects was intended to apply:

(a) The contractor shall be deemed to have waived the contractor's right to inspect and repair any common constructional defect that was identified in the notice with respect to that owner; and

(b) The owner is not required to comply with the provisions set forth in NRS 40.645 or 40.647 before commencing an action or amending a complaint to add a cause of action based on that common constructional defect.

Senator Kihuen moved the adoption of the amendment.

Remarks by Senators Kihuen, Roberson, Spearman, Brower and Ford.

SENATOR KIHUEN:

Thank you, Mr. President. Chapter 40 should remain a law that provides appropriate balance between homebuilders and the needs of homeowners.

To understand why this amendment is necessary, we need to discuss the process that has led us to Assembly Bill No. 125 today. That process is one of the reasons why Assembly Bill No. 125, which my colleague from District 11, the Democratic Leader, has rightfully tagged as the "Homeowner Rejection Act," came to us as flawed as it did.

We are again being asked to consider a bill that puts settling partisan scores over creating good, long-lasting, sound policy and disregards ordinary Nevadans. Yet again, we are considering a bill that goes back on a bipartisan approach that has been worked on over several months.

Never once, when we heard this bill in committee, did we hear any discussion from the proponents of this bill about what was best for the people for whom Chapter 40 was originally designed protect: homeowners. Assembly Bill No. 125 is unbalanced, which my amendment will help fix.

We certainly heard a lot about homebuilders. We heard a lot about protecting the interests of homebuilders, and we heard a lot about lawyers. We heard lots of anger toward attorneys who help homeowners navigate complex litigation when shoddy construction makes their homes defective. The supporters of this legislation have never explained once what this bill would do to protect homeowners or to expand their rights.

There is a simple reason why. It is because Assembly Bill No. 125, as written, does not do enough to protect homeowners. As it stands, this bill restricts Nevada homeowners' access to justice. The process surrounding this flawed bill is a disservice, a true disservice, to principles of good government, the deliberative process and transparency.

Our own Senate Rule No. 92 requires adequate notice be provided to legislators and the public for committee business, but we were given no warning that we would be working on or voting on this bill until the moment we walked into the committee room on Wednesday. That is not how we operate.

Now, maybe this process satisfies the special interests who had the privilege of crafting this bill for months. It did not satisfy those of us who consider legislating to be a deliberative, thoughtful process that promotes compromise in the interests of making good, sound, durable laws. Because the process was not appropriately deliberative, this bill harms the public even more.

Homeownership is foundational. Buying a home is key to middle-class life. The equity built up in a home can help fund a child's college or help pay for a secure retirement. For the average person, upon retirement, up to 70 percent of their accumulated wealth is in their home. When a home is defective, this bill, as written, may destroy the means to hold the homebuilders accountable. Without this amendment, the bill gives all the advantages to corporations and business special interests and leaves Nevadans with defective homes holding the bill.

Democrats agree that Chapter 40 is not perfect, and we have said time and time again we are willing to discuss reasonable reforms. Assembly Bill No. 125 changes the definition of a defect, which should now serve as a gatekeeper to prevent the frivolous lawsuits that supporters of this

bill claim are such a problem. My amendment will do two things to help level the playing field so that homeowners can, at least, have a fair shot at reasonable access to justice.

With regard to attorneys' fees, this amendment would retain the changes proposed in Assembly Bill No. 125 but would also provide that the prevailing party is entitled to recover reasonable attorney's fees.

When homeowners are forced to engage in costly litigation because a builder's shoddy workmanship causes a defect in their home, the homeowner ought to be able to recover enough to pay their attorney. That is fair. Many homeowners will own a home for 20 or 30 years, so we should not arbitrarily cut the number of years in which they can recover for defective construction. This amendment would also: (1) impose a statute of repose of 15 years in cases involving willful misconduct or fraudulent concealment; and (2) retain all other statutes of repose contained in existing law.

I hope this body considers these amendments for the sake of our constituents and for the sake of the people represented. I ask for your support.

SENATOR ROBERSON:

I appreciate the amendment. I have some questions for my friend, the Senator from District 10. It is interesting to me, that the focus of the changes in this amendment are with regard to trial lawyer fees. Are you proposing that the losing party in a case pays the winning party's legal fees? If that is the case, should we expand that more broadly than just construction defects?

SENATOR KIHUEN:

All this amendment is designed to do is level the playing field for everyone, for people who bought a new home and invested their entire savings into purchasing a home. If this home develops a cracked wall or other problem, I want them to have the ability to sue and be compensated for this damage. This amendment makes things fair. This bill as written does nothing to help protect a homeowner. It does everything to protect big special interests.

SENATOR ROBERSON:

I do not believe I received an answer to my question. What is the intent of this change? Who would pay the prevailing party? Who would pay their attorney's fee? Would it be the losing side?

SENATOR KIHUEN:

Yes, the losing party would pay the fees.

SENATOR ROBERSON:

I would like to point out that would be a departure from the American rule of law when it comes to legal fees. Would my colleague from Senate District 10 be open to broadening that beyond this bill and this amendment to include our legal system generally in the State of Nevada?

SENATOR KIHUEN:

Extension of fees already applies to others. It is not exclusive to construction defects. I am not an attorney, but I take pride in being practical and protecting the interests of my constituents who are the homeowners this will negatively impact. If we do not accept this amendment, the losers will be our constituents and the homeowners. We are impacting people's college educations and retirements. We are not talking about protecting the interests of the large home builders or the big special interests.

SENATOR ROBERSON:

Section 3 of this bill allows a party to receive fees if a settlement offer is rejected and that party ends up prevailing at trial. I believe this amendment is unnecessary, other than for the benefit of the trial lawyers.

SENATOR SPEARMAN:

I do not think this is an argument where home builders win and home owners lose; home owners lose and trial lawyers win. I think the constituent groups that I just named are constituents for all of us. My concern is not only for the content of the bill but also for the process by which we have come to this point.

Anytime we do not properly vet something, and I know that some of my colleagues will say that this has been vetted for the last eight to ten years. Well, some of the people who would have liked to hear that process may not have been around during that time. I know that because of the emails I received when the bill was rushed through Judiciary. Let me read one email from a constituent:

"Dear Senator Spearman, Given that the Assembly GOP Caucus has deemed Assembly Bill No. 125 an "emergency measure", I am writing this to you today. I spent most of Sunday, February 15th reading, re-reading and contemplating the text and potential implications of Assembly Bill No. 125, which makes substantial changes to construction defect litigation statutes colloquially known as "Chapter 40."

As a North Las Vegas Planning Commissioner, I can definitely see the need for responsible growth. New housing construction is definitely a part of that. It's why I voted in support of revised design standards that will help spur more growth while still ensuring builders are building quality communities in North Las Vegas.

I do agree that we need to reform Chapter 40. I've seen first-hand what can happen to property values when an entire development is embroiled in construction defect litigation. Home prices in the neighborhood are depressed. It's harder to get financing to purchase a house in the neighborhood. Homeowners are often left in limbo while the litigation works its way through the system.

However, there are some features on Assembly Bill No. 125 that seriously concern me. First, I disagree with shortening the period that a complaint can be filed to six years. In today's housing market, this is not a reasonable request. We know that many banks have sat on foreclosed houses for years. If shortened to six years, that would mean a house built in 2008, but vacated in 2009 and left vacant until 2013 would only have a year's worth of eligibility to file a construction defect lawsuit.

Second, in most civil matters, the victorious party can often request their attorney's fees be paid by the losing party. In my reading of Assembly Bill No. 125, the claimant can no longer request that their attorney's fees be paid. That is simply not fair.

Finally, while the bill does a lot to help alleviate some of the past fraud involved with construction defect lawsuits, it does go too far in the direction of home builders. It is all well and good to say that builders should honor their warranties, but the reality is that most warranties (except for the structure) expire after one year of ownership. We need to ensure that those people that choose to buy homes in our communities know the builder will honor their commitments.

I think that Assembly Bill No. 125 puts an onerous burden on our homeowners to identify the cause/location of the defect when they are not construction professionals. When you go to the doctor, they don't ask you tell you exactly what is wrong when you aren't feeling well down to the exact organ. No. Why would we expect the same thing when it comes to their home?"

In conclusion, this was written to me by Ken Kraft in North Las Vegas, a member of the Planning Commission. I hope this argument is not reduced to home builders winning and home owners losing; home owners losing and trial lawyers winning. If it is reduced to that, we miss the importance or the essence of what we are trying to do by reforming Chapter 40. The process by which we have come to this point was indeed flawed. I believe that accepting the amendment from my colleague from Senate District 10 in some ways corrects that defect.

SENATOR BROWER:

Thank you, Mr. President. The debate on this amendment that has gone off the rails and is full of exaggerated rhetoric, or as I referred to it during the Committee hearing, a long soliloquy exaggerated hyperbole.

This amendment, as I read it, is nothing but about attorney's fees. I think it is time we stop talking about attorney's fees in the context of a very real problem that this bill is intended to fix. Enough about the lawyers, and paying the lawyers. Let us talk about average Nevadans, and what is good for them.

This bill is a good bill as is. I would submit that it was made better since the hearing on the bill by the other Body's amendment to correct an issue that some members of this Body had a problem with. That issue was fixed.

I would suggest that no bill we consider is perfect, I am not sure that is possible with life, or certainly with legislative life. Let us not make the perfect the enemy of the good.

This is a very good bill, and I would urge that this amendment be rejected and we move on to vote on Assembly Bill No. 125.

SENATOR FORD:

It is amazing to hear this discussed as a bill about attorney's fees. It is not. It is about the homeowner and a fair chance to have this bill receive the same consideration as other bills have received in the past. This is about fairness. It is about an investment an individual has made that, potentially, lasts for the rest of their life. I am an attorney. I believe this amendment parrots the prevailing party provisions in other consumer protection statutes. It is in Title VII cases at the federal level. For example, it is seen in cases where the little guy has to fight the big guy. It is a reasonable compromise between what is currently in that law, which is that attorney's fees are an element of damages, and the American rule of law. This is a fair compromise. If you lose, you must pay the attorney's fees, that is fair. It is not about the attorney. It is about the individual. An individual should not have to pay attorney's fees in order to seek redress from a contractor who does not build a home correctly.

The other provision of this amendment relates to the length of time in which a fraud claim can be made. The average mortgage is 30 years, and this bill proposes to allow claims for fraud for only 6 years. This does not make sense. This amendment is a fair compromise. The current statute has no limitation as to when this type of claim can be brought. The bill proposes 6 years, and we propose 15 years in this amendment.

These two changes are the only ones we propose in order to make this a fair bill for homeowners and homebuilders. We have opportunities to find fair compromises here, and I have been at the forefront of trying to do so on this issue since last Session. I have worked with the home builders, trial lawyers and others to find a fair compromise. It is not a partisan issue. It is an issue to find the right balance between homeowners and homebuilders.

There is much rhetoric about how lawsuits and construction defects have hurt the housing market in Nevada. Today, the *Las Vegas Sun* newspaper ran an article that analyzed the contention that construction defect lawsuits are what harmed our economy. I want to read a few of that article's conclusions to make sure that we have some objective analysis in the record. The article states: "To say construction-defect cases are strangling the housing market or the state at large—while ignoring Nevada's countless serious economic problems—does not jibe with reality." It continues by saying "A University of Nevada professor summarized supporters of Assembly Bill No. 125's claim that Chapter 40 strangles the housing construction industry as 'so overstated, it's really pretty laughable.'" The article said, "The housing market has plenty of weak spots, but the woes do not seem to have anything to do with home-defect lawsuits." It relates that this bill is about a "partisan fight as opposed to what's best for the homeowner." I am trying to remove the partisanship from this and offer a bipartisan approach to a real issue. Democrats had few opportunities to participate

in the development of this bill. They had limited chances to compromise or participate in real discussions about the issue.

We are all being observed by our constituents in this process who wonder if we need something similar to the Open Meetings Law for the Nevada Legislature. A posting on Facebook states: "This bill just passed the Assembly yesterday, now it is being voted out of the Senate Judiciary—I'm guessing followed by another suspension of the rules to get it to the Governor's desk by this week's end. When the Senate Democratic leader is surprised by this coming through, imagine what it is like for the average citizens." That is what the Facebook posting said. People are watching and paying attention to what we are doing. They want to see transparency in this body. I urge your support of this reasonable compromise to a real issue, that balances, properly, the interests of the homeowner and the homebuilder.

SENATOR ROBERSON:

My colleague, the Senate Democratic Leader, asked if it was fair if someone's house needed repair and then the same plaintiff had to pay their own legal fees. I understand what you are saying, but to my knowledge there are no instances where construction defect cases are brought that are not on contingency. The plaintiff does not have legal fees currently in most, if not all cases. This returns to how much more money can the trial lawyer gain. I am not aware of any construction defect cases where the plaintiff homeowner pays an hourly bill to the plaintiff's attorneys, are you? It is my understand that these are contingency cases. If we amend this bill and put in a provision about prevailing party receiving legal fees, we are talking about more money potentially going into the pocket of the plaintiff's attorney, not the homeowner.

SENATOR FORD:

Thank you, Mr. President. I do not practice construction defect law. I do not know how the contracts look, generally. I will tell you this: what has been argued as the problem is that too many attorney's fees is being rewarded. The way to fix that is to do two things, one of which is to fix the gatekeeper, which is the definition. We left the definition alone, as you have put it in there. That is one way. Because, if it is truly all about the lawsuits, then the definition of a defect should handle that. Alternatively, you can fix the attorney's fees provisions and remove that incentive. Right now, the attorney's fees are an element of damages, meaning you automatically get them for all intent and purposes. That is the problem with the current bill. You have changed that to make it the American rule of law.

My suggestion is, to make it more fair to the homeowner, that we do prevailing party. That is not really an answer to your question because I do not know. I do not pretend to know what those contracts look like. That is not my business. That is a private, contractual interaction between a lawyer and their client, in that regard. I do not know if there was another question in there. I would answer it if there was.

SENATOR ROBERSON:

Thank you, I have received my answer.

SENATOR FORD:

Maybe I should clarify, the truth is the problem asserted was that attorneys' fees was the issue. The proposed solution is to make it "prevailing party." I am addressing the issue as asserted—whether a contract is contingency versus paying hourly is irrelevant to the question asserted. That is where we are coming from on this particular issue, Mr. President. Thank you for your indulgence.

Senators Ford, Manendo and Woodhouse requested a roll call vote on Senator Kihuen's motion.

Roll Call on Senator Kihuen's motion:

YEAS—8.

NAYS—Brower, Farley, Goicoechea, Gustavson, Hammond, Hardy, Harris, Kieckhefer, Lipparelli, Roberson, Settlemeyer—11.

EXCUSED—Segerblom, Smith—2.



The motion having failed to receive a majority, Mr. President declared it lost.

Remarks by Senator Brower, Ford, Atkinson, Kihuen, Settlemeyer, Spearman and Roberson.

SENATOR BROWER:

Thank you, Mr. President. I think we have heard enough on the bill itself. This is a good bill that fixes a real problem. And it is a long overdue fix. I have to tell you I have heard from one person, Mr. President, who suggested the bill maybe was not good enough and should be changed, before today's proposed amendment. That was from the sole witness at the joint hearing that was conducted last week on the bill. That one witness, to be sure, did not like the bill. I had not heard from him before the hearing. I invited him during the hearing to visit me in my office. I invited the world to visit me in my office if they had suggestions on how to improve the bill. No one visited me. That is okay, Mr. President. I have plenty to do. To be sure, my colleague from District 11 expressed his dissatisfaction with the bill. I heard from were people who were relieved that we were finally doing something to fix this problem. And, it is about time.

We, for the most part, today, have heard the sort of opposition that I expected to hear. Not so much on the substance, although we got into a little bit of that with respect to the proposed amendment. But we heard, predictably, that there was a lack of transparency with respect to how the bill was processed. Again, Mr. President, we had a joint hearing with a couple of hours of testimony. Anybody who wanted to oppose the bill was certainly free to testify against the bill. We heard from one person.

We heard that the process has moved too quickly. It has moved quickly. It is going to continue to move quickly. We will be deliberative; we will be thoughtful, but we will not always agree on the substance. Let me suggest to the Minority Party that just because we may disagree, does not mean we disrespect the ideas the other side has, the proposals they may put forth or the viewpoints that they express. We may simply disagree on the policy. This is an example of that. We will see much more of this in the weeks ahead.

We heard, predictably, that this bill was not the subject of compromise. Let me set the record straight on that, Mr. President. Months ago, years ago, because this debate is not new, it is not a new issue, the majority of people interested in this issue have long advocated for a complete elimination of Chapter 40 of Nevada Revised Statutes. A complete elimination. "It is broken, it does not work, let's get rid of it." Most of us who have participated in that debate thought a compromise position was better. That is this bill. Rather than getting rid of the whole thing, the idea was to fix it. That is what you see in Assembly Bill No. 125—a fix. I mentioned earlier, the other Body actually changed it even further, compromised further, in response to some concerns raised by members of this Body. And we have that amended bill in front of us now.

The one thing we have not heard today, that I expected and maybe it is coming, is a complaint about the seating arrangement in the Chamber. We have heard everything else. I do not read the social media stuff but I have heard that there is actually whining out there, whining, about how we are arranged here in the Chamber. Some of the whining, it seems to me, is being put forth by those who never even visited this place until the 21st century. I have just a bit of a history lesson. I do not want to sound patronizing, but I am afraid that some of us do not quite know the history of this place. I have not been here forever, Mr. President, but I will tell you that before 2011, the seats in the Chamber were arranged just like they are now. I am told that goes back to the early 1980s, during Democratic control of the Chamber. To waste time complaining where we are sitting, who we are sitting next to, that just gets us away from the important policies at issue here. I do not think that Senator Neal ever complained about the seating arrangement or that Senator Titus ever complained about the seating arrangements. Senator Wiener never complained about the seating arrangements. They debated real issues, to be sure, but let us keep our eyes on the ball.

Let us talk about the issues. There is an old lawyer's adage that you know well, Mr. President. "When the facts are on your side, argue the facts. When the law is on your side, argue the law. When neither the law nor the facts are on your side, just argue." I think that is what we are witnessing today. Just argument, throwing stuff up, hoping some of it will stick, distracting us from what we are here to do, which is to pass this bill, today. I would submit that we have an

opportunity to put partisan politics aside. The dilemma for this Body today, on this bill, is this: we can stand up against partisanship and try to fix a real problem, for real Nevadans, or we can continue to debate and argue and interject partisan hyperbole into the process. I would suggest, on behalf of all our constituents, on behalf our State's economy, we should do the right thing and pass a very good bill, fix this problem and move on. Thank you, Mr. President.

SENATOR FORD:

I was not going to speak, but in view of the beautiful soliloquy, I figured I would stand up to offer some thoughts of my own. You want us to keep our eye on the ball, but you cannot hide the ball if that is what you want us to do. Ultimately, that is what has occurred. Moreover, to the contrary, there were several proposed amendments that were suggested to the Chairs of both the Senate and Assembly Judiciary Committees.

In addition, one proposed amendment came from me directly and I asked: "Are you amenable to changing the attorney's fees provision in Assembly Bill No. 125 to 'prevailing party'?" If so, I can get you some votes." That is the type of conversation that has been attempted but has essentially been ignored. Yes, people of times past, again, have agreed to certain of these things, but this Body did not deliberate. You are going fast but this is not deliberative. That is the issue. Make no mistake about it, we do not have an issue with getting work done. We want to be able to deliberate on that work. You cannot hike the ball if we are going to keep the ball moving.

With that said, this Homeowner Rejection Act is a bad act. We have offered two opportunities that can make this bill better. You have rejected them so we will have to oppose this bill, and I suggest my colleagues do the same.

SENATOR ATKINSON:

Like my colleague, I too, was not going to speak, but, when a member of this House stands and tries to discipline us, someone has to speak out. To my college from District 15, we will not be domineered. We will not be disrespected. We will be treated like human beings. We do not need a lecture. When I spoke on the Floor about the seating chart, I was referring to this present Body and how it has become partisan. As I have mentioned before, I have been here since 2003 and know about the seating charts, and I think the rest of us know about the seating charts as well. My remarks and comments, when I walked in here, were that it was evident to me what type of session we were going to have, a Washington, D.C. style of politics session. We will continue to stand up and speak out about the things we think are harmful to our citizens or to our State.

Mr. President, if we could go back to last Session and speak about partisanship in this Body where in social media it was suggested how folks were treated last Session, I would like to refer to my bill, the most important bill of last Session, Senate Bill 123 of the 77th Legislative Session. I did not expect people to come to my office. I actually went to people, individually, to find out where they stood on Senate Bill 123 of the 77th Legislative Session. In the Committee, I promised my colleagues, from both parties, that no bills would come out of the Committee that were partisan. No bills from the Committee would come out as partisan because, I was committed to making sure we had the support. Senate Bill 123 of the 77th Legislative Session made it out of Committee with a 7 to 0 vote and out of this Body with a 21 to 0 vote. We did not move on the bill until we had everyone's support, including, those who wanted items changed or removed. We can keep doing this, but we are going to continue to stand up and speak out about the things that we feel are detrimental to our citizens and to our State. Thank you, Mr. President.

SENATOR KIHUEN:

It is important to discuss the process we will follow moving forward. We are only in the third week of the Legislative Session, and we have a long way to go. It is not a service to our constituents if they are denied the opportunity to testify in front of a committee because they did not know there was a work session occurring or that there was a vote coming up in a hearing. How is this a service to transparency? How is this a service to good, sound policy here in this Body?

I find it disrespectful that we are sitting here debating and I see colleagues not paying attention. We are debating important pieces of legislation that may impact the next 20 years in our State. I am concerned about the process. I have always been bipartisan and have enjoyed working with Republicans and Democrats. Moving forward, regardless of the outcome of this bill, we must

return to working together, to being respectful with each other and to allowing our constituents the opportunity to testify. We would not be where we are if it was not for our constituents. They deserve the opportunity to participate either here in Carson City or via video conference from Las Vegas. I am proud to serve in this Body, and I am proud to serve with each and every one of you. We are doing a disservice to our constituents when we do not allow them transparency and an opportunity for good, sound policy debate.

SENATOR SETTELMAYER:

Thank you, Mr. President I would rise support of Assembly Bill No. 125. I will try something novel. No offense to both sides, in a bi-partisan way, but I am actually going to speak to the bill in question.

A University of Nevada, Las Vegas, study showed that what we have done here in Nevada, with construction defect law is create a situation where Nevada has 38 times the national average of lawsuits regarding construction defects. That adds, as one gentleman by the name of Jeremy Slater stated, money to the cost of the home. The premiums for insurance alone, with the people he works with, is \$8,500. We can lower the cost of homes in the State of Nevada by fixing construction defects. That is why I rise in support of Assembly Bill No. 125. Thank you.

SENATOR SPEARMAN:

Thank you Mr. President. I do not think we are against fixing or reforming Chapter 40, I have not heard that from any of my colleagues. We are for that. We are not for the way it is written right now. Whining means "to say something in a very high-pitched voice, very peevishly." Observation means to look at something attentively. So, for the record, there is a difference.

SENATOR BROWER:

Thank you, Mr. President, for a final time. We all know we need to move on and to vote on this. At some point, I know it is easy to just say things, whether it is true or not, just to get it out there. But, let me try to correct the record. I think our colleague from District 10 knows this. We had a duly noticed hearing—a joint hearing between the two Bodies. Hundreds of people showed up for the hearing. We had a roomful of people in Carson City and a roomful of people in Las Vegas. I am told we had a couple of overflow rooms as well.

There was no lack of notice to those interested in the bill. In fact, it was said on the record by those opposing the bill that their strategic decision was to have one person testify against the bill. If we want to debate the merits of the bill, let us do that. That is why we are here. But let us not create a false narrative about hiding the ball or lack of transparency. Anybody who wanted to testify against this bill had an opportunity and for whatever reason, the opposing side decided one lawyer from Las Vegas would do it. I wanted to make sure the record is clear on that, Mr. President. Thank you.

SENATOR ROBERSON:

This debate is healthy, and it is good. I know I speak for my caucus when I say we respect each and every one of you—we respect everyone in this Body. This is good. If we all agreed on every issue these Chambers would be a boring place. This, however, is not the case. We are going to have spirited debates, and that is alright. I shared a meal last night with the Senate Democratic leader and we discussed this issue at length. It is good to remember we are all human beings with different perspectives, but we are all here because we believe we are doing the right thing for the people of Nevada. I believe this is true just as much for every one of the Democrats in this room as it is for the Republicans.

We appreciate the debate and will continue to have debates throughout this Session. We are here to respect and work with each other. We will have different viewpoints and vote differently, but we are here to do the right thing for the people of Nevada.

Roll call on Assembly Bill No 125.

YEAS—11.

NAYS—Atkinson, Denis, Ford, Kihuen, Manendo, Parks, Spearman, Woodhouse—8.

EXCUSED—Segeberblom, Smith—2.

Assembly Bill No. 125 having received a constitutional majority, Mr. President declared it passed.

Bill ordered transmitted to the Assembly.

GUESTS EXTENDED PRIVILEGE OF SENATE FLOOR

On request of Senator Brower, the privilege of the floor of the Senate Chamber for this day was extended to the following students, teachers, and chaperones from Saint Albert the Great Catholic Elementary School: Jeremy Atwell, Gary Benedict, Beau Bland, Dominic Browne, Jack Busboom, Stella Cole, Megan Drake, Katie Fitzgerald, Julianna Flores, Ella Galvez, Ella Gardner, Elizabeth Geil, Kylee Ghiggia, Kylei Gillialand, Ray Go, Gabe Hill, Breanna Huffaker, Jesse Kridler, Jack Maloney, Dominic Nunzir, Campbelle Redding, Hailey Riffel, Matteo Schettler, Brianna Sotelo, Jacob Struby, Rachel Taylor, Sergio Venegas, Maddelyn Watson, Kira Weible and Nicole Wetta.

On request of Senator Farley, the privilege of the floor of the Senate Chamber for this day was extended to former Senator William O'Donnell and Jake Struby.

Senator Roberson moved that the Senate adjourn until Monday, February 23, 2015, at 11:00 a.m.

Motion carried.

Senate adjourned at 12:34 p.m.

Approved:

MARK A. HUTCHISON  
*President of the Senate*

Attest: CLAIRE J. CLIFT  
*Secretary of the Senate*