IN THE SUPREME COURT OF THE STATE OF NEVADA

HIGH NOON AT ARLINGTON RANCH HOMEOWNERS ASSOCIATION, NEVADA NON-PROFIT CORPORATION,

Petitioner,

vs.

EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE SUSAN JOHNSON, DISTRICT JUDGE,

Respondent.

and

D.R. HORTON, INC.,

Real-Party-In-Interest.

SUPREME COURT CASE NO: 65456

Electronically Filed
Jan 02 2015 04:19 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

D.R. HORTON, INC., A DELAWARE CORPORATION,

Petitioner,

and

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK: AND THE HONORABLE ALLAN R EARL, DISTRICT JUDGE,

Respondents,

and

FIRST LIGHT HOMEOWNERS ASSOCIATION, A NEVADA NON-PROFIT CORPORATION, FOR ITSELF AND FOR ALL OTHERS SIMILARLY SITUATED,

Real-Party in Interest.

SUPREME COURT CASE NO: 65993

D.R. HORTON, INC.'S NOTICE OF FILING NEVADA LEGISLATURE SIXTY-EIGHTH SESSION 1995 SUMMARY OF LEGISLATION

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D.R. Horton, Inc. submits the following Notice of Filing Nevada Legislature Sixty-Eighth Session 1995 Summary of Legislation.

The cases of *High Noon at Arlington Ranch Homeowners Association v. D.R. Horton*, District Court Case No. 07A542616, Supreme Court Case No. 65456, and *D.R. Horton, Inc. v. Eighth Judicial District Court (First Light)*, District Court No. A499743 and Supreme Court No. 65993, were consolidated for oral argument by the Supreme Court of Nevada on December 10, 2014. The Supreme Court thereafter directed the parties in *High Noon at Arlington Ranch*, Case No. 65456, to address the effect of NRS 40.640(5) on the issues at Oral Argument on January 7, 2015. Upon further review of the issue, D.R. Horton has determined the arguments asserted by the Nevada Justice Association ("NJA") in the Amicus Curiae brief filed in the First Light matter, Supreme Court Case No. 65993, quoted language from the legislative history of NRS 40.640(5) and specifically testimony of Renny Ashleman, a lobbyist involved in the passage of Chapter 40, in hearings before the Assembly Committee on the Judiciary, without providing a copy of the complete legislative history or the specific statements relied upon by NJA in an appendix or as exhibits in violation or pursuant to Nevada Rule of Appellate Procedure 21(a)(4). Based upon the Supreme Court Order requesting the parties address the effect of NRS 40.645(5), a copy of excerpts from the Nevada Legislature Sixty-Eighth Session 1995 - Summary of Legislation including testimony cited by NJA is attached hereto as **Exhibit 1**. In addition the entire Nevada Legislature Sixty-Eighth Session 1995 -

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Summary of Legislation is attached hereto as **Exhibit 2**.

Dated this 2nd day of January, 2015.

WOLFENZON ROLLE

By: _____

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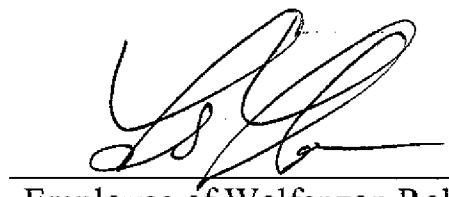
Attorneys for Petitioner and Real Party Interest, D.R. Horton, Inc.

CERTIFICATE OF SERVICE

I certify that on the 2nd day of January, 2015, I submitted for electronic filing and electronic service the foregoing **D.R. HORTON, INC.'S NOTICE OF FILING NEVADA LEGISLATURE SIXTY-EIGHTH SESSION 1995 SUMMARY OF LEGISLATION** to the parties in both cases with Docket Numbers: 65456 and 65993.



Employee of Wolfenzon Rolle

EXHIBIT 1

Expressing concern that the bill is unspecific and could lead to disputes, Senator Washington wondered if it would be appropriate to include a time limit rather than leave the wording "as soon as practicable" in section 16 of the proposed amendment. Mr. Ashleman responded it would be difficult to include a specific time limit because there is no way to anticipate what problem may arise, because one problem may be cured in a few minutes, while another will require several weeks. He pointed out the home owner has the capability to go ahead and make repairs if he feels the response is not sufficiently expeditious.

Senator Titus voiced concern any negotiations with unlicensed contractors will lend credibility to their status. Mr. Ashleman called attention to the provision in section 2. (c) on page 5 which provides that repairs must be made by a licensed, bonded and insured contractor if the original contractor fails to perform.

Mr. Wadhams declared the amendment is written so that unlicensed contractors will not be exempt from responsibility just because they are not licensed, but it does not authorize them to perform work.

Senator Porter inquired if material defects should be included under the definition of contractor liability in section 10 on page 3 along with construction defects. Mr. Ashleman responded, "The items listing the things that are accepted are exceptions to the responsibility."

Senator Porter noted the previous provision, which was found under section 8 in the original bill, appears to be substantially different from the provisions of section 10 in the amendment. Mr. Ashleman replied:

> There are substantial differences between the original section 8. Now there's not that much difference between the ... first set of amendments we brought you and what we have now.... We took out the reliance on government records, and we took out the use of the language of "negligence" because, in fact, these are warranty items, rather than negligence items. You're responsible for a construction defect whether, in fact, it was negligently done or not.

Mr. Wadhams interjected that was one of the points worked out through consensus with home owners and attorneys on both sides of the issue prior to the first hearing on the matter. He stated the definition was changed to a definition which seems

concept or a personal injury, wrongful death type concept. In talking with Mr. Lyle it is very clear at least in his mind and those of others we have consulted with there is probably some 30 to 40 attorneys at this point that we have nothing to do with any change in strict liability or the personal injury, wrongful death here. Section (b) does not bar or limit any defense otherwise available except as otherwise provided in these sections. That again is the Texas approach. Another reason for doing that was to make sure we were not in fact altering existing law. There are all sorts of Nevada statutes that talk about your defenses, your warrantees, and limitations thereon and we want to make sure we aren't touching any of those. We have bracketed the former subsection 2 of 9 to take it out. That was simply left over in the drafting process from earlier problems we were addressing. It no longer has any meaning in this statute. There would be no damages or other action or activity of the claimant or the defendants that that would point to, so it is surplusage. There is some concern that if we left it in, it might lead to confusion and interpretation problems so we would ask that it be removed.

Section 10 talks about what a contractor is liable for. He is liable for his acts or omissions or those of his agents, employees or subs and not liable for the acts or omissions of others who are not those persons. On page four, it goes on we are not liable for the failures of others who take reasonable actions to reduce damages or maintain the residence . . . normal wear, tear, or deterioration and these are from the Texas act. We did modify at 4, normal shrinkage, swelling, expansion or settlement from the Texas act as we were advised by engineers that worked for both sides that this language is the proper way to describe that situation so we made that modification. Finally, you are not liable for construction defects disclosed on owner if provided language that was understandable and written and underlined in bold-faced type with capital letters. This was added at the request of the trial lawyers. There are quite a number of cases where you know there is some sort of a problem with the residence, sometimes minor, sometimes not so minor, that simply cannot be fixed so there is really nothing you can do about it in practical terms, so you have to tell people that and they can make their decision whether to buy a home based on that situation or not.

Section 11 is sort of the operational part of the bill. Before you bring a cause of action in the courts you have to let the contractor know what is wrong by written notice by certified mail, return receipt requested, specifying in reasonable detail the defects or damages. The purpose of this is to prevent people from running to court before the contractor even has a chance to address the problem. Then during a 35

Statement by I. R. Ashleman supporting SB 395 prepared at the request of the Assembly Judiciary Committee covering the essential elements of legislative intent as presented by the Southern Nevada Home Builders and the Nevada Trial Lawyers to the Judiciary Committee on June 23, 1995.

The bill is intended to address warranty concerns relating to residential construction. It deals with construction defects as they relate to the use of the home.

It does not deal with personal injury claims, which have been purposefully removed from the bill. Some commentators have raised the concern that the bill imposes strict liability. That is a tort or personal injury-negligence type of claim. The bill has nothing to do with strict liability. It simply covers the method of repair and the measure of damages relating to construction defects as defined in the act.

The bill does not bar any defenses. The reason that it does not is to preserve warranty limitations and defenses found elsewhere in Nevada statutory and common law. An example would be those found in the Uniform Common Interest Ownership Act.

EXHIBIT 2

NEVADA LEGISLATURE

SIXTY-EIGHTH SESSION

1995

SUMMARY OF LEGISLATION

PREPARED BY

RESEARCH DIVISION

LEGISLATIVE COUNSEL BUREAU

SB 395 By Judiciary CONTRACTORS

Regulates recovery for defects in residential construction. (BDR 3-1589)

Fiscal Note: Effect on Local Government: No. Effect on the State or on Industrial Insurance: No.

04/21	59	Read first time. Referred to Committee on Judiciary. To printer.
04/24	60	From printer. To committee.
04/24	60	Dates discussed in Committee: 5/10, 5/30, 6/15, 7/1 (A&DP)
06/15	99	From committee: Amend, and do pass as amended.
06/15	99	(Amendment number 805.)
06/16	100	Read second time. Amended. To printer.
06/17	101	From printer. To engrossment.
06/17	101	Engrossed. First reprint. Placed on General File.
06/17	101	Read third time. Passed, as amended. Title approved. (21 Yeas, 0 Nays, 0 Absent, 0 Excused, 0 Not Voting.) To Assembly.
06/19	102	In Assembly.
06/19	102	Read first time. Referred to Committee on Judiciary. To committee.
06/19	102	Dates discussed in committee: 6/23, 6/25 (A&DP)
06/29	112	From committee: Amend, and do pass as amended.
06/29	112	(Amendment number 1331.)
06/29	112	Placed on Second Reading File.
06/29	112	Read second time. Amended. To printer.
06/30	113	From printer. To re-engrossment.
06/30	113	Re-engrossed. Second reprint.
06/30	113	Placed on General File.
06/30	113	Read third time. Passed, as amended. Title approved. (42 Yeas, 0 Nays, 0 Absent, 0 Excused, 0 Not Voting.) To Senate.
07/01	114	In Senate.
07/01	114	Assembly amendment concurred in. To enrollment.
07/03	116	Enrolled and delivered to Governor.
07/05	0	Approved by the Governor.
07/06	0	Chapter 661. Effective July 1, 1995.

(* = instrument from prior session)

S.B. 395 (Chapter 661)

Senate Bill 395 establishes the procedure for filing an action to recover damages resulting from a defect in residential construction and authorizes the claimant to recover attorney's fees and certain costs incurred as a result of the damage. Prior to filing such an action, the claimant must provide the contractor with notice of the action and an opportunity to inspect and repair the damage at his expense. The contractor may also offer to settle the claim by repurchasing the claimant's residence. In addition, the matter must be submitted to mediation prior to filing an action in court unless the contractor and the claimant waive, in writing, the right to mediation.

The contractor's liability is limited to damages resulting from his acts and omissions or those of his agents, employees, or subcontractors. Any statutes of limitation applicable to a claim filed under these provisions are tolled from the time that notice is provided until after mediation is concluded or waived.

Senate Bill 395 applies to claims to recover damages that arise after the act's effective date of July 1, 1995.

SENATE BILL NO. 395—COMMITTEE ON JUDICIARY

APRIL 21, 1995

Referred to Committee on Judiciary

SUMMARY—Regulates recovery for defects in residential construction. (BDR 3-1589)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

EXPLANATION—Matter in italics is new; matter in brackets [ ] is material to be omitted.

AN ACT relating to civil remedies; providing limits and procedures for recovery on account of defects in residential construction; and providing other matters properly relating thereto.

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

Section 1. Chapter 40 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 16, inclusive, of this act.

Sec. 2. *As used in sections 2 to 16, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 to 6, inclusive, of this act, have the meanings ascribed to them in those sections.*

Sec. 3. *"Accessory structure" means a structure or recreational facility that is appurtenant to a residence, but is not a part of the dwelling unit.*

Sec. 4. *"Constructional defect" includes a defect in the design or repair of a new residence, of an alteration of or addition to an existing residence, or of an accessory structure. The term includes physical damage to the residence, an accessory structure or the real property to which the residence or accessory structure is affixed that is proximately caused by a constructional defect.*

Sec. 5. *"Contractor" means a person contracting with an owner for the construction or sale of a new residence constructed by that person or by his agents, employees or subcontractors or for an alteration of or addition to an existing residence, repair of a new or existing residence, or construction, sale, alteration, addition or repair of an accessory structure to a new or existing residence. The term includes a risk retention group that insures all or any part of a contractor's liability for the cost to repair a residential constructional defect.*

Sec. 6. *"Residence" means a dwelling designed for not more than four families or a unit in such a dwelling in which title to the individual units is transferred to the owners pursuant to chapter 116 or 117 of NRS.*

Sec. 7. *1. Sections 2 to 16, inclusive, of this act:*

(a) Apply to a cause of action to recover damages resulting, directly or indirectly, from a constructional defect, except a claim for personal injury or

wrongful death, and prevail over any conflicting law otherwise applicable to the action.

(b) Do not bar or limit any defense otherwise available except as otherwise provided in those sections.

2. Sections 2 to 16, inclusive, of this act apply only if the cause of action arose on or after October 1, 1995.

3. As used in this section, "personal injury" does not include mental anguish, suffering, emotional distress, fear or anxiety.

Sec. 8. *1. In a cause of action to recover damages resulting from a constructional defect, a contractor is liable only for his negligence or the negligence of his agents, employees or subcontractors and is not liable for any damages caused by:*

(a) The negligence of a person other than the contractor or his agent, employee or subcontractor;

(b) The failure of a person other than the contractor or his agent, employee or subcontractor to take reasonable action to reduce the damages or maintain the residence;

(c) Normal wear, tear or deterioration;

(d) Normal shrinkage because of drying or settlement of constructional components within the tolerance of building standards generally considered acceptable in the area where the residence is constructed; or

(e) Any matter or potential problem disclosed, in writing, to an owner before his purchase of the residence.

2. A contractor may rely on written information relating to a residence, accessory structure or real property to which the residence or accessory structure is affixed which was obtained from official governmental records, even if the written information was false or inaccurate, if the contractor did not know and could not reasonably have known of the falsity or inaccuracy of the information.

Sec. 9. *1. Except as otherwise provided in subsection 2 and section 13 of this act:*

(a) At least 60 days before a claimant brings a cause of action against a contractor for damages arising from a constructional defect, the claimant must give written notice by certified mail, return receipt requested, to the contractor, at the contractor's last known address, specifying in reasonable detail the defects that are the subject of the complaint. During the 35-day period after the contractor receives the notice, on his written request, he is entitled to inspect the property that is the subject of the complaint to determine the nature and cause of the defect and the nature and extent of repairs necessary to remedy the defect. The contractor may take reasonable steps to establish the existence of the defect. If the residence is covered by a warranty issued by an insurer authorized to issue such a warranty by this state, a claimant must diligently pursue a claim under the warranty.

(b) Within 45 days after the contractor receives the notice, he may make a written offer of settlement to the claimant. The offer may include an agreement by the contractor to repair, or to cause to be repaired by an independent contractor at the contractor's expense, each constructional defect described in the notice, and must describe in reasonable detail the kind of repairs to be

made. The repairs must be made within 45 days after the contractor receives written notice of acceptance of the offer, unless completion is delayed by the claimant or by other events beyond the control of the contractor. The claimant and the contractor may agree in writing to extend the periods prescribed by this subsection.

2. Except as otherwise provided in section 13 of this act, if the giving of notice under subsection 1 within the period prescribed in that subsection is impracticable because of the necessity of bringing a cause of action at an earlier date to prevent the expiration of the statute of limitations or because the complaint is asserted as a counterclaim, that notice is not required. However, the cause of action or counterclaim must specify in reasonable detail each constructional defect that is the subject of the complaint, and the inspection and the written offer of settlement may be made within 60 days after the date of service of the cause of action or counterclaim on the contractor. If, while a cause of action governed by sections 2 to 16, inclusive, of this act is pending, the statute of limitations for the cause of action would have expired and it is determined that the provisions of paragraph (a) of subsection 1 were not followed, the cause of action must be stayed for not more than 75 days to allow compliance with subsection 1.

3. As used in this section, "independent contractor" means a person who is independent of the contractor and did not perform any of the work complained of in the claimant's notice unless otherwise agreed by the claimant.

Sec. 10. *1. If a claimant rejects a written offer of settlement made pursuant to section 9 of this act or does not permit the contractor or independent contractor a reasonable opportunity to repair the defect pursuant to an accepted offer of settlement and thereafter files a cause of action governed by sections 2 to 16, inclusive, of this act, the claimant may recover only the reasonable cost of the repairs which are necessary to cure the constructional defect and are the responsibility of the contractor, and the amount of reasonable and necessary attorney's fees and costs incurred before the offer was rejected or considered rejected. Any sums paid under a homeowner's warranty must be deducted from any recovery.*

2. If a contractor fails to make a reasonable offer of settlement pursuant to section 9 of this act or fails to complete, in a good and workmanlike manner, the repairs specified in an accepted offer, the limitations on damages and defenses to liability provided in sections 2 to 16, inclusive, of this act do not apply.

3. If coverage under a warranty is denied by an insurer in bad faith, the homeowner and the contractor 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.

Sec. 11. *1. Except as otherwise provided in section 10 of this act, in a cause of action governed by sections 2 to 16, inclusive, of this act, the claimant may recover only reasonable and necessary attorney's fees and the following damages to the extent proximately caused by a constructional defect:*

(a) The reasonable cost of repairs necessary to cure any constructional defect that the contractor failed to cure and the reasonable expenses of temporary housing reasonably necessary during the repair; or

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

2. The total damages awarded may not exceed the claimant's purchase price for the residence.

3. As used in this section, "structural failure" means physical damage to the load-bearing portion of a residence or accessory structure caused by a failure of the load-bearing portion of the residence or accessory structure.

Sec. 12. *An offer of settlement that is not accepted within 25 days after the offer is received by the claimant is considered rejected. An affidavit certifying rejection of an offer of settlement under this section may be filed with the court.*

Sec. 13. *A contractor who receives written notice of a constructional defect resulting from work performed by the contractor or his agent, employee or subcontractor which creates an imminent threat to the health or safety of the inhabitants of the residence shall take reasonable steps to cure the defect as soon as practicable. If the contractor fails to cure the defect in a reasonable time, the owner of the residence may have the defect cured and may recover from the contractor the reasonable cost of the repairs plus reasonable attorney's fees and costs in addition to any other damages recoverable under any other law not inconsistent with the provisions of sections 2 to 16, inclusive, of this act.*

Sec. 14. *1. A contractor who makes or provides for repairs under sections 2 to 16, inclusive, of this act may take reasonable steps to prove that the repairs were made and to have them inspected.*

2. The provisions of sections 2 to 16, inclusive, of this act regarding inspection and repair are in addition to any rights of inspection and settlement provided by common law or by another statute.

Sec. 15. *1. Before a complaint in a cause of action governed by sections 2 to 16, inclusive, of this act may be filed in court, the matter must be submitted to mediation. If the statute of limitations would otherwise expire during the pendency of the mediation, the statute is tolled until the expiration of 30 days after mediation is concluded.*

2. The claimant must notify the state contractors' board that a settlement has not been reached or that the repairs specified in an accepted offer of settlement have not been completed in a good and workmanlike manner. The board shall select a mediator at random from the panel of mediators. The mediator shall report to the board within 60 days after the matter is submitted to him, unless the parties agree to extend the time, whether the parties have reached agreement. Each party shall deposit with the board before mediation begins one-half of the amount estimated by the board as necessary to pay the salary and expenses of the mediator, and shall deposit additional amounts demanded by the board as incurred for that purpose.

3. If the parties do not reach agreement, the claimant may file his complaint. A report by the mediator that either party has failed to appear before him or to mediate in good faith is admissible in evidence in the cause of action, but a statement or admission made by either party in the course of mediation is not admissible.

Sec. 16. *1. The state contractors' board shall appoint 30 members to serve on the panel of mediators. After the initial terms, each member serves for a term of 3 years.*

2. Eighteen members must be residents of Clark County, Esmeralda County, Lincoln County or Nye County and shall hear claims arising in those counties. Twelve members must be residents of, and hear claims arising in, other counties. No member may be engaged in the business of contracting or be principally a supplier of goods or services to contractors.

3. Each member of the panel is entitled to receive from the board a salary of not more than $1,000 per day, as fixed by the board, for each day spent in performing his duties as a member and a per diem allowance and travel expenses at the rate provided for state officers and employees generally.

Sec. 17. NRS 624.3011 is hereby amended to read as follows:

624.3011 1. The following acts, among others, constitute cause for disciplinary action under NRS 624.300:

(a) Willful and prejudicial departure from or disregard of plans or specifications in any material respect without the consent of the owner or his [duly] authorized representative and the person entitled to have the particular construction project or operation completed in accordance with the plans and specifications.

(b) *Failure to respond to a claim arising out of a constructional defect, in a manner consistent with sections 2 to 16, inclusive, of this act.*

(c) Willful or deliberate disregard and violation of:

(1) The building laws of the state or of any political subdivision thereof.

(2) The safety laws or labor laws of the state.

(3) Any provision of the Nevada health and safety laws or the regulations adopted thereunder relating to the digging, boring or drilling of water wells.

(4) The laws of this state regarding industrial insurance.

2. If a contractor performs construction without obtaining any necessary building permit, there is a rebuttable presumption that the contractor willfully and deliberately violated the building laws of this state or of its political subdivisions. The board shall not require the contractor to obtain that permit more than 90 days after the construction is completed.

Sec. 18. The state contractors' board shall make one-third of the first appointments required by section 16 of this act for terms of 1 year, one-third for terms of 2 years and one-third for terms of 3 years.

Sec. 19. This section and sections 16 and 18 of this act become effective on July 1, 1995, for the purpose of making appointments pursuant to those sections, and on October 1, 1995, for all other purposes.

nature, dentistry is not a profession that "hurts many people very badly." Mr. Myers referred to the matter of patient "access," and said, "In addition to all the expenses involved in pursuing in court, if I had another layer of expense and time in the form of a screening panel, I would be even more selective, and turn away more people." He also said the insurance companies, if they had to pay panel expenses, would be even more inclined to pay greater sums to settle cases. Mr. Myers stated the Legal-Medical Screening Panel was already overburdened, and do not have sufficient manpower to handle the cases already filed.

Dr. Twesme appeared again to explain the peer-review panel system. He said this was a voluntary program which has been in place for many years and has been very successful. Dr. Twesme said when a patient registers a complaint, they enter into binding arbitration where the case is reviewed and hopefully settled to everyone's best interests. However, he stated, "That is not working, obviously, or we wouldn't have seven or eight dentists who have taken time out of their practice to come up here and talk to you today." Dr. Twesme indicated they would not be there today if there was not a problem, which was shown in the survey the dental association conducted. He said their goal is to increase access to the patients of Nevada. Dr. Twesme continued, "There are over 26 different procedures that have been discontinued by general dentists...who feel if they do these procedures which are performed by specialists, they are going to get sued." He said it was also important that malpractice premiums decrease, since increased costs have been passed along to the patients. Senator James responded, "The big question is whether or not this is going to help that."

Mr. Wadhams directed the committee's attention to lines 24 and 25, page 6 of S.B. 129. He said the language states, "If the determination is not in favor of the claimant, the claimant may file an action in court." He asked the committee members to keep that language in mind when considering the bill.

There was no further testimony on the bill, and Senator James closed the hearing on S.B. 129. He then opened the hearing on S.B. 395.

SENATE BILL 395: Regulates recovery for defects in residential construction.

Senator James indicated the bill also dealt with "tort reform" involving cases for recovery in residential construction. He informed the committee that one of his law partners is representing some southern Nevada homebuilders on various matters, and said this may or may not disqualify him from voting on the legislation. The chairman indicated he would seek an opinion in this matter.

The first to appear before the committee were I. R. (Rene) Ashleman, Lobbyist representing the Southern Nevada Home Builders, Robert Lyle, Attorney at Law, representing the NTLA, and Jim Wadhams, Lobbyist representing Southern Nevada Home Builders Association. Mr. Ashleman indicated the NTLA, the home builders and the local governments had worked very hard in order to agree on the legislation. He said the trial lawyers and the home builders "find themselves jointly in an undesirable situation, "because there currently is no mechanism for resolving disputes." Mr. Ashleman said very often if there is a suit or threat of suit involving construction defects, a warranty or insurance carrier may indicate "...they will have it out in court...don't fix things." He said that may be appropriate in some circumstances, but causes frustrations to the homeowner, "...who discovers he gets to live in what he believes to be an unpleasant and defective home for 2 or 3 years while the legal system cranks along its merry way." Mr. Ashleman said there is also frustration on the part of the home builder who is trying to sell more homes in that atmosphere. He said S.B. 395 provides procedures to help solve those problems. Mr. Ashleman stated there have been many modifications to the original bill, which is now almost entirely rewritten, and the agreed legislation is set forth on Exhibit D. Senator Adler asked if the legislation covered all defects, including landscaping. Mr. Ashleman answered the language was designed to cover all defects, such as construction, manufacture, design or repair of a new residence, or alteration or addition to an existing residence, or of accessory structure or other appurtenance. Senator Adler stated he wanted it to be made clear that the language included landscaping, sprinkler systems, and fencing. Mr. Ashleman answered for the record that this was clear in section 4 of the bill. Senator Adler reiterated his desire to have the term landscaping set forth in S.B. 395.

Senator Titus asked if the term "contractor" referred to a "licensed contractor." Mr. Ashleman stated if a homeowner bought a home from an unlicensed contractor, and needed to enter into litigation, "...he would want to have such a mechanism as surely then as if the guy were licensed."

Senator Porter asked if the new definition of "contractor" would appear only in chapter 40 of Nevada Revised Statutes (NRS), or if it would appear in other chapters pertaining to contractors. Mr. Ashleman answered that definition was intended to apply only to chapter 40 of NRS. Senator Porter asked Mr. Ashleman in his testimony to include information on how the bill will help the homeowner.

Mr. Ashleman explained the bill requires, before a cause of action is brought against a home builder, that the claimant give written notice by certified mail, return receipt requested, to the contractor at his last known address. He said the

contractor must then respond, by inspection and offer to repair, if the contractor admits he was at fault. (See section 11 of S.B. 395.) Mr. Ashleman stated the contractor may make a written offer of settlement or repair. He continued to say if the claimant rejects such offer, he may file a lawsuit. Mr. Ashleman said this system will provide immediate satisfaction to the homeowner, because if the contractor does not do the things which are necessary, he loses various defenses in court, and may subject himself to fees and costs. The contractor has the advantage of telling his insurance carrier that Nevada law requires to make the necessary repairs immediately. Senator James pointed out if a homeowner unreasonably rejects a written offer, the court can deny the attorney's fees and costs of the homeowner, and asked if a contractor fails to make a reasonable offer, or fails to complete the repairs, if the homeowner can recover such costs and fees. Mr. Ashleman stated section 13 of the bill covers that contingency.

Mr. Ashleman discussed section 14 of the bill, which provides that a contractor may elect to repurchase a defective structure. Senator James asked, "What if a homeowner wants to get it fixed as well as it can be fixed, and they don't want to move?" Mr. Ashleman indicated they could do that, but Senator James stated the language of the section gives an absolute right to the contractor. The chairman stated language should be set forth which says a homeowner can sue for damages, but not in excess of the value of the home. Mr. Ashleman continued, "If a builder offered...even if the homeowner wanted the home repaired...we would be free to argue in court that the builder [extended] a reasonable offer...." He added they certainly do not want to be put in a situation "where we have to pay more for the cost of repair than the home and the allied costs associated therewith are worth." Senator James asked if the language, "as the parties may agree," makes it a "mutual decision," not "an absolute right?" Mr. Ashleman agreed. Senator James indicated he did not believe the language was clear, and suggested they work on that section of the bill.

Mr. Ashleman continued with an explanation of Exhibit D, beginning with section 16. He indicated starting with section 18 of the bill, were provisions for bringing a complaint if the problems could not be resolved. Mr. Ashleman indicated the language set forth the term "mediation," which was not arbitration. He said a mediator's job was to facilitate communication between the parties, and if possible, to get them to agree upon a mutual settlement. Mr. Ashleman pointed out a mediator does not make an award nor does he make findings and a decision. He said if either party does not enter into mediation in good faith, he can so advise the court.

Mr. Ashleman stated to resolve a concern of both the trial lawyers and of various other consumers, they agreed on behalf of the bill's proponents that the contractor "fronts the entire amount of money for mediation fees." He added this does not mean if the contractor wins in court, he cannot regain those costs. Mr. Ashleman said this does not keep a person from "having their day in court." He said they have placed a cap on the daily cost of mediation and that is set forth in section 18(2).

Mr. Ashleman stated in addition to cutting down on discovery and preparation costs, mediation has other good features, such as time involved and the ability to allow the parties to "fashion their own solutions." He said the parties have far more flexibility than could be done in a courtroom setting or in arbitration.

Mr. Ashleman said if the parties must take the matter to court, a special master would be appointed, with powers as set forth in section 18(4) of Exhibit D. He said the aim was to cut down on the inordinate cost and delay involved in the discovery process. Mr. Ashleman stated the decisions or actions made by the special master may be reviewed de novo by application to the court.

In response to questions posed by the chairman, Mr. Ashleman indicated a special master would be appointed by the court and that master would be compensated by order of the court. Mr. Lyle (representing NTLA) indicated the cost of a special master is typically borne by the county as part of the court administration budget, or the parties can be ordered to bear the cost if specified by the court. Senator James asked what type of a report would be submitted by a special master. Mr. Ashleman answered the basis of the report of a special master, who would actually be an "expert witness" would be whether the problem was a defect or not.

Mr. Ashleman stated the advantages to the home buyer are very evident throughout the legislation, as well as to the home builder. He said section 19 of the bill is of particular value to the home buyer, because quite often the buyer will sign a waiver or settlement agreement, and find out later the problem had not been solved. Mr. Ashleman said there was a concern regarding such a waiver, which led to language which states, "No written waiver or settlement agreement executed by the buyer after the contractor's repair shall be a valid bar to a complaint...." (See section 19). Mr. Ashleman continued: "Depending upon which one of us you hear argue about it on any given day, this is a course of action not currently available to the home buyer...."

Mr. Ashleman stated section 20 of the bill tolls the action against claimants or contractors against any third parties, including government entities. He said the

bill was designed to make it clear it is the home builder's responsibility to resolve the problem.

Senator Titus asked for an explanation of the role of the contractors' board, and Mr. Ashleman explained its purpose: "The contractors' board is very active in going after unlicensed contractors...they remove the licenses of contractors who are incompetent...." He said S.B. 395 would not prohibit anyone in any way from going to the contractors' board, irrespective of other actions which are taking place, and filing a complaint. Senator Titus stated she would like to make sure a person who has a problem with an unlicensed contractor, "...they don't have to go through all of this to get at the unlicensed contractor first." Mr. Ashleman answered if that person wants to recover from the unlicensed contractor for his negligent work, they would still have to go through the process set forth in the bill.

Mr. Lyle indicated he has practiced law in the area of construction in Nevada. He said in the negotiations leading up to the development of Exhibit D, the question continually came up, "What would be best for homeowners who did not have a lawyer?" He said they have attempted to set forth a process whereby the average homeowner who is not able to hire a lawyer, can "walk themselves through the system and not be harmed by it, and be able to accomplish a timely repair and resolution of their problems." Mr. Lyle stated that involves (1) the notice; (2) the inspection; (3) an offer to resolve; (4) nonbinding mediation if the matter cannot be resolved; and (5) appointment of a special master if the matter must proceed to court.

Mr. Lyle indicated there were a number of homeowners present to testify, who had opposed the bill in its original form. He said he had explained the provisions of Exhibit D to those persons, and they would speak to the committee regarding that compromise.

Mr. Lyle stated as part of his law practice, he has represented contractors as well as homeowners, and has defended insurance companies representing contractors and subcontractors. He stressed he was not representing any particular interest regarding S.B. 395, but has worked with the other parties involved in order to "come up with a meaningful and fair bill."

The next person to speak was Barbara Quinby, Member of the Public. Ms. Quinby stated she was a resident of Reno. She said she was"...not all that concerned whether the attorneys and the home builders are going to go along on this," and added, "We need something for the homeowners." Ms. Quinby stated, "My life

has been hell for the last 6 years...and there has been nowhere to turn." She said there was no consumer group for homeowners to turn to, and she was unable to afford an attorney. Ms. Quinby said she turned to the State Contractors' Board which, she added, "...has done a good job of stonewalling me and getting me so confused I don't know up from down...and has caused some of the statute of limitations time lines to pass." Ms. Quinby asked how passage of S.B. 395 would affect people who "have already gone nowhere under the Nevada system." She said her family's file with the contractors' board is still open, but they have no access to that file. Ms. Quinby asked the following questions: "What happens if our contractor ignores our written statement; what happens if they go out of business; what happens if they file for bankruptcy; who inspects?" She said her contractor did the inspection himself, and they have water leaking out of their light fixtures, their smoke alarms and "pouring out of our doorjambs." Ms. Quinby continued, "They put a little bit of tar paper on our roof...then we have 2 dry years and it doesn't leak...but when we have a year like this...I have no pots and pans available left." She stated, "Unless we could afford an attorney, there has been nobody to help us." Ms. Quinby indicated the State Contractors' Board has indicated they would take care of the situation, but they have not. She reiterated, "Where does this bill help us? Are we grandfathered in? Do any of you want to buy my home?"

Senator Adler asked for the name of the contractor who built Ms. Quinby's home. She answered it was "Ekins Construction," which did not go under that name, but rather under the name, "Celebrity Homes," which later went bankrupt. Senator Adler indicated he had found similar problems in his district when contractors used multiple names. Ms. Quinby said there was additional negligence, when the county issued a Certificate of Occupancy to the family, although certain work had not been done. She stated she believed her home had been inspected. Ms. Quinby concluded, "I found out the hard way that there is no protection in this state for the homeowner."

Senator James recessed the hearing at 11:00 a.m., until adjournment of the floor session of the Senate.

Upon adjournment at 12:45 p.m., the chairman reconvened the hearing.

Ms. Quinby continued her testimony. She said her concern with the legislation was the language which states the contractor would do the inspection within 35 days. Ms. Quinby indicated she did not believe the party who was involved should do that inspection. Mr. Ashleman returned to the witness table to address that concern. He said if the contractor does not have the right to inspect, "..it will be

hard to make a repair or even an offer of settlement." Mr. Ashleman said the inspection was "not an official report," and was not to decide who was right or wrong for court purposes. Ms. Quinby said her other disagreement with the bill was the provision that states a contractor can offer to purchase the home "at the purchase price." She said her home has been increasing in value, because of other homes in the neighborhood. Ms. Quinby added, "By the time you can go through this problem...and maybe have to end up in court...I don't understand why they can't give you fair market value...." Mr. Ashleman answered: "If you start to do that, you are going to make settlements extremely difficult. Secondly, some of these homes were built 20 or 30 years ago." Senator James pointed out a homeowner was not "stuck" with a contractor's offer of a purchase price, because that homeowner has the option of going forward pursuant to other provisions of the legislation.

The next person to appear before the committee was Cherie Johnson, who provided the committee with documents set forth herein as Exhibit E. Ms. Johnson stated she was generally in agreement with the new version of the bill (Exhibit D). She said she had some of the same questions as did Ms. Quinby. Ms. Johnson showed the committee a picture of a rock on her roof, which was placed there to hold down roofing, and was "considered a roof repair." She then asked if a home purchaser would be notified as to the requirements for notice set forth in S.B. 395. Senator James asked Mr. Ashleman to address how homeowners are educated concerning their rights. Mr. Ashleman answered it was the intention of the home builders association to prepare a pamphlet which would be provided to the new homeowners. He said if Ms. Johnson was concerned that if a homeowner did not make a complaint within 60 days, he would have no recourse, it was not true. Mr. Ashleman said the 60 days involved "the time of notice prior to filing a lawsuit." Senator James asked Ms. Johnson if she understood there was now an "avenue of consumer protection" which did not exist before. Ms. Johnson agreed there was an avenue, since before they did not know what to do. As Ms. Quinby stated, the inaction on the part of the State Contractors' Board caused the matter to exceed the statute of limitations.

Senator Adler stated he believed the bill did a "good job [regarding] the medium to large size contractors, but the real 'fly-by-night' contractor is [still] going to build a house and take off...." Ms. Johnson indicated that is what happened in her case. She said that company filed bankruptcy and moved their assets into another company. Senator Adler stated most reputable companies would "make the repairs good, anyway." Senator James said he believed once the legislation was passed, creating an avenue for the homeowner to follow, there will be a willingness on the part of the reputable contractor to comply. He said class actions, which are very

complex pieces of litigation, "...will take you way down the road in time...and should be a last resort."

Senator McGinness indicated a homeowner should take responsibility before a home is purchased or built, to contact the State Contractors' Board and find out if the builder "...was just licensed last week or has been licensed for 60 years...." Ms. Johnson disputed Senator McGinness' statement, indicating the State Contractors' Board considers that to be confidential information. She said the contractor they used had been in the Reno area for quite a number of years, but they could obtain no information regarding complaints. Ms. Johnson stated, "I was told by the State Contractors' Board that I have no right to my own file...except for my own correspondence." She added, "They are not there for us... they are there for the contractor and they will protect that contractor...." Senator James said the issue of the State Contractors' Board was handled in a different committee, and added, "Maybe it is an area that should be reviewed...but I don't think it can be done today in the context of this bill."

The next person to speak was Bob Maddox, Attorney at Law, member of the NTLA, who stated he represented homeowners in Reno. Mr. Maddox stated he participated in the negotiations leading up to the development of Exhibit D. He said he was initially "adamately opposed" to the bill in its original version, and stated he was now "enthusiastically in support of the bill as redrafted." Mr. Maddox said he was in favor of the mediation provisions, particularly because the contractor must "front all the money" for such mediation. He stated he believed this would be an incentive for the contractor to deal with the smaller cases quickly and efficiently. Mr. Maddox said he was satisfied with the provisions of section 13 of the bill, which specify the damages the homeowner can recover. He also said he agreed the attorney's fees and costs of the homeowner should be recoverable in court. Mr. Maddox said there are some wording problems in the bill, and asked if he could go on record with his understanding of certain provisions:

> The definition of 'contractor'...this wording would include a person who is not necessarily licensed as a contractor, but who does work. There is a problem which should be addressed. In section 11, the contractor, given the definition...can go in and do the repairs...that is not a licensed person, and that should not be happening. If it occurs that the homeowner buys the house from an unlicensed person, and that person is covered by the definition here, that person should not be doing the repairs.

Senator Titus stated, "The way this bill works...if you have to negotiate with an unlicensed contractor to get down to repair it, you are encouraging them to do something additionally wrong, because they are unlicensed. Mr. Maddox indicated that was a provision which needed to be "cleaned up."

Senator Porter said he did not believe the unlicensed contractor should even be involved in mediation, since he had already broken the law. Mr. Maddox admitted that was a provision which must be discussed. Senator James asked that language be developed to deal with the issue of unlicensed contractors in the context of S.B. 395. Mr. Maddox indicated he would be happy to do that, and Mr. Ashleman agreed. Mr. Maddox set forth a second concern:

> By reading the definitions...a homeowner, as I understand it, may recover more than the original cost of the home. (Sections 13 and 14). If the idea is that the homeowner be made whole...there are a number of things which may come into play...
>
> It was important that between sections 13(a) and (b) of the bill, there be added the language, 'and/or'...

Senator James stated the bill drafters would not allow the phrase, "and/or," to appear in the NRS, and they generally use different wording.

Mr. Maddox stated section 14 should be "a negotiable thing," and not be forced upon the homeowner. Next he referenced section 16, and the language, "...costs in addition to any other damages recovered under any other law...," and asked that the language, "...not inconsistent with the provisions of sections 2 to 19 inclusive of this act," be stricken.

Senator Porter asked Mr. Maddox if he had any problem with the phrases, "...the contractors may...." Mr. Maddox answered that language had been agreed upon in negotiations between the parties developing the legislation. Mr. Ashleman indicated there were two definitions of the word "may," i.e., one "may" is intended to give the court discretion as to whether it does or does not allow certain attorney's fees and costs; the other, he said, is used because the contractor does in some cases have alternatives. He used as an example, "The contractor may decide to buy a house back, he may decide to repair it, or he may decide to make a reasonable offer of settlement...but he is not allowed to do nothing."

Mr. Maddox pointed to language in section 15 of the bill which states: "When the contractor makes the offer of settlement, it should provide that the offer warns the

claimant in clear and understandable language of the time frame to accept and the penalties for failure to respond...." Senator James stated he believed a new homeowner should receive a booklet explaining the law. Mr. Maddox agreed.

Mr. Maddox stated the intent of utilizing a special master would be to expedite the process so the matter could be resolved as quickly and efficiently as possible, without having "horrendously expensive discovery wars consuming everyone in the case."

The next person to speak was Francis I. Lynch, Attorney at Law, Las Vegas, who introduced three homeowners from southern Nevada who were his clients. The first to make a statement was Leslie Chikato. Ms. Chikato said the revised version of the bill (Exhibit D) "...gives us more rights that we originally had." She said they have been "fighting" their home builder for 3 years. She said her concern was that the mediation board "...not be handled in the same way as the contractors board...." Also speaking was Vicki Fort, who said she was against S.B. 395 in the beginning, but is pleased with the amended version. She said she hoped no one would have to go through what she did, although she did not elaborate. The last of the three to make a statement was Barbara Waller, President, Duck Creek Village Condominium Homeowners Association. She said they have gone through 5 years of litigation on construction defects, and their case has finally settled. Ms. Waller stated she is happy with the amended version of the legislation. Mr. Lynch concluded by saying the matter that worried him the most in the original bill were the provisions regarding the State Contractors' Board, but he is satisfied with S.B. 395 as presently written.

Senator James indicated he will ask for the amendment as set forth on Exhibit D to be drafted by the Legislative Counsel Bureau and returned to the committee for a work session.

The next person to speak was Eric Cantlin, Member of the Public, and a Carson City homeowner. Mr. Cantlin stated he contracted with a contractor approximately 3 years ago to have a 3,800 square foot custom home built. He said after 1 year had passed, after requesting vouchers, invoices and releases, he was told by both the contractor and the State Contractors' Board that he was not entitled to receive the same. Mr. Cantlin stated the contractor was paid $117,000 and rolled an additional construction loan over for $125,000. He said after a 3-year investigation, he found the mortgage company he had rolled the construction loan over to, "...is not licensed as a banking mortgage company in the State of Nevada." Mr. Cantlin said he started and ended with the attorney general of the State of Nevada, and has "gone through this loop ...around, around and around."

He said three formal complaints have been filed with the State Contractors' Board. Mr. Cantlin continued: "We have had 11 roof leaks, 9 plumbing leaks, a 1/2-inch fracture through 3 garage floors, a 3-inch drop in the foundation ...the construction was never completed...the materials list was not followed by the contractor." He said the State Contractors' Board has told him, "As long as it was built and he did use sufficient materials, I do not have a grievance." Mr. Cantlin continued to say the contractors' board has asked him, "What have you done to correct the problems?" He said although he is in favor of the bill as revised, there are additional revisions which are necessary. Mr. Cantlin referenced language which says the contractor may inspect in 35 days. He stated, "I have had this individual out six times to reinspect my home after I have asked subcontractors to give me a bid for the work." Mr. Cantlin stated the subcontractors are "aghast at the problems I have...when the contractor comes up...I have no problems." He said the contractors' board indicated to him that he had "invalid issues." Mr. Cantlin stated he could not sell his home, because "...it is not completed...not fixed...not finished." He said an appraisal in its present condition would cause him to lose money.

Mr. Cantlin disagreed with language in the bill which says no state, city or federal agencies could be held accountable. He said the contractor told him that the city "signed off" on everything concerning the home. He then asked if S.B. 395 would "grandfather" those persons who are still attempting to resolve problems regarding homes built in the past few years.

Senator James referred to the liability of governmental agencies and asked: "Does the language of the bill just toll those actions of the governmental entities pending the application of these provisions...with the liability for inspection [being] dealt with under a separate statute...?" Mr. Ashleman answered this was correct and no liability which exists for the governmental entities was removed. Mr. Maddox clarified that S.B. 395 does not have that impact. Senator James stated the bill would not affect a cause of action, and as a matter of fact it "tolls" the time within which a person can bring that action.

Senator James referenced the concerns regarding those persons who are presently involved in disputes with contractors. He said this bill "should apply to anybody." Mr. Ashleman stated they "very deliberately" did not use limiting language and added, "Any limitations they may have on filing actions are limitations caused by other statutes, not this bill." He said if the legislation is passed, any person "could send a letter off to their contractor today and cure their situation." Mr. Ashleman added, however, if a case is currently in court, the plaintiff would not do so.

Mr. Maddox stated the provisions regarding notice and mediation would not apply if a case had already been filed, but said he assumed those provisions would apply "at least as far as the damage provisions are concerned." Mr. Ashleman repeated he did not believe a matter already in the court system would apply. Senator James stated he believed the issue should be clearly spelled out in the bill.

The last person to testify was Robert S. Hadfield, Lobbyist representing Nevada Association of Counties. Mr. Hadfield stated the association supports the measure and believes it is a good consumer bill. He said the association feels the bill will provide the "quickest relief to the homeowner" and avoid costly litigation, by setting up a badly needed process.

Senator Porter asked if prior to the work session on the bill, staff could examine the definition of "contractors" contained in S.B. 395, and the impact it will have on the balance of the NRS. Senator James agreed and said all those items discussed in the hearing will be incorporated into an amendment, to be presented at the time of a work session.

Mr. Ashleman asked to clarify section 9(2) which should set forth the date of the act as July 1, 1995.

Senator James stated, "What has happened today is a tremendous example of how you can take what would be a hotly contentious issue and get your heads together to come up with something both sides can be happy with." He commended those who had worked to develop the legislation. The chairman indicated he would hold this issue up as an example for other issues, particularly in the area of tort reform. He concluded, "When parties take retractable positions on both sides...dig their heels in and decide they are going to hit a home run...and load the deck against the other side, nothing gets accomplished...." He again thanked those present for their work.

SENATE BILL NO. 395 - COMMITTEE ON JUDICIARY

APRIL 21, 1995

REFERRED TO COMMITTEE ON JUDICIARY

SUMMARY - Regulates recovery for defects in residential construction. (BDR 3-1589)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

AN ACT relating to civil remedies; providing limits and procedures for recovery on account of defects in residential construction; and providing other matters properly relating thereto.

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

Section 1. Chapter 40 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 19, inclusive, of this act.

Sec. 2. As used in sections 2 to 19, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 to 8, inclusive, of this act, have the meanings ascribed to them in those sections.

Sec. 3. "Accessory structure" means a structure or recreational facility that is appurtenant to a residence, but is not a part of the dwelling unit.

Sec. 4. "Constructional defect" includes a defect in the construction, manufacture, design or repair of a new residence, of an alteration of or addition to an existing residence, or of an accessory structure or other appurtenance. The term includes physical damage to the residence, an accessory structure or the real property to which the residence or accessory structure is affixed that is proximately caused by a constructional defect.

Sec. 5. "Contractor" means a person contracting with an owner for the construction or sale of a new residence constructed by that person or by his agents, employees or subcontractors or for an alteration of or addition to an existing residence, repair of a new or existing residence, or construction, sale, alteration, addition or repair of an accessory structure to a new or existing residence. The term includes a risk retention group that insures all or any part of a contractor's liability for the cost to repair a residential constructional defect.

Sec. 6. "Residence" means a dwelling designed for not more than four families or a unit in such a dwelling in which title to the individual units is transferred to the owners pursuant to chapter 116 or 117 of NRS.

Sec. 7. "Homeowner's warranty" means a contract of warranty issued by an insurer authorized to issue such a warranty in this state or issued by or on behalf of the contractor.

[redacted]

EXHIBIT D

Sec. 8. Homeowner's warranty claim does not include claims made by a homeowner to a homeowner's insurance carrier due to damages not caused by the acts of a contractor.

Sec. 9. 1. Sections 2 to 19, inclusive, of this act:

(a) Apply to a cause of action to recover damages resulting, directly or indirectly, from a constructional defect, except a claim for personal injury or wrongful death, and prevail over any conflicting law otherwise applicable to the action.

(b) Do not bar or limit any claim or defense otherwise available except as otherwise provided in those sections.

2. Sections 2 to 19, inclusive, of this act apply only if the cause of action arose on or after October 1, 1995.

3. As used in this section, "personal injury" does not include mental anguish, suffering, emotional distress, fear or anxiety unless any such injury includes a physical manifestation.

Sec. 10. 1. In a cause of action to recover damages resulting from a constructional defect, a contractor is liable ~~only~~ for his negligence or the negligence of his agents, employees or subcontractors and is not liable for any damages caused by:

(a) The negligence of a person other than the contractor or his agent, employee or subcontractor;

(b) The failure of a person other than the contractor or his agent, employee or subcontractor to take reasonable action to reduce the damages or maintain the residence;

(c) Normal wear, tear or deterioration;

(d) Normal shrinkage because of drying or settlement of constructional components within the tolerance of building standards generally considered acceptable in the area where the residence is constructed, or

(e) The specific written disclosure given prior to purchase listing the nature and extent of any existing defects in the residence, in language understandable to the buyer, highlighted in bold capital letters and underlined.

2. A contractor may rely on written information relating to a residence, accessory structure or real property to which the residence or accessory structure is affixed which was obtained from official governmental records, even if the written information was false or inaccurate, if the contractor did not know and could not reasonably have known of the falsity or inaccuracy of the information.

Sec. 11. 1. Except as otherwise provided in subsection 2 and section 16 of this act:

(a) At least 60 days before a claimant, brings a cause of action against a contractor for damages arising from a constructional defect, the claimant must give written notice by certified mail, return receipt requested, to the contractor, at the contractor's last known address, specifying in reasonable detail the defects, damages or injuries that are the subject of the complaint. During the 35-day period after the contractor receives the notice, on his written request, the contractor is entitled to inspect the property that is the subject of the complaint to determine the nature and cause of the defect, damage or injury and the nature and extent of repairs necessary to remedy the defect. The contractor may take reasonable steps to establish the existence of the defect. If the residence is covered by a warranty issued by an insurer authorized to issue such a warranty by this state, a claimant must diligently pursue a claim under the warranty.

(b) Within 45 days after the contractor receives the notice, the contractor may make a written offer of settlement to the claimant. The offer may include an agreement by the contractor to repair, or to cause to be repaired by an independent contractor at the

contractor's expense, each constructional defect described in the notice, and must describe in reasonable detail the cause of the defect, damage or injury and the known nature and extent of the permanent repairs to be made. The repairs must be made within 45 days after the contractor receives written notice of acceptance of the offer, unless completion is delayed by the claimant or by other events beyond the control of the contractor. The claimant and the contractor may only agree in writing to extend the periods prescribed by this subsection.

2. Except as otherwise provided in section 16 of this act, if the giving of notice under subsection 1 within the period prescribed in that subsection is impracticable because of the necessity of bringing a cause of action at an earlier date to prevent the expiration of the statute of limitations or because the complaint is asserted as a counterclaim, that notice is not required. However, the cause of action or counterclaim must specify in reasonable detail each constructional defect that is the subject of the complaint, and the inspection and the written offer of settlement may be made within 60 days after the date of service of the cause of action or counterclaim on the contractor. If, while a cause of action governed by sections 2 to 19, inclusive, of this act is pending, the statute of limitations for the cause of action would have expired and it is determined that the provisions of paragraph (a) of subsection 1 were not followed, the cause of action must be stayed for not more than 75 days to allow compliance with subsection 1.

3. As used in this section, "independent contractor" means a person who is independent of the contractor and did not perform any of the work complained of in the claimant's notice unless otherwise agreed by the claimant.

Sec. 12. If a claimant unreasonably rejects a reasonable written offer of settlement made pursuant to section 11 of this act or does not permit the contractor or independent contractor a reasonable opportunity to repair the defect pursuant to an accepted offer of settlement and thereafter files a cause of action governed by sections 2 to 19, inclusive, of this act, the court may deny the claimant's attorney's fees and costs and/or the court may award attorney's fees and costs to the contractor. Any sums paid under a homeowner's warranty must be deducted from any recovery.

2. If a contractor fails to make a reasonable offer of settlement pursuant to section 11(1)(b) of this act or fails to complete, in a good and workmanlike manner, the repairs specified in an accepted offer, the limitations on damages and defenses to liability provided in sections 2 to 19, inclusive, of this act do not apply.

3. If coverage under a warranty is denied by an insurer in bad faith, the homeowners and the contractor 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.

Sec. 13. 1. Except as otherwise provided in section 13 of this act, in a cause of action governed by sections 2 to 19, inclusive, of this act, the claimant may recover only reasonable and necessary attorney's fees and the following damages to the extent proximately caused by a construction defect:

(a) The reasonable cost of repairs necessary to cure any constructional defect that the contractor failed to cure and the reasonable expenses of temporary housing reasonably necessary during the repair; or

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

(c) The loss of use of the residence during the time period significantly impacted by a constructional defect; and

(d) The reasonable value of other property injured by the constructional defect; and

(e) Costs including costs and fees of experts reasonably necessary to evaluate the nature and extent of the defects on the part of the homeowner; and

(f) Interest as provided by statute.

2. As used in this section, "structural failure" means physical damage to the load bearing portion of a residence or accessory structure caused by a failure of the load-bearing portion of the residence or accessory structure.

Sec. 14. The contractor may elect to repurchase a defective structure and the real property upon which it is constructed and reimburse the buyer reasonable attorney's fees, costs, expert fees, moving costs, the value of any improvements made by others, and loan costs, points and fees to resolve a claim as the parties may agree.

Sec. 15. An offer of settlement that is not accepted within 25 days after the offer is received by the claimant is considered rejected provided that the offer of settlement warns the claimant in clear and understandable language of the timeframe to accept and the penalties for failure to respond, accept or reject. An affidavit certifying rejection of an offer of settlement under this section may be filed with the court.

Sec. 16. A contractor who receives written notice of a construction defect resulting from work performed by a contractor or his agent, employee or subcontractor which creates an imminent threat to the health or safety of the inhabitants of the residence shall take reasonable steps to cure the defect as soon as practicable. If the contractor fails to cure the defect in a reasonable time, the owner of the residence may have the defect cured and may recover from the contractor the reasonable cost of the repairs plus reasonable attorney's fees and costs in addition to any other damages recoverable under any other law not inconsistent with the provisions of sections 2 to 19, inclusive, of this act.

Sec. 17. 1. A contractor who makes or provides for repairs under sections 2 to 19, inclusive, of this act may take reasonable steps to prove that the repairs were made and to have them inspected.

2. The provisions of sections 2 to 19, inclusive, of this act regarding inspection and repair are in addition to any rights of inspection and settlement provided by common law or by another statute.

Sec. 18. 1. Before a complaint in a cause of action governed by sections 2 to 19, inclusive, of this act may be filed in court, the matter must be submitted to mediation. If the statute of limitations would otherwise expire during the pendency of the mediation, the statute is tolled until the expiration of 30 days after mediation is concluded.

2. Subsequent to any claimed defective remedial repair and prior to filing a complaint for damages, the parties must agree to a mediator. Should they fail to do so within 45 days of the suggestion of a mediator by the plaintiff to defendant, either party may petition the American Arbitration Association or any other mediation service acceptable to the parties to designate a mediator prior to the commencement of the action. The mediator is free to discover any documents or records necessary to handle the mediation. No other discovery shall be conducted. The mediator shall report to the parties within 60 days after the matter is submitted to him, unless the parties agree to extend the time. ~~Each party~~ shall deposit with the mediator before mediation begins ~~one-half of~~ the amount estimated by the mediator as necessary to pay the salary and expenses of the mediator, and shall deposit additional amounts demanded by the mediator as incurred for that purpose. Fees for both one day mediation and the mediator shall not exceed a total of $750.00 per day. The parties may

Contract

further agree, in writing, to waive mediation. Any reasonable costs and fees incurred in mediation may be recovered as recoverable costs pursuant to NRS. 18.005.

3. If the parties do not reach agreement, the claimant may file his complaint and have a special master appointed by the Court.

4. Powers of the special master.

(a) The special master shall have the following powers of authority: the special master shall have authority to coordinate all discovery, including disclosure of witnesses and taking of depositions of all or any parties; to order site inspections and attendance by all parties and the consultants and experts; and to order settlement conferences and the attendance there by insurance representatives with authority to act on behalf of a party;

~~(b) With regard to settlement, the special master has authority to meet with parties, ex parte, and conduct ex parte communications with parties and counsel;~~

(b) The special master may review the Court's file and meet with counsel;

(c) The special master may, when deemed appropriate, require counsel to provide statements pertaining to legal and factual issues;

~~(e) The special master may require the attendance of counsel and parties or representatives of parties with full authority to settle at all settlement conferences and may impose reasonable sanctions for unexcused failure to attend by counsel, parties or claims representatives;~~

~~(f) The special master may, when deemed appropriate, meet with counsel and the parties or their representatives together and/or separately;~~

(d) The special master may refer special problems which require the assistance of the court to the presiding judge, or to the supervising judge designated by the presiding judge;

~~(h) The special master may upon determination that settlement cannot be reached under the circumstances then prevailing, report the status of the matter to the presiding judge together with such recommendations as may assist the Court in securing ultimate settlement of the case.~~

Decisions or actions by the special master may be reviewed de novo by application to the court.

5. A report by the mediator or special master that either party has failed to appear before him or to mediate in good faith is admissible in evidence in the cause of action but a statement or admission made by either party in the course of mediation is not admissible.

Sec. 19. No written waiver or settlement agreement executed by the buyer after the contractors repair shall be a valid bar to a complaint for defective construction unless the construction problem or defect has been properly corrected and repaired, nor shall any written waiver or settlement agreement bar any claims for latent defect. However, to overcome the language of any written waiver or settlement agreement, the buyer must:

1. Obtain an expert opinion regarding the problem or defect.

2. The buyer must provide written notice of the defect to the contractor in accordance with Sec. 11 along with a copy of the buyer's expert opinion. And, the parties must comply with all requirements for inspection and repair as provided in Sections 11 through 19.

3. If the claimant loses any such claim after signing a written waiver the court may deny the claimant the recovery of attorney's fees, costs and expert witness fees and costs and/or the court may award attorney's fees and costs to the contractor.

Sec. 20 During the application of sections 2 to 19 no action may be brought by claimant or the contractor against any third parties including governmental entities, ~~and private parties,~~

and the statute of limitation and repose are tolled from the time of notice of claimed defect, damage or injury is presented to the contractor or until 30 days after the mediation is concluded and/or 30 days after the mediation is waived in written form.

Sec. 21. NRS 624.3011 is hereby amended to read as follows:

624.3011 1. The following acts, among others, constitute cause for disciplinary action under NRS 624.300:

(a) Willful and prejudicial departure from or disregard of plans or specifications in any material respect without the consent of the owner or his [duly] authorized representative and the person entitled to have the particular construction project or operation completed in accordance with the plans and specifications.

(b) Failure to respond to a claim arising out of a constructional defect, in a manner consistent with sections 2 to 16, inclusive, of this act.

(c) Willful or deliberate disregard and violation of:

(1) The building laws of the state or of any political subdivision thereof.

(2) The safety laws or labor laws of the state.

(3) Any provision of the Nevada health and safety laws or the regulations adopted thereunder relating to the digging, boring or drilling of water wells.

(4) The laws of this state regarding industrial insurance.

2. If a contractor performs construction without obtaining any necessary building permit, there is a rebuttable presumption that the contractor willfully and deliberately violated the building laws of this state or of its political subdivisions. The board shall not require the contractor to obtain that permit more than 90 days after the construction is completed.

Sec. 22. This act becomes effective on October 1, 1995.

State of Nevada

STATE CONTRACTORS BOARD

REPLY TO:

RENO
70 Linden Street
Reno, Nevada 89502
(702) 688-1141
Fax (702) 688-1271
Investigations (702) 688-1150

LAS VEGAS
1800 Industrial Road
Las Vegas, Nevada 89102
(702) 486-3500
Fax (702) 486-3508
Investigations (702) 486-3585

August 10, 1994

Gary Johnson
14330 Sundance
Reno, Nevada 89511

Re: Johnson vs. Ekins Construction Company

Dear Mr. Johnson:

This is a follow up to our home visit with you and Mrs. Johnson on August 8. After our Senior Investigator Bob Kennedy's inspection of the roof and a review of your file on the roof problems, the following status report is offered:

1. Your initial punch list back in 1989 noted the presence of a roof leak at the front entrance.

2. Numerous repairs, consisting mainly of caulking and patching, were attempted at the request of Ekins Construction. None of these repairs were successful.

3. Your first complaint to us was November, 1990. That warranty work was completed, including an attempt at the roof leak. That file was closed August, 1991.

4. A second complaint was filed in June, 1992 and closed immediately after assurances from Ekins that repairs would be made.

5. Your third and current complaint was filed with us in February, 1993. I have attempted since then to get Ekins back out to your home to fix, what we believe is the original leak. It has nothing to do with any possible broken tiles. It was not until November, 1993 that Mr. Ekins denied any responsibility for this leak. Mr. Ekins' contention is that the leak had been caused by someone in your family walking on the roof and breaking tiles. He also states that Fletcher Roofing, who did some of the repairs, only warranties their repair work for one year.

6. Since we believe the leak is still the original leak from 1989 and has never been corrected, those arguments may not be valid.

Therefore, it is our staff determination as follows:

1. We believe, to a reasonable degree of certainty, that your current roof leak at the front entrance is related to the original leak that you reported in 1989.

2. The roof appears to be sufficiently nailed to meet the standards of the industry at the time of installation.

Since you indicated to us that you have fixed the leaks yourself, to the best of your knowledge, we will close this file and no further action will be taken by this office.

If this matter is pursued through the judicial system we would appreciate hearing the results.

If you have any questions do not hesitate to contact us.

Sincerely

Michael W. Maloy
Investigator

For: Bill Rizzo
Director of Investigations

MWM/hmg
c: Kay H. Barber, Executive Officer
Bob Kennedy, Senior Investigator
Donnell J. Ekins
Lic. #12698, R9302-090W

EKINS CONSTRUCTION COMPANY

P.O. Box 2903 • Reno, Nevada 89505
702-827-4008

April 1, 1991

Tedesco Construction Co.
4890 Air Center Circle
Reno, Nevada

Att: Gregg Tedesco

Dear Gregg,

A complaint was filed against us at the State Contractor's Board by Gary Johnson regarding deficiencies at his house located at 14330 Sundance Drive at Shadowridge Village.

One of the items of complaint is excessive spalling of the driveway. Mr. Johnson stated in his letter to the Board the following: "The concrete in the driveway has spalled when I witnessed them pour the driveway in one of the worst storms in Dec 1989 @ 32 degrees and 50 mile/hr winds. They were out in the fields to collect the insulating blankets that were supposed to cover & protect the concrete from freezing—it didn't ".

This complaint was sent to the Contractor's Board 11/28/90.

Please investigate this complaint and replace the driveway if indeed it froze as Mr. Johnson says.

Sincerely,

Ekins Construction Co.

Don J. Ekins

c/c Kieth Reed, State of Nevada Contractor's Board

They claimed no responsibility and refused to fix the driveway.

3

23304

BOB MILLER
Governor

LAS VEGAS
[illegible] Industrial Road
[illegible] Nevada 89158
486-3500

State of Nevada

RENO
70 Linden Street
Reno, Nevada 8950
(702) 688-1141

STATE CONTRACTORS BOARD

August 22, 1991

Mr. Gary Johnson
14330 Sundance Drive
Reno, NV 89511

Re: Mr. Gary Johnson vs. Ekins Construction Company

Dear Mr. Johnson:

As of this date August 21, 1991 **Board investigator** John Cole **reports that the matters of your complaint against** Ekins Construction Company, **which were deemed valid have been resolved in a satisfactory manner.**

It is therefore necessary to close the complaint as of this writing.

Very truly yours,

Ruth Reed
Director of Investigations

KR/ss
cc: Ekins Construction Company
John Cole
File #12698

At this point
we were told [illegible]
[illegible] we have not
had any more problems.
The next time we
received an appropriate
amount of letter [illegible]
we had did have [illegible].

4

To:State Contractors Board
Subject:Reopen claim against Ekins Construction Company
or its developers.
From:Gary Johnson.homeowner. 851-4124

This is a summary of the events as you requested. The first complaint filed 11-30-90 included the items on the original punch out list dated 7-21-89.Number 1a,1b on this list stated window in dining area is still leaking,it looks like it is leaking from the window above because the drywall gets wet.Entry way leaks when it rains.The other items on the list were resolved.We still have the same leaks in the same place discovered after our recent rain.I did call your office to reopen claim a few months ago after a rain we noticed seepage through acoustic ceiling but we didn't hear from your office.There have been at least three or four visits from roofing services who have squirted caulking here and there then we wait till it rains, which you know can be a long wait.Well we've waited it rained and the roof leaks as much or more than ever.I would appreciate your prompt attention to this matter so it can finally be resolved.

Sincerely,

Gary John

Governor

LAS VEGAS
1800 Industrial Road
Las Vegas, Nevada 89158
(702) 486-3500

Reply to

RENO
70 Linden Street
Reno Nevada 89502
(702) 688-1141
FAX (702) 688-1271

STATE CONTRACTORS BOARD

May 27, 1993

Donnell J. Ekins, Owner
Ekins Construction Company
1490 Foxridge Circle
Auburn, California 95603

Re: Johnson v. Ekins - R9302-090-W

Dear Mr. Ekins:

This will follow up on our last telephone conversation of May 10th when you indicated that you would have your man Bill get back in touch with the Johnsons to repair their roof leak.

The last time Bill was out to the house was sometime in March or early April and has not returned since.

Although this is an old problem it appears to be the original problem that surfaced back in 1989 when the house was newly constructed. Perhaps it is beyond Bill's expertise.

At any rate some contact by you with the Johnsons would be appreciated. Their telephone number is (702) 851-4124.

Your cooperation in this matter will be appreciated.

Sincerely,

Michael W. Maloy
Investigator

For: R. Terry Gilmartin
Director of Investigations

MWM/m

cc: Gary Johnson

BOB MILLER
Governor

LAS VEGAS
1800 Industrial Road
Las Vegas, Nevada 89158
(702) 486-3500

State of Nevada

Reply to:

RENO
70 Linden Street
Reno, Nevada 89502
(702) 688-1141
FAX (702) 688-1271

STATE CONTRACTORS BOARD

September 21, 1993

Donnell J. Ekins, Owner
Ekins Construction Company
1490 Foxridge Circle
Auburn, California 95603

Re: Johnson v. Ekins - R9302-090-W

Dear Mr. Ekins:

Although you promised to have some one get in touch with the Johnsons concerning their roof leak no one has done that since Bill was at the house in March.

It is now coming into the fall season and they still have the problem.

My last correspondence to you was May 27th and I am enclosing another copy for you.

It appears as though this is a legitimate complaint which has not been disputed by you.

Please contact them directly before further action must be taken.

Sincerely,

Michael W. Maloy
Investigator

For: Bill Rizzo
Director of Investigations

MWM/m

cc: Gary Johnson

Encl.

BOB MILLER
Governor

LAS VEGAS
1800 Industrial Road
as Vegas, Nevada 89158
(702) 486-3500
FAX (702) 486-3508
INVESTIGATIONS
(702) 486-3585

State of Nevada

Reply to

RENO
70 Linden Street
Reno, Nevada 89502
(702) 688-1141
FAX (702) 688-1271
INVESTIGATIONS
(702) 688-1150

STATE CONTRACTORS BOARD

November 19, 1993

Donnell J. Ekins, Owner
Ekins Construction Company
1490 Foxridge Circle
Auburn, California 95603

Re: Johnson v. Ekins

Dear Mr. Ekins:

Following up our last telephone conversation of November 9th and in an effort to get some resolution enclosed are the following:

1. Letter of February, 1993 from Johnson requesting to reopen file.
2. Letter of November 28, 1990 original complaint.
3. Letter of May 27th from me to you.
4. Letter of September 21st from me to you.

Again the last time we talked you said you would get in touch with Bill and have him contact the Johnsons. In this conversation you mentioned for the first time that you did not think this was part of the original problem.

Mr. Johnson called my office recently stating he has not heard from you or Bill or anyone since spring.

I realize you are now removed from this area but we need some resolution to this matter before we can close the file.

Please see that someone contacts the Johnsons directly.

Sincerely,

Michael W. Maloy
Investigator

For: Bill Rizzo
Director of Investigations

MWM/m
cc: Gary Johnson (851-4124)
Lic. #12698 28302-090-W

BOB MILLER
Governor

LAS VEGAS
1800 Industrial Road
Las Vegas, Nevada 89158
(702) 486-3500
FAX (702) 486-3508
INVESTIGATIONS
(702) 486-3585

State of Nevada

Reply to

RENO
70 Linden Street
Reno, Nevada 89502
(702) 688-1141
FAX (702) 688-1271
INVESTIGATIONS
(702) 688-1150

STATE CONTRACTORS BOARD

November 23, 1993

Gary Johnson
14330 Sundance
Reno, Nevada 89511

Re: Johnson vs. Ekins Construction

Dear Mr. Johnson:

Enclosed is a copy of Mr. Ekins letter to me dated November 18, 1993 which I just received.

Taking the contents of Mr. Ekins' letter to be true I do not believe keeping this file open any longer would be warranted. However, if you wish to discuss this further please contact me as soon as possible.

Sincerely,

Mike Maloy

Michael W. Maloy
Investigator

For: Bill Rizzo BR
Director of Investigations

MWM/m

cc: Lic. #12698, R9302-090-W

EKINS CONSTRUCTION COMPANY

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX 1490 Foxridge Circle, Auburn, CA 95603
702-827-4008

Nov. 18, 1993

State Contractor's Board
70 Linden St.
Reno, NV 89502

Att: Michael W. Maloy

Dear Mr. Maloy:

Re: Johnson v. Ekins-R9302-090-W

Bill Fought went out to the Johnson house and inspected the roof. He reports that the Johnsons have walked on the roof to erect and dismantle Christmas displays and there is evidence of damage from this traffic. Inasmuch as this is a concrete tile roof, it is very fragile and will break easily if not protected when walked on.

After Johnson's first complaint we had Fletcher Roofing Co. do extensive repairs on this roof and paid them a substantial amount for these repairs. Fought contacted Wes Fletcher after this latest complaint and Fletcher informed him that they only warrant repairs for a period of one year.

This complaint was closed by your predecessor, John Cole, on August 22, 1991.

We accept no responsibility for the present roof leaking problem because of the owner's activities on his roof and the age of the complaint.

Sincerely,

Ekins Construction Co.

Don J. Ekins

State of Nevada

STATE CONTRACTORS BOARD

RENO
70 Linden Street
Reno, Nevada 89502
(702) 688-1141
Fax (702) 688-1271
Investigations (702) 688-1150

LAS VEGAS
1800 Industrial Road
Las Vegas, Nevada 89102
(702) 486-3500
Fax (702) 486-3508
Investigations (702) 486-3585

May 31, 1994

Gary Johnson
14330 Sundance
Reno, Nevada 89511

Re: Johnson vs. Ekins Construction Company

Dear Mr. Johnson:

This will confirm my telephone conversation with Mrs. Johnson on May 27th concerning the above.

Neither you nor I have heard from Mr. Ekins since January when his local representative Bill Fought informed me Ekins would be sending another letter regarding my proposal.

You have contacted your insurance company and an independent contractor to ascertain the cause of your roof leaks and any other problem that may exist.

Please keep me informed as to the status of this examination and particularly any ensuing litigation.

Sincerely,

Mike Maloy

Michael W. Maloy
Investigator

For: Bill Rizzo
Director of Investigations

MWM/m

cc: Don J. Ekins
Lic. #12698, R9302-090-W

* * * * *

Senator James announced his intention to delay further discussion of A.B. 393 until after Senator Adler has an opportunity to consider it. Senator Adler requested committee members to inform him of proposed amendments.

The committee held a brief discussion of S.B. 434.

SENATE BILL 434: Makes various changes to provisions governing statutory liens.

The consensus was that the bill is not well thought out and will need substantial review and revision. Citing conversations with many lawyers around the state, Senator James surmised it could create many problems which the committee may not be able to anticipate.

Senator Adler said it has been proposed to remove many of the bonding requirements. He declared the insurance division has so little control over bonding companies that the measure may be unworkable. He stated he has heard testimony many never pay on the bonds.

Senator James stated, "Litigation over statutory liens is one of the most arcane areas." Senator Adler voiced approval of the provision to remove frivolous liens because that will enable the close of escrow in a timely manner.

Senator James proposed more work be done on the matter in an attempt to glean the best parts of the bill. He indicated further discussion should be held on S.B. 434 at the next meeting of the committee.

Senator Porter expressed concern regarding a measure including a so-called bill of rights for home owners, S.B. 395.

SENATE BILL 395: Regulates recovery for defects in residential construction.

Senator James responded the bill is being reviewed and a substantial amendment is being drafted.

Senator James noted that A.B. 476 was voted upon earlier, but recalled Senator Adler had voiced concern regarding the language in section 4, subsection 2(d), so proposed wording for the bill will include removal of "never before occupied" and replacement of the language with "has not been occupied for a period longer than 120 days" which will allow the property to close escrow in a timely manner. Senator Adler said contractors agree that properties that have had long-term leases should be considered new buildings.

Senator Titus said she is concerned as to when the warranty will start under the provisions. She reported she has been advised the warranty will start on the day the buyer takes title to the property.

Senator James reported the accepted amendment includes the 120 days proposed by Senator Adler, and the addition of "or reasonably should have discovered, whichever occurs later" on page 3, section 6, subsection 4 at lines 31 through 33. The words "or his agent" will have to be removed throughout the bill, he said.

ASSEMBLY BILL 256: Increases penalty for abuse, neglect or endangerment of child where substantial bodily or mental harm results.

Senator James asked the committee to review Amendment No. 720 to A.B. 256 as approved earlier by the committee. Senator Adler explained the amendment will prevent the court from returning a child over whom it has custody or control to a parent who has been convicted of child abuse unless there is clear and convincing evidence that there will be no physical or psychological harm to the child by the return.

SENATE BILL 395: Regulates recovery for defects in residential construction.

Senator James called for a review of Amendment No. 805 to S.B. 395. I.R. (Renny) Ashleman, Lobbyist, Southern Nevada Home Builders Association, responded the amendment (Exhibit C) clears up some confusion in the use of the words "cause" and "claim," incorporated in the original bill. He stated:

> We went through there and made those changes. We made a change for the State Contractors' Board. They, unfortunately, are still a little misguided, I must say, as politely as I can put it. The current reference to the State Contractors' Board keeps them from

> undertaking any action ordering the correction of construction defect while this process, that is, discussing the correction of construction defects, is under way.

Mr. Ashleman claimed:

> The State Contractors' Board is having a little problem reading, if you look at the amendment, which is the last section of the bill. It says expressly in paragraph 3, as I recall, that action under this paragraph is stayed. That's the paragraph that talks about remedying construction defects.
>
> The State Contractors' Board's attorney called me. He said, `Gee, we have some concerns that that stays all other enforcement action.' It does not.... I don't know how it could be more plainly written. They are simply misguided, and I think that it's easy for the committee to see the destructive effect of having an enforcement proceeding under way on the same subject matter that you're trying to offer settlements and counter-settlements and to mediate. It seems to me it would be a totally inappropriate use of public funds for them to undertake such activity.

Mr. Ashleman pointed out the attorney for the State Contractors' Board, David Reese, told him in several conversations that the board was in agreement with the proposed amendment. Yet, calling attention to a letter from the board (Exhibit D), Mr. Ashleman said:

> I told Mr. Reese that if he could somehow explain to me how that stayed in the other action, I would be more than happy, once we get to the Assembly side, to make any corrections he needs. He told me yesterday that that was quite satisfactory with him, so we've got this letter [Exhibit D], and I don't know what more I can tell the committee about it.

Senator James noted the letter asks for the removal of section 21 of the amendment, which reads, "The board shall not take any disciplinary action pursuant to this paragraph during the period in which the claim is being settled, mediated or otherwise resolved pursuant to sections 2 through 20 inclusive, unless the disciplinary action is necessary to protect the public health or safety."

Senator James asked if the attorney for the State Contractors' Board is really in opposition to that section. Mr. Ashleman replied he is, and said, "He's wrong to oppose that. It's contradictory to what their policy statement is, that they shouldn't be undertaking corrective action while parties are trying to reach a settlement and compromise over the very same issue."

In response to a query by Senator Adler, Mr. Ashleman said currently the board does not have explicit power to respond to a construction defect and the board is concerned over its power, which will be provided through S.B. 395.

Mr. Ashleman pointed out there are two other amendments which should be added, and he suggested those be made by the members of the Assembly. The Nevada Trial Lawyers Association and others involved are in agreement, he said. He explained:

> The bill, by its plain context, does require that if this process is followed, then your sole remedy [is] the things that are in this process. However, the word that used, either `only' or `sole,' I've forgotten which, in the draft that was before the original committee, was dropped in the bill drafting process by the trial lawyers. I'm told by their secretary that did it they had no particular reason to have made that drop, and we want to reinstate it.

Senator James asked where he could find the referenced wording. Mr. Ashleman replied the word "only" should be inserted in section 13 on page 6 of the amendment at the second line either after the word "may" or after the word "recover."

Mr. Ashleman returned to the continuation of section 20, subsection 2, line 6 on page 12 where he indicated the words "or obligations" should be inserted after the word "rights," and, again, "or obligations" should be inserted after "rights" on the eighth line. He explained the changes allow the settlement to be neutral regarding third parties, and it will not prevent third parties from pursuing the claimant or contractor in a countersuit. He reiterated those amendments are already being drafted for addition to S.B. 395 by the Assembly.

Senator James declared he will accede to Mr. Ashleman's request that the bill be amended by the Assembly only due to the late date of the session.

Senator Porter asked what problems may be created by the new definition of "contractor." Mr. Ashleman replied the definition differs through the addition of the language "with or without a license." He explained the addition will allow a consumer to use the statute against an unlicensed as well as a licensed contractor.

Mr. Ashleman added the kinds of things that will be covered by the contractor will be set forth in detail. He stated:

> We made sure that the term included a res pretension group, or insurer, or the representative of a home owner's warranty. And that's specific to this bill, because, otherwise, you'd have to repeat that language. Every time you said `contractor,' you'd also have to say `res pretension group, insurer, representative of a homeowner's warranty,' which is simply poor drafting.

Senator Porter inquired if the provision will apply to subcontractors, which Mr. Ashleman confirmed. Mr. Ashleman explained the principal contractor will have to deal with complaints by the home owner, which will protect the home owner from having to be involved in any disputes between the contractor and the subcontractors.

Senator Porter asked if a real estate agent will be considered a contractor under the language "sells a residence." Mr. Ashleman denied it will do so, and read from page 2 of the amendment to the bill, "Sells a residence ... any part of which the person ... or by himself or through his agents ... has constructed, altered, repaired, improved ...." He pointed out it is not the seller, unless he is the builder or the improver of the residence, in which case he will be considered the contractor whether he is licensed or not.

Senator Porter wondered if the contractor is part of the res pretension group or the insurer representing the home warranty. Mr. Ashleman replied he is, because he must respond to complaints of defective construction under the terms of the bill. He declared one problem arises when the contractor wants to make repairs or settle, but his insurer will not allow him to do so. He said:

> And they can control that. Under this language we force them to participate in that settlement process, hopefully initially and quickly, just like the contractor has to do it. So that's the reason why we include them in the definition.

Senator Porter acknowledged there is a problem with some of the home owner warranty companies, often with their financial stability. However, he said, there are times when the warranty company steps in to fulfill some of the contractor's responsibilities. He wanted to know how the amendment ties into such a situation. Mr. Ashleman replied:

> This does tie them in. This makes them respond to that complaint of defective construction, just like the contractor does. So what'll happen, of course, is somebody will notify the contractor, and then he'll notify the res pretension group or insurer or the warranty representative of the situation.

Senator Porter asked if that will eliminate the contractor as a possibility. Mr. Ashleman replied it will not. He said, "It simply includes, it doesn't substitute."

Senator James noted section 13 includes the addition of attorneys' fees and asked if that came about as the result of an omission. Mr. Ashleman responded:

> The attorneys' fees in all cases were added on a balance basis. If the contractor doesn't respond with a reasonable offer ... either to pay or to repair, as determined later by a court, he can become liable for attorneys' fees. On the other hand, if the individual doesn't responsibly respond to a reasonable offer of settlement or repair, he can become liable for attorneys' fees.

Senator James inquired if the provision under section 14 which allows the contractor to repurchase a defective structure has been removed from the bill under the proposed amendment. Mr. Ashleman replied it has been incorporated into the bill under section 15.

James L. Wadhams, Lobbyist, Southern Nevada Home Builders Association, interjected one of the key points of the legislation is an attempt to expedite the process of settlement between the claimant and the contractor. He noted under current law it is not necessarily the case that the contractor fails to respond, but there are occasions where it happens in an untimely fashion. He asserted S.B. 395 will place specific responsibility on the home owner to make a claim within a time frame and to bring the process to a quicker closure. The bill is designed to facilitate and expedite the process on both sides, he said.

Expressing concern that the bill is unspecific and could lead to disputes, Senator Washington wondered if it would be appropriate to include a time limit rather than leave the wording "as soon as practicable" in section 16 of the proposed amendment. Mr. Ashleman responded it would be difficult to include a specific time limit because there is no way to anticipate what problem may arise, because one problem may be cured in a few minutes, while another will require several weeks. He pointed out the home owner has the capability to go ahead and make repairs if he feels the response is not sufficiently expeditious.

Senator Titus voiced concern any negotiations with unlicensed contractors will lend credibility to their status. Mr. Ashleman called attention to the provision in section 2. (c) on page 5 which provides that repairs must be made by a licensed, bonded and insured contractor if the original contractor fails to perform.

Mr. Wadhams declared the amendment is written so that unlicensed contractors will not be exempt from responsibility just because they are not licensed, but it does not authorize them to perform work.

Senator Porter inquired if material defects should be included under the definition of contractor liability in section 10 on page 3 along with construction defects. Mr. Ashleman responded, "The items listing the things that are accepted are exceptions to the responsibility."

Senator Porter noted the previous provision, which was found under section 8 in the original bill, appears to be substantially different from the provisions of section 10 in the amendment. Mr. Ashleman replied:

> There are substantial differences between the original section 8. Now there's not that much difference between the ... first set of amendments we brought you and what we have now.... We took out the reliance on government records, and we took out the use of the language of "negligence" because, in fact, these are warranty items, rather than negligence items. You're responsible for a construction defect whether, in fact, it was negligently done or not.

Mr. Wadhams interjected that was one of the points worked out through consensus with home owners and attorneys on both sides of the issue prior to the first hearing on the matter. He stated the definition was changed to a definition which seems

to be more consistent with the policy approved by the Senate Committee on Judiciary .

Mr. Wadhams opined the new definition is broader and more precise. He said the first definition seems to apply to items which were caused by the builder's negligence, and negligence is a tort theory, while warranty is a contract theory which has nothing to do with negligence. He reiterated there is an obligation to repair a construction defect if the home owner notifies the contractor.

Mr. Ashleman stated the substantive changes in Exhibit C came about as a result of discussions by the committee when they were presented with it on May 10, 1995. He indicated descriptions of normal wear, tear, deterioration, shrinkage and settlement were provided by engineers and were substituted for the original language.

SENATOR LEE MOVED TO AMEND AND DO PASS S.B. 395 WITH AMENDMENT NO. 805.

SENATOR TITUS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

Senator James asked the committee to consider action on the bills heard earlier in the day.

SENATOR McGINNESS MOVED TO DO PASS A.B. 604.

SENATOR WASHINGTON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

SENATOR ADLER MOVED TO AMEND AND DO PASS A.B. 570 WITH A PENALTY OF 5 TO 20 YEARS, AND WITH REPLACEMENT OF THE WORDS "DISTRICT ATTORNEY" BY THE WORDS "PROSECUTING ATTORNEY."

1995 REGULAR SESSION (68th)

ASSEMBLY ACTION		SENATE ACTION		
Adopted	☐	Adopted	☐	Senate Amendment to Senate Bill No. 395 BDR 3-1589 Proposed by Committee on Judiciary
Lost	☐	Lost	☐	
Date: Initial:		Date: Initial:		
Concurred in	☐	Concurred in	☐	
Not Concurred in	☐	Not Concurred in	☐	
Date: Initial:		Date: Initial:		

Amendment No. 805

Replaces Amendment No. 517.

Amend the bill as a whole by deleting sections 1 through 19 and adding new sections designated sections 1 through 22, following the enacting clause, to read as follows:

"**Section 1.** Chapter 40 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 20, inclusive, of this act.

Sec. 2. *As used in sections 2 to 20, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 to 8, inclusive, of this act, have the meanings ascribed to them in those sections.*

Sec. 3. *"Appurtenance" means a structure, installation, facility or amenity that is appurtenant to a residence, but is not a part of the dwelling unit. The term includes, without limitation, recreational facilities, golf courses, walls, sidewalks, driveways,*

Drafted by: SJC:mrw

Date: 6/8/95

S.B. No. 395--Regulates recovery for defects in residential construction.

landscaping and other structures, installations, facilities and amenities associated with a residence.

Sec. 4. *"Claimant" means an owner of a residence or appurtenance or a representative of a homeowner's association that is responsible for a residence or appurtenance.*

Sec. 5. *"Constructional defect" includes 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. The term includes physical damage to the residence, an appurtenance or the real property to which the residence or appurtenance is affixed that is proximately caused by a constructional defect.*

Sec. 6. *"Contractor" means a person who, with or without a license issued pursuant to chapter 624 of NRS, by himself or through his agents, employees or subcontractors:*

1. Constructs, alters, repairs, improves or landscapes a residence, appurtenance or any part thereof; or

2. Sells a residence or appurtenance, any part of which the person, by himself or through his agents, employees or subcontractors, has constructed, altered, repaired, improved or landscaped.

The term includes a risk retention group or insurer who, or the representative of a homeowner's warranty which, insures all or any part of a contractor's liability for the cost to repair a residential constructional defect.

Sec. 7. *"Homeowner's warranty" means a warranty or contract of insurance for the protection of a homeowner which is issued by an insurer authorized to issue such a warranty or contract in this state or issued by or on behalf of a contractor.*

Sec. 8. *"Residence" means a dwelling designed for not more than four families or a unit in such a dwelling in which title to the individual units is transferred to the owners pursuant to chapter 116 or 117 of NRS.*

Sec. 9. *1. Sections 2 to 20, inclusive, of this act:*

(a) Apply to a claim or cause of action which arises after July 1, 1995, to recover damages resulting, directly or indirectly, from a constructional defect, except a claim for personal injury or wrongful death, and prevail over any conflicting law otherwise applicable to the claim or cause of action.

(b) Do not bar or limit any defense otherwise available except as otherwise provided in those sections.

2. As used in this section, "personal injury" does not include mental anguish, suffering, emotional distress, fear or anxiety, unless physically manifested by the claimant.

Sec. 10. *In a claim or cause of action to recover damages resulting from a constructional defect, a contractor is liable for his acts or omissions or the acts or omissions of his agents, employees or subcontractors and is not liable for any damages caused by:*

1. The acts or omissions of a person other than the contractor or his agent, employee or subcontractor;

2. The failure of a person other than the contractor or his agent, employee or subcontractor to take reasonable action to reduce the damages or maintain the residence;

3. Normal wear, tear or deterioration;

4. Normal shrinkage, swelling, expansion or settlement; or

5. Any constructional defect disclosed to an owner before his purchase of the residence, if the disclosure was provided in a language that is understandable and was written in underlined and boldfaced type with capital letters.

Sec. 11. *Except as otherwise provided in this section and section 16 of this act:*

1. At least 60 days before a claimant brings a cause of action against a contractor for damages arising from a constructional defect, the claimant must give written notice by certified mail, return receipt requested, to the contractor, at the contractor's last known address, specifying in reasonable detail the defects or any damages or injuries that are the subject of the complaint. During the 35-day period after the contractor receives the notice, on his written request, the contractor is entitled to inspect the property that is the subject of the complaint to determine the nature and cause of the defect, damage or injury and the nature and extent of repairs necessary to remedy the defect. The contractor may take reasonable steps to establish the existence of the defect. If the residence is covered by a warranty or contract of insurance issued by an insurer authorized by this state to issue such a warranty or contract, a claimant must diligently pursue a claim under the warranty or contract.

2. Within 45 days after the contractor receives the notice, the contractor may make a written offer of settlement to the claimant. The offer:

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

(b) Must respond to each constructional defect set forth in the claimant's notice, and describe in reasonable detail the cause of the defect, if known, the nature and extent of the damage or injury resulting from the defect, and the method, adequacy and estimated cost of the proposed repair.

(c) May include an agreement by the contractor to make the repairs or, at the contractor's expense, to cause the repairs to be made by another contractor who is licensed, bonded and insured.

The repairs must be made within 45 days after the contractor receives written notice of acceptance of the offer, unless completion is delayed by the claimant or by other events beyond the control of the contractor. The claimant and the contractor may agree in writing to extend the periods prescribed by this section.

Sec. 12. *1. If a claimant unreasonably rejects a reasonable written offer of settlement made pursuant to section 11 of this act or does not permit the contractor or independent contractor a reasonable opportunity to repair the defect pursuant to an accepted offer of settlement and thereafter files a cause of action governed by sections 2 to 20, inclusive, of this act, the court in which the cause of action is filed may:*

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

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

flush *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 fails to make a reasonable offer of settlement pursuant to section 11 of this act or fails to complete, in a good and workmanlike manner, the repairs specified in an accepted offer, the limitations on damages and defenses to liability provided in sections 2 to 20, inclusive, of this act do not apply.

3. If coverage under a warranty or contract of insurance is denied by an insurer in bad faith, the homeowner and the contractor 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.

Sec. 13. *1. Except as otherwise provided in section 12 of this act, in a claim or cause of action governed by sections 2 to 20, inclusive, of this act, the claimant may recover the following damages to the extent proximately caused by a constructional defect:*

(a) Any reasonable attorney's fees;

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

(d) The loss of the use of the residence during the time of the repair;

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

(f) Any additional costs incurred by the claimant, including any costs and fees incurred for hiring experts reasonably necessary to ascertain the nature and extent of the constructional defect; and

(g) Any interest provided by statute.

2. 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. 14. *An offer of settlement that is not accepted within 25 days after the offer is received by the claimant is considered rejected if the offer contains a clear and understandable statement notifying the claimant of the consequences of his failure to respond or otherwise accept or reject the offer of settlement. An affidavit certifying rejection of an offer of settlement under this section may be filed with the court.*

Sec. 15. *In addition to any other method provided for settling a claim pursuant to sections 2 to 20, inclusive, of this act, a contractor may, pursuant to a written agreement entered into with a claimant, settle a claim by repurchasing the claimant's residence and the real property upon which it is located. The agreement may include, without limitation, provisions which reimburse the claimant for:*

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

2. Reasonable attorney's fees and fees for experts; and

3. Any costs, including costs and expenses for moving and costs, points and fees for loans.

Sec. 16. *A contractor who receives written notice of a constructional defect resulting from work performed by the contractor or his agent, employee or subcontractor which creates an imminent threat to the health or safety of the inhabitants of the residence shall take reasonable steps to cure the defect as soon as practicable. If the contractor fails to cure the defect in a reasonable time, the owner of the residence may have the defect cured and may recover from the contractor the reasonable cost of the repairs plus reasonable attorney's fees and costs in addition to any other damages recoverable under any other law.*

Sec. 17. *1. A contractor who makes or provides for repairs under sections 2 to 20, inclusive, of this act may take reasonable steps to prove that the repairs were made and to have them inspected.*

2. The provisions of sections 2 to 20, inclusive, of this act regarding inspection and repair are in addition to any rights of inspection and settlement provided by common law or by another statute.

Sec. 18. *1. Before a complaint in a cause of action governed by sections 2 to 20, inclusive, of this act may be filed in court, the matter must be submitted to mediation, unless mediation is waived in writing by the contractor and the claimant.*

2. The claimant and contractor must select a mediator by agreement. If the claimant and contractor fail to agree upon a mediator within 45 days after a

mediator is first selected by the claimant, either party may petition the American Arbitration Association, the Nevada Arbitration Association, Nevada Dispute Resolution Services or any other mediation service acceptable to the parties for the appointment of a mediator. A mediator so appointed may discover only those documents or records which are necessary to conduct the mediation. The mediator shall convene the mediation within 60 days after the matter is submitted to him, unless the parties agree to extend the time. The contractor shall deposit with the mediator before mediation begins the entire amount estimated by the mediator as necessary to pay the salary and expenses of the mediator, and shall deposit additional amounts demanded by the mediator as incurred for that purpose. The total fees for each day of mediation and the mediator must not exceed $750 per day.

3. If, after undergoing mediation pursuant to subsection 2, the parties do not reach an agreement concerning the matter, the claimant may file his complaint and:

(a) The reasonable costs and fees of the mediation are recoverable as costs of the action.

(b) The claimant may petition the court in which the complaint is filed for the appointment of a special master.

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

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

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

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

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

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

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

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

5. Upon application by a party to the court in which the cause of action is filed, any decision or other action taken by a special master appointed pursuant to this section may be appealed for a trial de novo.

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

Sec. 19. *1. Except as otherwise provided in subsection 2, a written waiver or settlement agreement executed by a claimant after a contractor has corrected or otherwise repaired a constructional defect does not bar a cause of action for the constructional defect if it is determined that the contractor failed to correct or repair the defect properly.*

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

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

(b) The claimant has provided the contractor with a written notice of the defect pursuant to section 11 of this act and a copy of the expert's opinion; and

(c) The claimant and the contractor have complied with the requirements for inspection and repair as provided in sections 2 to 20, inclusive, of this act.

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

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

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

Sec. 20. *1. Any statutes of limitation or repose applicable to a claim or cause of action governed by sections 2 to 20, inclusive, of this act are tolled from the time a claimant provides notice of the claimed defect, damage or injury to the contractor pursuant to section 11 of this act until 30 days after mediation is concluded or waived in writing pursuant to section 18 of this act.*

2. No claim or cause of action governed by sections 2 to 20, inclusive, of this act may be brought by a claimant or contractor against any third parties, including a government, governmental agency or political subdivision of a government, during the period in which a claim or cause of action for a constructional defect is being settled, mediated or otherwise resolved pursuant to sections 2 to 20, inclusive, of this act. The settlement of such a claim or cause of action does not affect the rights of any person who is not a party to the settlement, and the failure to reach such a settlement does not affect the rights of the claimant or contractor in any action brought by the claimant or contractor against a third party.

Sec. 21. NRS 624.3011 is hereby amended to read as follows:

624.3011 1. The following acts, among others, constitute cause for disciplinary action under NRS 624.300:

(a) Willful and prejudicial departure from or disregard of plans or specifications in any material respect without the consent of the owner or his [duly] authorized representative and the person entitled to have the particular construction project or operation completed in accordance with the plans and specifications.

(b) *Failure to respond to a claim arising out of a constructional defect, as that term is defined in section 5 of this act. The board shall not take any disciplinary action pursuant to this paragraph during the period in which the claim is being settled, mediated or otherwise resolved pursuant to sections 2 to 20, inclusive, of this act, unless the disciplinary action is necessary to protect the public health or safety.*

(c) Willful or deliberate disregard and violation of:

(1) The building laws of the state or of any political subdivision thereof.

(2) The safety laws or labor laws of the state.

(3) Any provision of the Nevada health and safety laws or the regulations adopted thereunder relating to the digging, boring or drilling of water wells.

(4) The laws of this state regarding industrial insurance.

2. If a contractor performs construction without obtaining any necessary building permit, there is a rebuttable presumption that the contractor willfully and deliberately violated the building laws of this state or of its political subdivisions. The board shall not require the contractor to obtain that permit more than 90 days after the construction is completed.

Sec. 22. This act becomes effective on July 1, 1995.".

STATE OF NEVADA

STATE CONTRACTORS BOARD

RENO
70 Linden Street
Reno, Nevada 89502
(702) 688-1141
Fax (702) 688-1271
Investigations (702) 688-1159

LAS VEGAS
1800 Industrial Road
Las Vegas, Nevada 89102
(702) 486-3500
Fax (702) 486-3508
Investigations (702) 486-3585

June 13, 1995

Senator Ernie Adler
Senate Committee on Judiciary
Nevada State Senate
Carson City, Nevada 89710

Subject: Senate Bill 395 and Amendment 805

Dear Senator Adler:

It is my understanding that Senate Bill 395 and proposed amendment number 805 will be presented for a full committee vote within the next few days. This subject matter of this bill relates to regulating recovery for defects in residential construction. This letter is to inform you of the State Contractors Board's position on SB 395.

The board respectfully requests deletion of any sections of the original bill, amendment 805, or any other amendment that revises NRS Chapter 624 and any language that references the State Contractors Board.

Those sections include the following:

- **Original SB 395 -- delete Sections 15, 16, 17, 18, and 19**
- **Amendment 805 to SB 395 -- delete Section 21 in its entirety**

If you have any questions or need additional information, please contact me at 688-1141. Thank you for your consideration.

Sincerely,

Margi A. Grein

Director of Finance
Public Relations

Cc: Committee Members
State Contractors Board Members

EXHIBIT D

Senator O'Donnell moved that the bill be referred to the Committee on Taxation.

Motion carried.

UNFINISHED BUSINESS

Appointment of Conference Committees

Mr. President appointed Senators Porter, Shaffer and Jacobsen as a first Committee on Conference to meet with a like committee of the Assembly for the further consideration of Senate Bill No. 189.

Mr. President appointed Senators O'Connell, Townsend and Regan as a first Committee on Conference to meet with a like committee of the Assembly for the further consideration of Senate Bill No. 272.

SECOND READING AND AMENDMENT

Senate Bill No. 395.

Bill read second time.

The following amendment was proposed by the Committee on Judiciary:

Amendment No. 805.

Amend the bill as a whole by deleting sections 1 through 19 and adding new sections designated sections 1 through 22, following the enacting clause, to read as follows:

"Section 1. Chapter 40 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 20, inclusive, of this act.

Sec. 2. *As used in sections 2 to 20, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 to 8, inclusive, of this act, have the meanings ascribed to them in those sections.*

Sec. 3. *"Appurtenance" means a structure, installation, facility or amenity that is appurtenant to a residence, but is not a part of the dwelling unit. The term includes, without limitation, recreational facilities, golf courses, walls, sidewalks, driveways, landscaping and other structures, installations, facilities and amenities associated with a residence.*

Sec. 4. *"Claimant" means an owner of a residence or appurtenance or a representative of a homeowner's association that is responsible for a residence or appurtenance.*

Sec. 5. *"Constructional defect" includes 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. The term includes physical damage to the residence, an appurtenance or the real property to which the residence or appurtenance is affixed that is proximately caused by a constructional defect.*

Sec. 6. *"Contractor" means a person who, with or without a license issued pursuant to chapter 624 of NRS, by himself or through his agents, employees or subcontractors:*

1. Constructs, alters, repairs, improves or landscapes a residence, appurtenance or any part thereof; or

2. Sells a residence or appurtenance, any part of which the person, by himself or through his agents, employees or subcontractors, has constructed, altered, repaired, improved or landscaped.

The term includes a risk retention group or insurer who, or the representative of a homeowner's warranty which, insures all or any part of a contractor's liability for the cost to repair a residential constructional defect.

Sec. 7. *"Homeowner's warranty" means a warranty or contract of insurance for the protection of a homeowner which is issued by an insurer authorized to issue such a warranty or contract in this state or issued by or on behalf of a contractor.*

Sec. 8. *"Residence" means a dwelling designed for not more than four families or a unit in such a dwelling in which title to the individual units is transferred to the owners pursuant to chapter 116 or 117 of NRS.*

Sec. 9. *1. Sections 2 to 20, inclusive, of this act:*

(a) Apply to a claim or cause of action which arises after July 1, 1995, to recover damages resulting, directly or indirectly, from a constructional defect, except a claim for personal injury or wrongful death, and prevail over any conflicting law otherwise applicable to the claim or cause of action.

(b) Do not bar or limit any defense otherwise available except as otherwise provided in those sections.

2. As used in this section, "personal injury" does not include mental anguish, suffering, emotional distress, fear or anxiety, unless physically manifested by the claimant.

Sec. 10. *In a claim or cause of action to recover damages resulting from a constructional defect, a contractor is liable for his acts or omissions or the acts or omissions of his agents, employees or subcontractors and is not liable for any damages caused by:*

1. The acts or omissions of a person other than the contractor or his agent, employee or subcontractor;

2. The failure of a person other than the contractor or his agent, employee or subcontractor to take reasonable action to reduce the damages or maintain the residence;

3. Normal wear, tear or deterioration;

4. Normal shrinkage, swelling, expansion or settlement; or

5. Any constructional defect disclosed to an owner before his purchase of the residence, if the disclosure was provided in a language that is understandable and was written in underlined and boldfaced type with capital letters.

Sec. 11. *Except as otherwise provided in this section and section 16 of this act:*

1. At least 60 days before a claimant brings a cause of action against a contractor for damages arising from a constructional defect, the claimant must give written notice by certified mail, return receipt requested, to the contractor, at the contractor's last known address, specifying in reasonable detail the defects or any damages or injuries that are the subject of the complaint. During the 35-day period after the contractor receives the notice, on his written request, the contractor is entitled to inspect the property that is the subject of the complaint to determine the nature and cause of the

defect, damage or injury and the nature and extent of repairs necessary to remedy the defect. The contractor may take reasonable steps to establish the existence of the defect. If the residence is covered by a warranty or contract of insurance issued by an insurer authorized by this state to issue such a warranty or contract, a claimant must diligently pursue a claim under the warranty or contract.

2. Within 45 days after the contractor receives the notice, the contractor may make a written offer of settlement to the claimant. The offer:

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

(b) Must respond to each constructional defect set forth in the claimant's notice, and describe in reasonable detail the cause of the defect, if known, the nature and extent of the damage or injury resulting from the defect, and the method, adequacy and estimated cost of the proposed repair.

(c) May include an agreement by the contractor to make the repairs or, at the contractor's expense, to cause the repairs to be made by another contractor who is licensed, bonded and insured.

The repairs must be made within 45 days after the contractor receives written notice of acceptance of the offer, unless completion is delayed by the claimant or by other events beyond the control of the contractor. The claimant and the contractor may agree in writing to extend the periods prescribed by this section.

Sec. 12. *1. If a claimant unreasonably rejects a reasonable written offer of settlement made pursuant to section 11 of this act or does not permit the contractor or independent contractor a reasonable opportunity to repair the defect pursuant to an accepted offer of settlement and thereafter files a cause of action governed by sections 2 to 20, inclusive, of this act, the court in which the cause of action is filed 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 fails to make a reasonable offer of settlement pursuant to section 11 of this act or fails to complete, in a good and workmanlike manner, the repairs specified in an accepted offer, the limitations on damages and defenses to liability provided in sections 2 to 20, inclusive, of this act do not apply.

3. If coverage under a warranty or contract of insurance is denied by an insurer in bad faith, the homeowner and the contractor 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.

Sec. 13. *1. Except as otherwise provided in section 12 of this act, in a claim or cause of action governed by sections 2 to 20, inclusive, of this act, the claimant may recover the following damages to the extent proximately caused by a constructional defect:*

(a) Any reasonable attorney's fees;

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

(d) The loss of the use of the residence during the time of the repair;

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

(f) Any additional costs incurred by the claimant, including any costs and fees incurred for hiring experts reasonably necessary to ascertain the nature and extent of the constructional defect; and

(g) Any interest provided by statute.

2. 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. 14. *An offer of settlement that is not accepted within 25 days after the offer is received by the claimant is considered rejected if the offer contains a clear and understandable statement notifying the claimant of the consequences of his failure to respond or otherwise accept or reject the offer of settlement. An affidavit certifying rejection of an offer of settlement under this section may be filed with the court.*

Sec. 15. *In addition to any other method provided for settling a claim pursuant to sections 2 to 20, inclusive, of this act, a contractor may, pursuant to a written agreement entered into with a claimant, settle a claim by repurchasing the claimant's residence and the real property upon which it is located. The agreement may include, without limitation, provisions which reimburse the claimant for:*

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

2. Reasonable attorney's fees and fees for experts; and

3. Any costs, including costs and expenses for moving and costs, points and fees for loans.

Sec. 16. *A contractor who receives written notice of a constructional defect resulting from work performed by the contractor or his agent, employee or subcontractor which creates an imminent threat to the health or safety of the inhabitants of the residence shall take reasonable steps to cure the defect as soon as practicable. If the contractor fails to cure the defect in a reasonable time, the owner of the residence may have the defect cured and may recover from the contractor the reasonable cost of the repairs plus reasonable attorney's fees and costs in addition to any other damages recoverable under any other law.*

Sec. 17. *1. A contractor who makes or provides for repairs under sections 2 to 20, inclusive, of this act may take reasonable steps to prove that the repairs were made and to have them inspected.*

2. The provisions of sections 2 to 20, inclusive, of this act regarding

inspection and repair are in addition to any rights of inspection and settlement provided by common law or by another statute.

Sec. 18. *1. Before a complaint in a cause of action governed by sections 2 to 20, inclusive, of this act may be filed in court, the matter must be submitted to mediation, unless mediation is waived in writing by the contractor and the claimant.*

2. The claimant and contractor must select a mediator by agreement. If the claimant and contractor fail to agree upon a mediator within 45 days after a mediator is first selected by the claimant, either party may petition the American Arbitration Association, the Nevada Arbitration Association, Nevada Dispute Resolution Services or any other mediation service acceptable to the parties for the appointment of a mediator. A mediator so appointed may discover only those documents or records which are necessary to conduct the mediation. The mediator shall convene the mediation within 60 days after the matter is submitted to him, unless the parties agree to extend the time. The contractor shall deposit with the mediator before mediation begins the entire amount estimated by the mediator as necessary to pay the salary and expenses of the mediator, and shall deposit additional amounts demanded by the mediator as incurred for that purpose. The total fees for each day of mediation and the mediator must not exceed $750 per day.

3. If, after undergoing mediation pursuant to subsection 2, the parties do not reach an agreement concerning the matter, the claimant may file his complaint and:

(a) The reasonable costs and fees of the mediation are recoverable as costs of the action.

(b) The claimant may petition the court in which the complaint is filed for the appointment of a special master.

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

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

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

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

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

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

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

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

5. Upon application by a party to the court in which the cause of action is filed, any decision or other action taken by a special master appointed pursuant to this section may be appealed for a trial de novo.

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

Sec. 19. *1. Except as otherwise provided in subsection 2, a written waiver or settlement agreement executed by a claimant after a contractor has corrected or otherwise repaired a constructional defect does not bar a cause of action for the constructional defect if it is determined that the contractor failed to correct or repair the defect properly.*

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

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

(b) The claimant has provided the contractor with a written notice of the defect pursuant to section 11 of this act and a copy of the expert's opinion; and

(c) The claimant and the contractor have complied with the requirements for inspection and repair as provided in sections 2 to 20, inclusive, of this act.

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

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

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

Sec. 20. *1. Any statutes of limitation or repose applicable to a claim or cause of action governed by sections 2 to 20, inclusive, of this act are tolled from the time a claimant provides notice of the claimed defect, damage or injury to the contractor pursuant to section 11 of this act until 30 days after mediation is concluded or waived in writing pursuant to section 18 of this act.*

2. No claim or cause of action governed by sections 2 to 20, inclusive, of this act may be brought by a claimant or contractor against any third parties, including a government, governmental agency or political subdivision of a government, during the period in which a claim or cause of action for a constructional defect is being settled, mediated or otherwise resolved pursuant to sections 2 to 20, inclusive, of this act. The settlement of such a claim or cause of action does not affect the rights of any person who is not a party to the settlement, and the failure to reach such a settlement does not affect the rights of the claimant or contractor in any action brought by the claimant or contractor against a third party.

Sec. 21. NRS 624.3011 is hereby amended to read as follows:

624.3011 1. The following acts, among others, constitute cause for disciplinary action under NRS 624.300:

(a) Willful and prejudicial departure from or disregard of plans or specifi-

cations in any material respect without the consent of the owner or his [duly] authorized representative and the person entitled to have the particular construction project or operation completed in accordance with the plans and specifications.

(b) *Failure to respond to a claim arising out of a constructional defect, as that term is defined in section 5 of this act. The board shall not take any disciplinary action pursuant to this paragraph during the period in which the claim is being settled, mediated or otherwise resolved pursuant to sections 2 to 20, inclusive, of this act, unless the disciplinary action is necessary to protect the public health or safety.*

(c) Willful or deliberate disregard and violation of:

(1) The building laws of the state or of any political subdivision thereof.

(2) The safety laws or labor laws of the state.

(3) Any provision of the Nevada health and safety laws or the regulations adopted thereunder relating to the digging, boring or drilling of water wells.

(4) The laws of this state regarding industrial insurance.

2. If a contractor performs construction without obtaining any necessary building permit, there is a rebuttable presumption that the contractor willfully and deliberately violated the building laws of this state or of its political subdivisions. The board shall not require the contractor to obtain that permit more than 90 days after the construction is completed.

Sec. 22. This act becomes effective on July 1, 1995.".

Senator McGinness moved the adoption of the amendment.

Remarks by Senators James and Neal.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Senate Bill No. 435.

Bill read second time.

The following amendment was proposed by the Committee on Judiciary:

Amendment No. 721.

Amend the bill as a whole by deleting sections 1 and 2 and renumbering sections 3 and 4 as sections 1 and 2.

Amend sec. 3, page 2, by deleting lines 41 through 48 and inserting:

"441A.320 1. As soon as practicable after [:

(a) A] *a* person is arrested for the commission of a crime [; or

(b) A] *or a* minor is detained for the commission of an act which, if committed by a person other than a minor would constitute a crime, which [the victim or] :

(a) The victim, a witness *or an investigating or arresting peace officer* alleges involved the sexual penetration of the victim's body [,] *; or*

(b) The victim, a witness or an investigating or arresting peace officer alleges resulted in a transfer of bodily fluids between the arrested person or detained minor and the victim, witness or peace officer, and the health authority determines, pursuant to the protocol established by regulations of the board, that the transfer has the potential to cause the transmission of disease,

the health authority shall test a specimen".

Amend sec. 3, page 3, by deleting lines 44 through 46 and inserting:

"victim [.

5. The] *, witness or peace officer.*

5. For the purposes of this section, the board shall adopt regulations [identifying, for the purposes of this section,] :

(a) Identifying sexually transmitted diseases which are commonly contracted [.] *; and*

(b) Specifying the protocol to be used by the health authority to determine whether a transfer of bodily fluids with the potential to cause the transmission of disease has occurred.".

Amend the bill as a whole by deleting sec. 5 and renumbering sec. 6 as sec. 3.

Amend the title of the bill to read as follows:

"An Act relating to communicable diseases; revising the provisions that require certain persons arrested or detained for the commission of an offense be tested for the human immunodeficiency virus and any commonly contracted sexually transmitted disease; and providing other matters properly relating thereto.".

Amend the summary of the bill to read as follows:

"Summary—Revises provisions governing testing of certain arrested persons for human immunodeficiency virus and any commonly contracted sexually transmitted disease. (BDR 40-466)".

Senator James moved the adoption of the amendment.

Remarks by Senator James.

Senator James moved that Senate Bill No. 435 and Amendment No. 721 be taken from the Second Reading File and placed on the Secretary's desk.

Remarks by Senator James.

Motion carried.

MOTIONS, RESOLUTIONS AND NOTICES

Senator Raggio moved that Senate Bill No. 271 be taken from the General File and placed on the Secretary's desk.

Remarks by Senator Raggio.

Motion carried.

SECOND READING AND AMENDMENT

Senate Bill No. 492.

Bill read second time.

The following amendment was proposed by the Committee on Commerce and Labor:

Amendment No. 984.

Amend sec. 4, page 1, line 17, by deleting "*assistant.*" and inserting: "*assistant or an advanced practitioner of homeopathy.*".

SENATE BILL NO. 395—COMMITTEE ON JUDICIARY

APRIL 21, 1995

Referred to Committee on Judiciary

SUMMARY—Regulates recovery for defects in residential construction. (BDR 3-1589)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

EXPLANATION—Matter in italics is new; matter in brackets [ ] is material to be omitted.

AN ACT relating to civil remedies; providing limits and procedures for recovery on account of defects in residential construction; and providing other matters properly relating thereto.

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

Section 1. Chapter 40 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 20, inclusive, of this act.

Sec. 2. *As used in sections 2 to 20, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 to 8, inclusive, of this act, have the meanings ascribed to them in those sections.*

Sec. 3. *"Appurtenance" means a structure, installation, facility or amenity that is appurtenant to a residence, but is not a part of the dwelling unit. The term includes, without limitation, recreational facilities, golf courses, walls, sidewalks, driveways, landscaping and other structures, installations, facilities and amenities associated with a residence.*

Sec. 4. *"Claimant" means an owner of a residence or appurtenance or a representative of a homeowner's association that is responsible for a residence or appurtenance.*

Sec. 5. *"Constructional defect" includes 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. The term includes physical damage to the residence, an appurtenance or the real property to which the residence or appurtenance is affixed that is proximately caused by a constructional defect.*

Sec. 6. *"Contractor" means a person who, with or without a license issued pursuant to chapter 624 of NRS, by himself or through his agents, employees or subcontractors:*

1. Constructs, alters, repairs, improves or landscapes a residence, appurtenance or any part thereof; or

2. Sells a residence or appurtenance, any part of which the person, by himself or through his agents, employees or subcontractors, has constructed, altered, repaired, improved or landscaped.

The term includes a risk retention group or insurer who, or the representative of a homeowner's warranty which, insures all or any part of a contractor's liability for the cost to repair a residential constructional defect.

Sec. 7. *"Homeowner's warranty" means a warranty or contract of insurance for the protection of a homeowner which is issued by an insurer authorized to issue such a warranty or contract in this state or issued by or on behalf of a contractor.*

Sec. 8. *"Residence" means a dwelling designed for not more than four families or a unit in such a dwelling in which title to the individual units is transferred to the owners pursuant to chapter 116 or 117 of NRS.*

Sec. 9. *1. Sections 2 to 20, inclusive, of this act:*

(a) Apply to a claim or cause of action which arises after July 1, 1995, to recover damages resulting, directly or indirectly, from a constructional defect, except a claim for personal injury or wrongful death, and prevail over any conflicting law otherwise applicable to the claim or cause of action.

(b) Do not bar or limit any defense otherwise available except as otherwise provided in those sections.

2. As used in this section, "personal injury" does not include mental anguish, suffering, emotional distress, fear or anxiety, unless physically manifested by the claimant.

Sec. 10. *In a claim or cause of action to recover damages resulting from a constructional defect, a contractor is liable for his acts or omissions or the acts or omissions of his agents, employees or subcontractors and is not liable for any damages caused by:*

1. The acts or omissions of a person other than the contractor or his agent, employee or subcontractor;

2. The failure of a person other than the contractor or his agent, employee or subcontractor to take reasonable action to reduce the damages or maintain the residence;

3. Normal wear, tear or deterioration;

4. Normal shrinkage, swelling, expansion or settlement; or

5. Any constructional defect disclosed to an owner before his purchase of the residence, if the disclosure was provided in a language that is understandable and was written in underlined and boldfaced type with capital letters.

Sec. 11. *Except as otherwise provided in this section and section 16 of this act:*

1. At least 60 days before a claimant brings a cause of action against a contractor for damages arising from a constructional defect, the claimant must give written notice by certified mail, return receipt requested, to the contractor, at the contractor's last known address, specifying in reasonable detail the defects or any damages or injuries that are the subject of the complaint. During the 35-day period after the contractor receives the notice, on his written request, the contractor is entitled to inspect the property that is the subject of the complaint to determine the nature and cause of the defect, damage or injury and the nature and extent of repairs necessary to remedy the

defect. The contractor may take reasonable steps to establish the existence of the defect. If the residence is covered by a warranty or contract of insurance issued by an insurer authorized by this state to issue such a warranty or contract, a claimant must diligently pursue a claim under the warranty or contract.

2. Within 45 days after the contractor receives the notice, the contractor may make a written offer of settlement to the claimant. The offer:

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

(b) Must respond to each constructional defect set forth in the claimant's notice, and describe in reasonable detail the cause of the defect, if known, the nature and extent of the damage or injury resulting from the defect, and the method, adequacy and estimated cost of the proposed repair.

(c) May include an agreement by the contractor to make the repairs or, at the contractor's expense, to cause the repairs to be made by another contractor who is licensed, bonded and insured.

The repairs must be made within 45 days after the contractor receives written notice of acceptance of the offer, unless completion is delayed by the claimant or by other events beyond the control of the contractor. The claimant and the contractor may agree in writing to extend the periods prescribed by this section.

Sec. 12. *1. If a claimant unreasonably rejects a reasonable written offer of settlement made pursuant to section 11 of this act or does not permit the contractor or independent contractor a reasonable opportunity to repair the defect pursuant to an accepted offer of settlement and thereafter files a cause of action governed by sections 2 to 20, inclusive, of this act, the court in which the cause of action is filed 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 fails to make a reasonable offer of settlement pursuant to section 11 of this act or fails to complete, in a good and workmanlike manner, the repairs specified in an accepted offer, the limitations on damages and defenses to liability provided in sections 2 to 20, inclusive, of this act do not apply.

3. If coverage under a warranty or contract of insurance is denied by an insurer in bad faith, the homeowner and the contractor 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.

Sec. 13. *1. Except as otherwise provided in section 12 of this act, in a claim or cause of action governed by sections 2 to 20, inclusive, of this act, the claimant may recover the following damages to the extent proximately caused by a constructional defect:*

(a) Any reasonable attorney's fees;

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

(d) The loss of the use of the residence during the time of the repair;

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

(f) Any additional costs incurred by the claimant, including any costs and fees incurred for hiring experts reasonably necessary to ascertain the nature and extent of the constructional defect; and

(g) Any interest provided by statute.

2. 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. 14. *An offer of settlement that is not accepted within 25 days after the offer is received by the claimant is considered rejected if the offer contains a clear and understandable statement notifying the claimant of the consequences of his failure to respond or otherwise accept or reject the offer of settlement. An affidavit certifying rejection of an offer of settlement under this section may be filed with the court.*

Sec. 15. *In addition to any other method provided for settling a claim pursuant to sections 2 to 20, inclusive, of this act, a contractor may, pursuant to a written agreement entered into with a claimant, settle a claim by repurchasing the claimant's residence and the real property upon which it is located. The agreement may include, without limitation, provisions which reimburse the claimant for:*

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

2. Reasonable attorney's fees and fees for experts; and

3. Any costs, including costs and expenses for moving and costs, points and fees for loans.

Sec. 16. *A contractor who receives written notice of a constructional defect resulting from work performed by the contractor or his agent, employee or subcontractor which creates an imminent threat to the health or safety of the inhabitants of the residence shall take reasonable steps to cure the defect as soon as practicable. If the contractor fails to cure the defect in a reasonable time, the owner of the residence may have the defect cured and may recover from the contractor the reasonable cost of the repairs plus reasonable attorney's fees and costs in addition to any other damages recoverable under any other law.*

Sec. 17. *1. A contractor who makes or provides for repairs under sections 2 to 20, inclusive, of this act may take reasonable steps to prove that the repairs were made and to have them inspected.*

2. The provisions of sections 2 to 20, inclusive, of this act regarding inspection and repair are in addition to any rights of inspection and settlement provided by common law or by another statute.

Sec. 18. *1. Before a complaint in a cause of action governed by sections 2 to 20, inclusive, of this act may be filed in court, the matter must be submitted to mediation, unless mediation is waived in writing by the contractor and the claimant.*

2. The claimant and contractor must select a mediator by agreement. If the claimant and contractor fail to agree upon a mediator within 45 days after a mediator is first selected by the claimant, either party may petition the American Arbitration Association, the Nevada Arbitration Association, Nevada Dispute Resolution Services or any other mediation service acceptable to the parties for the appointment of a mediator. A mediator so appointed may discover only those documents or records which are necessary to conduct the mediation. The mediator shall convene the mediation within 60 days after the matter is submitted to him, unless the parties agree to extend the time. The contractor shall deposit with the mediator before mediation begins the entire amount estimated by the mediator as necessary to pay the salary and expenses of the mediator, and shall deposit additional amounts demanded by the mediator as incurred for that purpose. The total fees for each day of mediation and the mediator must not exceed $750 per day.

3. If, after undergoing mediation pursuant to subsection 2, the parties do not reach an agreement concerning the matter, the claimant may file his complaint and:

(a) The reasonable costs and fees of the mediation are recoverable as costs of the action.

(b) The claimant may petition the court in which the complaint is filed for the appointment of a special master.

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

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

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

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

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

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

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

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

5. Upon application by a party to the court in which the cause of action is filed, any decision or other action taken by a special master appointed pursuant to this section may be appealed for a trial de novo.

6. A report issued by a mediator or special master that indicates that either party has failed to appear before him or to mediate in good faith is

admissible in the cause of action, but a statement or admission made by either party in the course of mediation is not admissible.

Sec. 19. *1. Except as otherwise provided in subsection 2, a written waiver or settlement agreement executed by a claimant after a contractor has corrected or otherwise repaired a constructional defect does not bar a cause of action for the constructional defect if it is determined that the contractor failed to correct or repair the defect properly.*

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

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

(b) The claimant has provided the contractor with a written notice of the defect pursuant to section 11 of this act and a copy of the expert's opinion; and

(c) The claimant and the contractor have complied with the requirements for inspection and repair as provided in sections 2 to 20, inclusive, of this act.

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

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

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

Sec. 20. *1. Any statutes of limitation or repose applicable to a claim or cause of action governed by sections 2 to 20, inclusive, of this act are tolled from the time a claimant provides notice of the claimed defect, damage or injury to the contractor pursuant to section 11 of this act until 30 days after mediation is concluded or waived in writing pursuant to section 18 of this act.*

2. No claim or cause of action governed by sections 2 to 20, inclusive, of this act may be brought by a claimant or contractor against any third parties, including a government, governmental agency or political subdivision of a government, during the period in which a claim or cause of action for a constructional defect is being settled, mediated or otherwise resolved pursuant to sections 2 to 20, inclusive, of this act. The settlement of such a claim or cause of action does not affect the rights of any person who is not a party to the settlement, and the failure to reach such a settlement does not affect the rights of the claimant or contractor in any action brought by the claimant or contractor against a third party.

Sec. 21. NRS 624.3011 is hereby amended to read as follows:

624.3011 1. The following acts, among others, constitute cause for disciplinary action under NRS 624.300:

(a) Willful and prejudicial departure from or disregard of plans or specifications in any material respect without the consent of the owner or his [duly] authorized representative and the person entitled to have the particular construction project or operation completed in accordance with the plans and specifications.

(b) *Failure to respond to a claim arising out of a constructional defect, as that term is defined in section 5 of this act. The board shall not take any disciplinary action pursuant to this paragraph during the period in which the claim is being settled, mediated or otherwise resolved pursuant to sections 2 to 20, inclusive, of this act, unless the disciplinary action is necessary to protect the public health or safety.*

(c) Willful or deliberate disregard and violation of:

(1) The building laws of the state or of any political subdivision thereof.

(2) The safety laws or labor laws of the state.

(3) Any provision of the Nevada health and safety laws or the regulations adopted thereunder relating to the digging, boring or drilling of water wells.

(4) The laws of this state regarding industrial insurance.

2. If a contractor performs construction without obtaining any necessary building permit, there is a rebuttable presumption that the contractor willfully and deliberately violated the building laws of this state or of its political subdivisions. The board shall not require the contractor to obtain that permit more than 90 days after the construction is completed.

Sec. 22. This act becomes effective on July 1, 1995.

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(c) Training expenses; or

(d) Fuel for vehicles or aircraft used in an official mission of the United States Air Force.

5. Any person who makes a claim against the Civil Air Patrol account shall reimburse the account if payment for the claim is also received from another source.

6. There must be remitted to the treasurer of each county such portion of the remaining balance in the account for taxes on aviation fuel as is proportional to the excise taxes remitted by dealers or users in his county.".

Amend the title of the bill by deleting the first line and inserting:

"An Act relating to petroleum products; reducing the rate of taxation on aviation fuel; eliminating the refund on the tax paid on aviation fuel used for certain purposes; and".

Amend the summary of the bill to read as follows:

"Summary—Reduces rate of tax on aviation fuel. (BDR 32-1306)".

Senator Lowden moved the adoption of the amendment.

Remarks by Senators Lowden, O'Donnell, Coffin and Raggio.

Conflict of interest declared by Senators Raggio and Mathews.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

GENERAL FILE AND THIRD READING

Senate Bill No. 395.

Bill read third time.

Remarks by Senator James.

Senator James requested that his remarks made on June 16 on Amendment No. 805 to Senate Bill No. 395 and his additional remarks made today on the bill be entered in the Journal.

SENATOR JAMES:

Thank you, Mr. President. This bill is called the residential construction liability act. It is one of the major efforts at tort reform that the Senate Judiciary Committee worked on this session.

I want to give an overall statement of what the amendment does because the amendment replaces the bill entirely. So you can toss the bill aside and just look at the amendment.

The bill as it is now constituted in the amendment is designed to provide a fair and expeditious way for people buying homes and homebuilders to resolve construction defects, get them taken care of so that people can go on with their lives. Something quite remarkable happened on this bill because when it was first proposed, the attorneys and the groups that represent consumers of new homes and others came out in ardent opposition to the bill. The Judiciary Committee heard all of their testimony and their complaints about the content of the bill. We asked all the parties involved to go back and work in a subcommittee, to come back and come up with a bill that would be fair and equitable to both sides. I think it is a minor miracle as one of the parties put it, that this is the first time in history that the trial lawyers, the homebuilders, the State Contractors' Board and local governments have all agreed on a bill. They did unanimously support it. We had one hearing where they all came forward and just agreed to all the new provisions.

What you now have before you is a compromise but one that, I think, does a lot and goes a long way to getting rid of needless and unnecessary litigation that just penalizes both sides. When somebody moves into a new house and there is a problem, they make a complaint, the homebuilder's natural response is, "Oh boy, here is a big potential

litigation" so they get the wrong attitude from the very beginning. There has been a history in Nevada of a lot of class actions that come out of these. A large group of different people, each of whom has a small defect amounting to a few hundred dollars in value put enough of those together in a class action. Then attorneys, often from out-of-state, are often the ones who have pushed most of these cases and can then get a substantial settlement out of that. Nobody's interests are served by that except for the lawyers. So, this puts the interests of the buying public ahead of all others.

The bill provides that if you find a defect in construction of your residence, you must give notice to the builder. The builder then has a certain time within which they have to go out and inspect it, determine what the problem is and then make an offer to you to fix or otherwise compensate you in a way that you can agree on, an offer of settlement. If the builder either fails to make the offer or settlement or to actually do the repairs if that is what he has offered to do, then all of his defenses under this law are stricken. You can then get attorney's fees and costs and other damages against the builder. If, on the other hand, a reasonable offer of settlement is made and the person refuses to accept that offer, then you go forward with the litigation. At that end of that litigation, the builder can get his or her attorney's fees and costs against that party if the party refused the earlier offer unreasonably.

That is basically how it works with an additional mediation that comes in and the parties are required to go to a non-binding mediation to try to resolve their differences. After this procedure there is still a resort to the courts with those provisos; that if you have acted unreasonably in the negotiation process set up by the statute, you could be penalized.

I think this is appropriate. It preserves, basically, all of the remedies that you have now in the law if you ultimately can't get your settlement resolved. This, we think, will effectuate those settlements and will be a good step forward for what is happening in this industry and for people who are buying new residences in large numbers in our state as it continues to grow.

SENATOR NEAL:

I have a question. Will this amendment, particularly the section dealing with the mediation or arbitration of these disputes bar the Contractors' Board from involving themselves in any way in this?

SENATOR JAMES:

The bill provides in Section 21 that the Contractors' Board would not become involved in a disciplinary action while these proceedings are going on. It provides that the board shall not take disciplinary action pursuant to this paragraph during the time in which the claim is being settled, mediated or otherwise resolved pursuant to Sections 2 through 20, inclusive, unless it is necessary to protect the public's health or safety. That is appropriate for them to be out of this process while the parties resolve their differences. It does not prevent any action from being taken subsequently in regard to someone's license.

SENATOR JAMES:

Thank you, Mr. President pro Tempore. First of all, this bill deals with residential construction defect liability and the civil procedures with which you deal with those. My firm represents one or two homebuilders, but they did not lobby this bill and on balance in looking at this bill I am going to vote on this measure based upon my review of the ethics laws.

I explained the bill yesterday when we voted on the amendment. I think it is a balanced approach to what has become a very difficult problem where the courts and traditional civil litigation does not expeditiously resolve these problems. In most of the cases, the people who have these problems with new homes which they buy find there are unintentional mistakes on the part of the homebuilder. There is often some problem which needs to be cured as fast as possible. There is no need to get into a lawsuit over this with each side incurring large attorney fees. The repairs may entail only a few hundred to $1,000 while the attorney fees may reach into the tens of thousands of dollars. This bill provides a required expeditious mediation procedure. Even before that, it requires a notice for the

parties to meet and determine what needs to be fixed. It usually gets fixed, but if it doesn't get fixed then the party is penalized. I think this is a very good bill and it was supported by all the people who came before the committee. I urge all of you to vote for this measure.

Roll call on Senate Bill No. 395:

YEAS—21.
NAYS—None.

Senate Bill No. 395 having received a constitutional majority, Mr. President pro Tempore declared it passed, as amended.

Bill ordered transmitted to the Assembly.

Senate Bill No. 492.

Bill read third time.

Roll call on Senate Bill No. 492:

YEAS—13.
NAYS—Adler, Augustine, Coffin, Lee, Mathews, O'Donnell, Rawson, Washington—8.

Senate Bill No. 492 having received a constitutional majority, Mr. President pro Tempore declared it passed, as amended.

Bill ordered transmitted to the Assembly.

Senate Bill No. 537.

Bill read third time.

Remarks by Senators Townsend, Augustine and Adler.

Senator Townsend moved that Senate Bill No. 537 be taken from the General File and placed on the General File for the next legislative day.

Remarks by Senator Townsend.

Motion carried.

Assembly Bill No. 256.

Bill read third time.

Roll call on Assembly Bill No. 256:

YEAS—21.
NAYS—None.

Assembly Bill No. 256 having received a constitutional majority, Mr. President pro Tempore declared it passed, as amended.

Bill ordered transmitted to the Assembly.

REPORTS OF COMMITTEES

Mr. President pro Tempore:

Your Committee on Finance, to which were referred Senate Bills Nos. 16, 214, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

WILLIAM J. RAGGIO, *Chairman*

Mr. President pro Tempore:

Your Committee on Human Resources and Facilities, to which were referred Assembly Bills Nos. 482, 681, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

RAYMOND D. RAWSON, *Chairman*

MINUTES OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Sixty-eighth Session
June 23, 1995

The Committee on Judiciary was called to order at 8:12 a.m., on Friday, June 23, 1995, Chairman Anderson presiding in Room 332 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Mr. Bernie Anderson, Chairman
Mr. David E. Humke, Chairman
Ms. Barbara E. Buckley, Vice Chairman
Mr. Thomas Batten
Mr. John C. Carpenter
Mr. David Goldwater
Mr. Mark Manendo
Mrs. Jan Monaghan
Ms. Genie Ohrenschall
Mr. Richard Perkins
Mr. Michael A. (Mike) Schneider
Ms. Dianne Steel
Ms. Jeannine Stroth

COMMITTEE MEMBERS EXCUSED:

Mr. Brian Sandoval, Vice Chairman

GUEST LEGISLATORS PRESENT:

Assemblywoman Gene Segerblom

STAFF MEMBERS PRESENT:

Dennis Neilander, Research Analyst
Joi Davis, Committee Secretary

OTHERS PRESENT:

I.R. "Renny" Ashelman, Southern Nevada Home Builders
Ann Cathcart, Deputy Attorney General
Mark Ghan, Deputy Attorney General
Bill Bradley, Nevada Trial Lawyers Association
Valerie Cooney, Nevada Trial Lawyers Association
Jim Wadhams, Southern Nevada Home Builders

Chairman Anderson commenced the meeting as a subcommittee.

ASSEMBLY BILL 714 - Reduces period during which cause of action to recover damages for personal injury or wrongful death may be commenced against State of Nevada or any of its officers or employees.

Chairman Anderson announced this bill was heard partially on Monday, June 19, 1995, but due to time constraints testimony was not concluded. Mark Ghan, Deputy Attorney General, testifying in support of A.B. 714, continued his previous testimony. Mr. Ghan provided a letter dated June 21, 1995 including a graph pertaining to the amount of tort cases and claims, attached hereto as (Exhibit C).

Mr. Ghan stated the graph illustrates the number of non-inmate civil rights cases and inmate civil rights cases pending in the Attorney General's (AG) office on June 21, 1995. In addition, a relationship is shown between those cases and tort cases and claims open in the AG office. There are 452 inmate civil rights cases pending, 71 non-inmate civil rights cases pending, 67 tort cases, and 80 tort claims pending. Mr. Ghan stressed the point of the chart shows there is a negligible effect on the tort cases filed against the state.

Mr. Ghan addressed the constitutionality of A.B. 714 stating they believe it is unclear what the Supreme Court would conclude due to two cases. In Turner v. Staggs, 89 Nev. 230, 510 P.2d 879 (1973) a notice of claims provision was involved so there was a statute of limitation plus a six-month notice of claims provision. Therefore, Mr. Ghan continued, if someone was suing a state or public entity and the notice of claim provision was not satisfied, the claim could be barred. The Supreme Court stated that was arbitrary and violated the equal protection guarantees of the United States Constitution. However, Mr. Ghan

the bill would not unduly clog the court and she would see theses as relatively rare cases. In addition, the purpose of the bill is so the plaintiff does not fall victim twice; once upon original discrimination and once because the process takes two years to get a decision, not including the briefing and hearing time. Mrs. Monaghan asked if this would cause reverse age discrimination. Ms. Buckley responded certainly someone by virtue of their age would get priority; however, she did not see it as causing a reverse age discrimination situation but rather accommodating a person who may die before a decision is rendered.

Further discussion ensued.

SENATE BILL 395 - Regulates recovery for defects in residential construction.

At the request of the testifier and the concurrence of Chairman Anderson, the following testimony has been transcribed verbatim.

I.R. "Renny" Ashelman, Southern Home Builders, testified in favor of S.B. 395 and provided a revised version of the bill attached hereto as (Exhibit D).

Mr. Ashelman: "What I have done is taken the last set of amendments which is the First Reprint and made some further technical amendments that we advised the Senate we would need to make on this side and put them in there. I will go through and explain the additional amendments as well in traditional LCB style as you know, the italics is new and the brackets are out. We have added some further brackets which we have distinguished by using a different type style for the brackets and we have underlined the amendments to the amendments so you will be able to follow what we have done.

This bill is a result of several months of work compromising the trial lawyers and local governments who support the bill and have been very helpful in working with us on the amendments to provide a bill that everybody believes will address a very serious problem in our society. As you know, probably from constituent complaints, there are various kinds of problems with construction defects and Nevada has no law currently codifying how you deal with a construction defect. There are no procedures for them so the situation for the public, the home builders, and the lawyers involved has become fairly chaotic. We are hoping to bring some structure to that and a bring Alternative Dispute Resolution to bear and we'll solve problems from both sides.

Page one are definitions and cover the kinds of facilities involved. Page two is definitional and talks about what a claimant is. A claimant is an owner or his representative for the purpose of this bill. Construction defects include a defect in the design, construction, including physical damages to anything attached to the property that is caused by a constructional defect. It is important to note for the purpose of this discussion that this is a bill that essentially deals with a warranty type situation. We are not attempting to address negligence as I will amplify as we go forward. We are trying to discuss what you do to put a good product on the market irrespective of fault from that viewpoint as to these damages. A contractor covers licensed and unlicensed contractors. That is an issue that concerned many on the Senate side. Our reason for doing that is that this bill is in fact good for the consumer and even if he has to go after an unlicensed contractor, he needs tools to do that just as he needs tools to go after licensed contractors. There are certain limitations on what an unlicensed contractor can do in this bill. For instance, since he is unlicensed, he can't go fix his own problem. There are other provisions in other statutes and in bills in this session to chase unlicensed contractors."

Mr. Carpenter: "It is my understanding you do not have to be a licensed contractor to do work on someone's home if they hire you to do it."

Mr. Ashelman: "That is not true Mr. Carpenter. An individual may build his own home of course and not be licensed. But if you hire someone independent of you to do work, that person has to be licensed. That is not done by this bill but that is what Nevada law says."

Mr. Carpenter: "I don't think that is right. I think that on your own personal residence you do not have to have a licensed contractor."

Ms. Buckley: "I am a little concerned about creating another definition for 'contractor' when we already have one in Chapter 624. Why couldn't you define in Section 6 the contractor by referencing the definition in Chapter 624 and then create another section to put under this ambit individuals who you think are not defined in Chapter 624 so as not to create a conflict in the statutes?"

Mr. Ashelman: "We have checked with LCB and this is not considered a conflict in the statutes and we do believe this clearly states the situation we are trying to address by amplifying 624."

Ms. Buckley: "Could you do it as I just suggested without harming your intent?"

Mr. Ashelman: "I tell you we spent so many hours working on this thing, crafting and compromising, and I am very hesitant to change it in that regard. I have no ability to reach out and consult with the people who have been the primary co-crafters of this because they are not physically available to me. From the trial lawyers' viewpoint, Bob Lyle is their chief person and he is currently out of state. I don't believe this does any harm and I would really very much prefer to stick with it if we possibly could."

Jim Wadhams, also on behalf of the Southern Nevada Home Builders: "In reviewing the issue that Ms. Buckley's question goes to, that was not a problem at the contractor's board. We had other issues to work through with the contractor's board but that did not appear to be a problem. I think in addition to the trial lawyers we also have some concurrence in the use of this particular definition for these purposes."

Mr. Ashelman: "Although it is not a conclusive reason, this bill does try to track, in some major respects, the original act of this type which was from Texas. So, if we keep the language somewhat parallel, we might at least have some reference to case law. It is not the heaviest reason but that is one of the items involved. You will see down at the bottom of page two, the term includes a risk retention group registered under NRS 695E and we had bracketed out 'or insurer who or the representative of a homeowner's warranty.' We are advised by counsel for the various insurance and warranty people involved in this kind of work that that is the correct reference and the one line we are taking out is to avoid some possible conflicts and confusion elsewhere in the statute. There is no controversy on behalf of any of the representatives of the industry that would be concerned with that language."

Mr. Ashelman: "Section 7 and Section 8 are traditional definitions again just to give shape to the bill so we can understand what we are doing with it. Section 9 amplifies on a remark I made earlier. We make it clear in Section 9 at (a) that these apply to a claim or cause of action to recover damages resulting directly or indirectly from a constructional defect. We do not cover in this bill personal injury or wrongful death. This bill is not intended to get into that area of the law just as the Texas act we are modeling after did not. We are only talking about the construction defect itself in a sort of physical sense as to what it did to the property and what needs to be fixed as opposed to the personal injury consequences of it. There had been some concern raised by certain members of the defense bar that somehow we were getting strict liability which is a negligence

concept or a personal injury, wrongful death type concept. In talking with Mr. Lyle it is very clear at least in his mind and those of others we have consulted with there is probably some 30 to 40 attorneys at this point that we have nothing to do with any change in strict liability or the personal injury, wrongful death here. Section (b) does not bar or limit any defense otherwise available except as otherwise provided in these sections. That again is the Texas approach. Another reason for doing that was to make sure we were not in fact altering existing law. There are all sorts of Nevada statutes that talk about your defenses, your warrantees, and limitations thereon and we want to make sure we aren't touching any of those. We have bracketed the former subsection 2 of 9 to take it out. That was simply left over in the drafting process from earlier problems we were addressing. It no longer has any meaning in this statute. There would be no damages or other action or activity of the claimant or the defendants that that would point to, so it is surplusage. There is some concern that if we left it in, it might lead to confusion and interpretation problems so we would ask that it be removed.

Section 10 talks about what a contractor is liable for. He is liable for his acts or omissions or those of his agents, employees or subs and not liable for the acts or omissions of others who are not those persons. On page four, it goes on we are not liable for the failures of others who take reasonable actions to reduce damages or maintain the residence . . . normal wear, tear, or deterioration and these are from the Texas act. We did modify at 4, normal shrinkage, swelling, expansion or settlement from the Texas act as we were advised by engineers that worked for both sides that this language is the proper way to describe that situation so we made that modification. Finally, you are not liable for construction defects disclosed on owner if provided language that was understandable and written and underlined in bold-faced type with capital letters. This was added at the request of the trial lawyers. There are quite a number of cases where you know there is some sort of a problem with the residence, sometimes minor, sometimes not so minor, that simply cannot be fixed so there is really nothing you can do about it in practical terms, so you have to tell people that and they can make their decision whether to buy a home based on that situation or not.

Section 11 is sort of the operational part of the bill. Before you bring a cause of action in the courts you have to let the contractor know what is wrong by written notice by certified mail, return receipt requested, specifying in reasonable detail the defects or damages. The purpose of this is to prevent people from running to court before the contractor even has a chance to address the problem. Then during a 35

day period, the contractor is entitled to inspect the property . . . that has been one of the real problems in Nevada from a contractor's viewpoint. People will tell us there is something wrong but they won't let us look at it and it is kind of hard to fix it if you can't look at it. It is hard to do something sensible to avoid a court conflict if you can't look at it. Anyway, they get to make that inspection and take reasonable steps to establish the existence of the defect. If there is a warranty or contract of insurance, the claimant has to diligently pursue that claim, which is another problem we have had in the field at the present time.

Going to page five, subsection 2, within 45 days after receiving the notice, you may make a written offer of settlement which may include a monetary offer to the claimant. The purpose of that is sometimes the parties' relationship has become poor and you know any further work will lead to further complaints. It is easier just to pay for the problem. Sometimes you have problems that are minor as far as affecting the value or utility of the residence, but are extremely large in terms of what you would have to do to correct the situation, so in fairness you are allowed to make a monetary offer to cure. The answer, like the offer, like the claim, has to be by certified mail, return receipt requested, at the last known address. The claim has to address in some considerable detail as (b) outlines the cause of defect, the nature and extent of it, the method, adequacy, and estimated cost of the repair, unless a monetary offer is made. There is a typo in (b) which needs to come out of the bill.

In subsection (c) , it may include an agreement by the contractor to make the repairs or at the contractors expense, to cause the repairs be made by another contractor who is licensed, bonded, and insured. An unlicensed contractor shall not make his own repairs. This is to address concerns the contractor's board and members of the Senate committee had about unlicensed contractors being somehow given permission to go on being unlicensed by this bill. The repair must be made within 45 days after the contractor receives written notice unless completion is delayed by the claimant or by other events beyond the control of the contractor, the parties may of course agree to extend the period. Section 12 puts some teeth into the bill. If the claimant unreasonably rejects a reasonable written offer of settlement or does not permit the opportunity to inspect or repair, then files a cause of action, they can still do so, but there could be a denial of a claim for attorney's fees and costs and the court could, if it wished to, give attorney's fees and costs to the contractor so there would be at least the risk of some penalty if there was not reasonable cooperation in this process. We have found that works very well. You may recall I had some testimony on the court-annexed arbitration

which I gave to this committee a few days ago which showed when one assumes partially because of the risk, if you appeal a trial de novo and you don't do better and you don't establish to the court that you had a reasonable ground for that appeal, you may end up paying attorney's fees. So, that appears to at least partially deter people not willing to cooperate in this process in a reasonable manner. Finally, any sums paid under a home owners warranty other than sums paid in satisfaction of claims that are collateral to any coverage issued to or by the contractor, in other words, insurance that the home owner himself might have for example, must be deducted from any recovery. But if the homeowner himself has a policy as true, traditional law today, that is not deducted from the recovery.

In subsection 2 if the contractor fails to make a reasonable offer of settlement or fails to complete in a good and workmanlike manner the repairs specified on an accepted offer, the limitations on damages and defenses to liability do not apply. So there is penalties to the contractor if he does not make a reasonable offer. This helps with a very serious problem where quite often the contractor will get a complaint and the contractor will be willing to do something about that complaint but his insurance company, because they might have to ultimately reimburse, orders him to do nothing unless there is a trial. The contractor is stymied, the homeowner is stymied. With this language, they will not be able to do that or they will risk having to pay greater damages. If they are willing to take that risk, then they can control the suit as they ordinarily would under their insurance coverage. Again, we have had insurance people inspect this and they think it will be helpful."

Ms. Buckley: "With regard to the issue where the warranty must be deducted from the recovery, who pays for that homeowner warranty?"

Mr. Ashelman: "The only time you do deduct is coverage issued to or by the contractor. So it is when the contractor has bought the warranty or when the contractor himself has furnished the warranty."

Ms. Buckley: "Where does it say that?"

Mr. Ashelman: "It says that in (b) at the second and third lines of page six."

Ms. Buckley: "Other than sums paid in satisfaction of claims that are collateral to any coverage issued to or by the contractor. . . that's where that says that?"

Mr. Ashelman: "Right. The collateral would be a policy that was issued for the

homeowner for example. In other words, when he paid for the insurance. Then we have a bad faith limitation of coverage under a warranty or contract of insurance is denied by an insurer in bad faith, the homeowner and the contractor 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. On Section 13, except as otherwise provided in Section 12, when a claim or cause of action governed by this act, the claimant may only recover the following damages to the extent proximately caused by a constructional defect: attorney's fees. This is a new feature in the law. Now, attorney's fees would only be available up to $20,000.00. This lets them go beyond that. We believe this to be a very significant extension of coverage to the homeowner. A substantial change in Nevada law and the homeowners favor.

Number (b), of course, the reasonable costs of repairs and the reasonable expenses of temporary housing reasonably necessary during the repair. Number (c), the reduction in market value of the residence or accessory structure, if any, to the extent the reduction was caused by structural failure. That is in the Texas bill. That is probably in addition to Nevada law. We do not have Supreme Court cases, we've got some lower court cases so no one really knows that for certain. It is probably an additional benefit to the homeowner. The loss of the use of the residence during the time of the repair and the reasonable value of any other property damage by the constructional defect. I mean, if the ceiling falls in and wipes out the . . . "

Mr. Carpenter: "In (b) you have the reasonable expense of temporary housing necessary during the repair . . . and then (d) the loss of the use of the residence during time of repair. What would be the two situations?"

Mr. Ashelman: "Mr. Carpenter, we debated that among ourselves. As I say, we no longer have the ability to get back all the people involved in that original negotiation and ask them why there was a distinction. I have no particular objection if someone wishes to strike (d) as surplusage and if LCB or this committee makes that determination, I don't think it will cause anybody any harm. I didn't describe it because I wasn't able to track down the people that did that part of it and I did not want to be accused of somehow removing somebody's valued clause but I tend to think it is surplusage."

Mr. Carpenter: "It seems to me we would have to have an example of . . . if you are going to pay for the rent at some other place, then what other loss would you

have?"

Mr. Ashelman: "I tend to agree with you. So we could take (d) out."

Chairman Anderson: "Maybe we should remove (b) 'the reasonable expense of temporary housing reasonably necessary during the repair' and leave in (d) 'the loss of use of the residence during the time of repair'."

Mr. Ashelman: "Mr. Chairman, I would be happy to leave that to the discretion of the committee. I would simply point out that (b) is the more specific and probably the more generous of the two to the homeowner. The use I think is the less specific of the two."

Chairman Anderson: "Could (d) conceivably be the convenience rather than the actual cost of having to find temporary housing from a farther distance in location from where you actually want to be so that would give you the opportunity to gain some costs associated thereto."

Valerie Cooney, Nevada Trial Lawyers Association: "I have not personally been involved in the workings of this bill in trying to reach an agreement between the various parties. I do know that that has taken some substantial time. Simply reading these provisions, as an attorney, I do believe there is a distinction between the reasonable expenses of temporary housing and the loss of use of property. I think that is the concern perhaps of members of our association and if there were to be any change, I would suggest we retain section (d) and provide the loss of use of the residence during the time of repair, 'including the reasonable expense of temporary housing.' That would be simply moving one section to another and I don't know if that is a difference without a distinction but I would prefer not to see section (d) deleted because I do believe there may be much use that is compensable due to a loss."

Mr. Ashelman: "I have no problem with that or any of these versions, whichever one the committee desires."

Chairman Anderson: "Very accommodating today, Mr. Ashelman, as always."

Mr. Ashelman: "Thank you, Mr. Chairman, this has been a long hunt."

Mrs. Monaghan: "Would this make any difference as far as whether you had

temporary housing on your own or when moving in with a family member."

Mr. Ashelman: "You know, Mrs. Monaghan, I think there is some things we probably better leave to the courts and later adjudication. If you are not out any money, you are not out any money but indeed you might be inconvenienced and you might be entitled to some compensation for that and we don't have any problem with that."

Mr. Carpenter: "I think there will be a jillion things litigated in this bill anyway so it probably does not make any difference."

Mr. Ashelman: "If we just leave it as it is, the worst thing we do is just create some surplusage and that has been known to happen before. Number (f), any additional costs incurred by the claimant, including any costs and fees incurred for hiring experts reasonably necessary to ascertain the nature and extent of the constructional defect. Finally, because this is a limitation bill in some respects and we don't intend to alter the present statutory interest scheme. The trial lawyers wanted it because it was more generous. The rest of us wanted it because we can barely figure out what we got now and we certainly don't want to mess with it anymore.

Moving along, 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. That is directly from the Texas bill. Section 14, if you send a clear and understandable statement telling a claimant what happens if he does not respond or otherwise accept or reject, the offer is deemed rejected within 25 days so that the contractor knows where he is on that situation and can furnish an affidavit to that effect if it does indeed go forward to court.

Section 15 is simply an expansion on methods of settling a claim. In addition to everything else you do, if you have an agreement with the claimant, you may settle a claim by repurchasing the residence and the real property upon which it is located. The agreement may include limitation provisions which reimburse the claimant for the value of the improvements made to the property, reasonable attorney's fees, and fees for experts and any costs, including costs and expenses for moving . . . and so on. Those are merely examples, they are not limitations. The purpose of this section is to try to give guidance to a court as to what the ultimate reasonable offer would be. 'I'll buy it back, and I'll pay you for your time

and trouble and I'll pay you for your expenses involved with this and so on and so forth, including your moving costs.' The Texas statute makes that an absolute limitation on damages and in fact is less generous to the claimants than this provision. We did not make it an absolute limitation but we do believe it to be useful as giving some guidance to the court that there is sort of an upper limit on what you have to pay for constructional defect.

Section 16 states that if the defect creates an imminent threat to health or safety of the inhabitants, the contractor should take reasonable steps to cure the defect as soon as practicable. If the contractor does not do that in a reasonable time, the owner may have the defect cured to get the costs of repairs, attorney's fees and costs, and any other damages. Once again, we see an unlicensed contractor shall not make his own repairs. Section 17, the contractor who makes or provides for repair may take reasonable steps to prove the repairs have been made and have them inspected. The provisions of that inspection are additional to rates of inspection provided by common law or by another statute."

Mr. Carpenter: "I have a question as to Section 16 as to who makes the decision whether this is imminent threat to the health and safety of the inhabitants. That looks to me to be an open-ended . . . you may not really be able to defend against."

Mr. Ashelman: "The ultimate answer is that if the parties couldn't figure it out among themselves one thing that would happen is the judge would figure it out for them. The homeowner can certainly, if he thinks he is in danger, go ahead and have it repaired and stick to his guns and try to get the recovery. In addition, later in the statute at the very end, Mr. Carpenter, we allow the state contractor's board to intervene in any case where they think there is a threat to health or safety if the contractor is proceeding rapidly enough. We believe that would be another assistance to the homeowner. I think this is as fair as you can get. You are always going to have some disputes over what is reasonable time and what is or isn't a threat. But if the homeowner truly believes he has that situation, he can go ahead and repair and then go after the costs of repairs and so on. I would suggest, if he goes ahead and repairs, he certainly is going to get his reasonable costs of repair back in any event. The only questions would be whether or not he might get attorney's fees and costs for having been hasty when he need not have been. That is really the risk he would run in it. After many hours of discussion, none of us have arrived at anything better."

Mr. Carpenter: "It just seems to me that this is an onerous situation to the

contractor. I don't think it is fair."

Mr. Ashelman: "Well, if he thinks it's imminent, he can go ahead and have it cured and if he doesn't, he'll have to wait and like a lot of things in the law, eventually you just have to say reasonable and have the parties sort it out and if they can't they'll have to go to court to sort it out. The point is, it doesn't put the guy out of court just because he goes ahead and fixes the thing. On the other hand, the contractor would be free to argue it was an imminent threat and could have repaired it cheaper and they could have a further battle with that when they get there. In addition, the contractor's board has jurisdiction over this and they should be able to assist in some of these cases.

Section 18, before a complaint is filed, and here we depart from the Texas act and we add some alternative dispute resolution, the matter must be submitted to mediation unless the parties waive mediation. The claimant and the contractor must select a mediator by agreement. If they fail to agree upon a mediator within 45 days, either party may petition the American Arbitration Association, the Nevada Arbitration Association, the Nevada Dispute Resolution Services, or any other mediation service acceptable to the parties for the appointment of a mediator. The mediator so appointed may discover only those documents or records necessary to conduct mediation. The mediator shall convene the mediation within 60 days unless the parties agree to extend the time. The contractor shall deposit with the mediator before the mediation begins, the entire amount estimated by the mediator necessary to pay the salary and expenses of the mediator and shall deposit additional amounts demanded by the mediator incurred for that purpose. Total fees for each day of mediation must not exceed $750 per day. I have spoken to each of those named services. They do have mediation panels. They have mediators who are conversant with construction problems. They assure me, and I know from my own service as a mediator, that that sum is adequate to retain competent mediators for the purpose so we believe this section will work. If, after undergoing mediation, the parties don't reach an agreement, national studies repeatedly show about 85% of the time the parties will reach an agreement, but if they don't, they can file a complaint. Then the reasonable costs and fees of mediation are reparable as costs of the action. That puts a little bit of pressure on the claimant to try to work with the mediator to solve the problem because he is going to go to court. If he doesn't convince the court that he had been reasonable, the court can allow the cost of mediation against him.

The claimant may petition the court in which the complaint is filed for the

appointment of a special master. Attorneys who have done a great many of these cases, tell us in the bigger cases they can be very complex and there is a great advantage to the use of a master in terms of the court's time. The special master can review the pleadings, papers, or documents. The special master can coordinate discovery, including the disclosure of witnesses and the taking of depositions of each party. That is very much the way we work with the court-annexed arbitration act. One of the huge expenses of these cases is the parties' tendencies to vastly over-discover. The attorneys, very much like the doctors do with their tests, tend to over-discover to protect themselves from later malpractice claims. If they are under the guidance and coordination of the special master, it gives the trial attorney some protection. He can order inspections on the site by a party and any consultants or experts of a party. He can order settlement conferences and attendance by any representative of an insurer of a party. He can require any attorney representing a party to provide statements of legal and factual issues. He can refer to the judge for any matter where he needs assistance from the court. A special master shall not personally conduct any settlement conferences or engage in any ex parte meetings regarding the action. People who try these cases, particularly in California, tell us there has been a danger there for the special masters to sort of abuse their positions as a member of the court and hold endless settlement conferences. Also, they get involved in ex parte meetings which can be extremely touchy in court matters. That was at their request that they put that language in.

Upon application by any party to the court on a decision by a special master, they can get a trial de novo. Nevada law is pretty hostile to master's report. Generally speaking, you really can't have one that isn't available for trial de novo in any event so we simply put that in to avoid litigation. The mediator or the special master may report to the court that either party failed to appear, that they didn't mediate in good faith, but a statement or admission made by either party in the course of mediation is not admissible. That is in keeping with customary mediation and law rules of procedures. Some mediators, laws, and rules, restrict the use of exhibits and expert testimony. Again, we are trying to cut down the costs of litigation.

Section 19 deals with waivers. After a contractor has corrected or otherwise repaired a constructional defect, a waiver or settlement agreement does not bar a cause of action if it is determined the contractor failed to correct or repair the defect properly. However, you are not going to get that opportunity unless the claimant has obtained the opinion of an expert concerning the constructional defect. In other words, he has somebody willing to testify that it was not repaired

properly and he has given notice of a defect, a copy of the expert's opinion, and another opportunity to repair and fix it properly. Finally, if a claimant doesn't prevail in a cause of action which is not barred pursuant to this section . . . in other words, if he loses in his claim that it wasn't fixed accurately, they can deny his fees for expert witnesses and costs, and can award attorney's fees and costs to the contractor.

Section 20 we have tolled statutes of limitation or repose from the time of the notice of claim, defect, or injury until 30 days after the mediation is concluded or waived in writing so parties have an opportunity to go to court and do not lose their cause of action because of the existence of this bill. As the one who has had to amend the statute of repose three times, problems with our Supreme Court in the tolling of statutes of limitations, I believe this section is essential to protect the rights of the consumer and to avoid additional litigation of Supreme Court appeals by undertaking this time limitation.

Finally, causes of action against third parties, including a governmental agency or political subdivision of government, during the period of time in which this is being settled, mediators are stayed so the parties don't create all sorts of collateral litigation that completely defeat the purpose of the statute by driving up the costs of litigation and by embroiling everybody in battles all over the map. The settlement if such a claim or cause of action does not affect the rights . . . and there was a drafting error and we're asking you to add in . . . or obligations of any parties who is not a party to the settlement and that failure to reach such a settlement does not affect the rights or obligations of the claimant or contractor in any action brought by the claimant or contractor against a third party. So that goes forward. I think we may wish to consult with your experts and with the people at LCB to make sure that the Section 20 tolling covers subsection 2. As I read that, I am not absolutely certain that it does and of course it should. You shouldn't stop suits by, for, or against third parties and preserve their rights and allow statutes to run on them so we may have to do some further amending to make sure subsection 1 covers the subsection 2 situation or we'll be back on the constitutional problem.

Finally, we add to the causes of action or the disciplinary actions that are available to the contractor's board their ability to go after the failure to respond to a claim. So, a contractor can be fined, disciplined, and presumably ultimately lose his license if he doesn't respond to these claims . . . besides which he is going to be in litigation and have all those other problems. The bracketing is because that

reference at that point was inappropriate language. It created a circular situation. The bracketing would have had us saying, failure to respond is a cause of discipline, but you can't take any action for failing to respond and that is obviously a blunder in the draftsmanship so we are taking that out with the brackets. Finally, we defer the board taking disciplinary action on a constructional defect during the time while the claim is being settled, mediated, or otherwise resolved. Again, unless the disciplinary action is necessary to protect the public health and safety. The effective date is July 1, 1995. That is the bill as it stands today with the proposed additional amendments. I would be happy to take any additional questions."

Chairman Anderson: "Section 22 asks this act become effective July 1, 1995. Is the contractor's board able to establish these rules by then? Is there someone here from the contractor's board?"

Mr. Ashelman: "It doesn't call for any rules or regulations, Mr. Chairman. The act itself simply states these are things you can act on and basically, except for failing to respond, it defers their action until the completion of this so they will have plenty of time to deal with that. The process itself takes approximately six months. So, that would give them six months to deal with any rules they would have to do for punishment or so on."

Chairman Anderson: "To your dismay, Mr. Ashelman, I have reviewed the text of the statutes for the last six years because I have an interest relative to home inspectors that are unlicensed in this state. As you well know, the Texas statute has major provisions in terms of trying to protect consumers in homes and contractors who represent themselves to have done something to a home and the nature of home inspectors in this particular state. We have a bill pending in another committee looking at that particular piece of legislation. How would this piece of legislation be able to operate without home inspectors, people who would be willing to go in without being involved either as an agent of the contractor, yet knowledgeable to make sure these kinds of problems are clearly identified. Don't you need that in order to have these pieces of legislation go forward, that partial third person who . . . not just the legal side of this which I realize of course has its own applications, but what the contractor needs to protect themselves and what the homeowner and the consumer needs to protect himself if somebody is an agent of either one. Can we move on this legislation without that?"

Mr. Ashelman: "Let me put it this way. I don't believe we are currently having

difficulty getting appropriate experts to do these inspections. From the standpoint of a homeowner as opposed to the home builder or indeed after the attorneys get involved in the process, if there were a category of persons certified and properly set up to do this sort of thing in Nevada law, it probably would assist the homeowner that wanted to proceed on his own. But, as far as getting construction experts and architects and engineers or whoever might be available for testimony, the bill could function . . . it might assist the individual homeowner who simply had to go to the yellow pages or some licensing board, he could go to to try and find himself some experts."

Mr. Goldwater: "I think this is an excellent, excellent bill but it leaves one crucial element out that is a major problem and I wonder if you addressed it or if it can be addressed. As a person that does rehabs, particularly in the poor neighborhoods and in the run down neighborhood like the one I come from, the guy buys the house, and because he is the owner of the house he would not be subject to this because he does his own repairs, supposedly, but he is only doing them to rehabilitate the house so he can sell it a month or two later. Is there any way we can address that? Is it addressed here and I'm not seeing it? Because this is a major problem. People buy these houses and they don't rely on these kinds of statutes. They have to rely on the disclosure statutes and those are very difficult to maneuver. Is that addressed, Mr. Ashelman, or can we address that?"

Mr. Ashelman: "Well, I think it is at least partially addressed. The person who is the owner/buyer of the house . . . a current owner hires a contractor and then he turns around and 'spins' the house as they say in real estate. That buyer is a claimant. He is an eligible claimant under our statutes. He has a claim against the contractor. It would be a matter of interpretation by the court as to whether that intermediary buyer was himself a contractor. My suggestion is he probably was not if he had somebody else do the rehab work. If he did it himself, he might be a contractor for this purpose and indeed might have been in many cases an unlicensed contractor because he was working on a home he bought himself and there would be recourse against that individual."

Mr. Goldwater: "With this, or is that current in the statute? We need this bill for that act?"

Mr. Ashelman: "I think this bill would assist that situation. I am not sure we will cover all the permutations about what you are talking about but it is going to be helpful in many of those cases."

Mr. Wadhams: "I will be very brief but in an additional answer to that, it really is similar to the question Assemblyman Carpenter asked earlier of what constitutes a contract, licensed or unlicensed but to the extent this bill may reach your situation and have some relief for those buyers."

Chairman Anderson: "It has been my experience, Mr. Goldwater, generally the home buyer is left without much protection if it has been a kind of 'do-it-yourself' kind of project of which you are describing that somebody comes in and turns the house around and picks it up at a relatively low rate and does it himself, you know puts in paneling and covers blemishes. Although oftentimes serious constructional errors are overlooked and then a subsequent buyer doesn't recognize it and turns it over himself and then the next buyer has a home inspector come in and identify the problems. Then they are stuck having enormous repairs and this is a major, growing problem in our state unfortunately."

Mr. Schneider: "Mr. Ashelman, I think this is excellent and I just wanted to make a statement for the committee. My partner and I were building a custom home on a contract and there was a problem, we felt, in the design of the stairway that went up and we were in the framing stages. So, we called the architect and homeowner together to make the correction. We thought it wasn't quite high enough when it hit under the hallway. It was a simple change when you are in framing. Of course, the people went ballistic, shut down the entire project, and we wound up in court over a year later and many thousands of dollars were spent. They hired some sort of home inspector that came out that said there was a lot of bracing missing in the building. Well, when we were ordered off the job . . . when you are ordered off a job right in the middle of framing, of course there is going to be some bracing missing because it was in the middle of the day and you just put some walls up and everything wasn't there yet. These things have to be checked off according to the county and city inspectors. Anyhow, this is the type of thing that hits the small homebuilders real hard. We have had these problems before because the public doesn't understand construction. They just don't understand it. I think with this, you can get right into mediation or arbitration and resolve all your problems within 90 days and this just saves the courts a lot of time and actually saves some home builders from going under and saves . . . I'll tell you what, I've seen people lose their houses during construction that . . . this is just an excellent piece of legislation that will solve a lot of problems out there."

Chairman Anderson: "Mr. Ashelman, let me make sure we have the amendments correctly. First of all, on page two we are going to delete 'or insurer or the

representatives . . .' and insert registered under NRS 695E." On page three of Section 9 of the bill, we would be deleting the number one leaving in the information that follows and the (a) and (b) and deleting number two in its entirety. No changes to sections 10 or 11 on page four. Section 11 on page five at two we are going to be adding new language which may include a monetary offer. In (b) unless a monetary offer is made. In (c) an unlicensed contractor shall not make his own repair. Further, in Section 13 on page six, the addition of the hand written word, 'only' eliminating factor and on page eight, Section 16, again the 'unlicensed contractor shall not make his own repair' and there are no additions on page nine, ten, and eleven. On page 12, Section 20, 'or obligations' is added in two places. Then the deletion, in Section 21 of the bill, in part (b) you are going to delete 'the board shall not take any disciplinary action pursuant to this paragraph during the period the claim is being settled' and then on page 13, we are following a numbered section that reads down and you want that to say five?"

Mr. Ashelman: "No, that two should be out in the corner. The two would be a 2 following the 1 of that section--a flush 2."

Chairman Anderson: "This language here that is underlined is new then I presume is from what bill? Is this borrowed language from another statute . . .?"

Mr. Ashelman: "It is new creation. It ought to look similar because it is similar to what we came up with above but we added some words to it so it would make sense."

Chairman Anderson: "And then we would be striking two and noting it as three? Those are the only noted changes?"

Mr. Ashelman: "Yes, those are all correct. If I may, Mr. Chairman, I would remind you that we want to ask bill drafting and work with them to make sure that we stay the statute of limitations and repose as to the third party situation."

Chairman Anderson: "Okay. That is at subsection two of Section 20 of the bill is tolled relative to Section 1 of the bill."

Mr. Ashelman: "That is correct."

Mr. Carpenter: "I have a couple questions. On Section 16, I would like a resident agent, like Mr. Schneider, to read that because to me I'm not on a level playing

field there. Then, I am wondering in the situation on the mediation, why the contractor is the one who has to make the entire deposit. To me, it is kind of reading like the contractor is always the bad guy here and you know there are some of these homes, especially custom homes, where the owner of the home can probably buy and sell the contractor over four or five times so I just have those two questions."

Mr. Ashelman: "Well on Section 16, Mr. Carpenter, we were concerned with that provision. The Senate Judiciary was concerned with that provision. This is our best effort to resolve what would be an unusual but difficult situation. Certainly, I think between the trial lawyers and the home builders there was no effort to slant it one way or the other. We simply tried to deal with it the best way we knew how. I don't know anything else I could do that would be better and if I did, I would be happy to do it and if I heard it I would be happy to agree with it. There is no pride of authorship but we hammered and hammered and worked on it and maybe we just failed but we thought it was the best we could do with it."

Chairman Anderson: "I would point out to Mr. Carpenter that Mr. Ashelman here represents the Southern Nevada Homebuilders in this particular instance and we have the Nevada Trial Lawyers here, represented by Ms. Cooney, and Mr. Wadhams representing Southern Nevada Homebuilders. This language we see is a compromise that all of you have reached and agreed to in substance and in part and would feel comfortable if we moved forward with this?"

Mr. Ashelman: "That is true and, Mr. Carpenter, we agreed to pay for the mediation for two reasons: 1) we had a gun at our head; and 2) we rather strongly believe in the principle of mediation. This bill encompasses huge claims, little claims, and in fairness to the home builder with the small claims at least could be considerably burdensome to him to restrict his right to court by saying you got to put the cost of mediation up. We are comfortable with it. We may come back in two years screaming and say we've been abused, or we may come back and say it is wonderful and we're glad we did it that way. Time will tell. We are happy with it. We think it is a balanced bill and where we gave some things up we got some things and we would like to go forward with it."

Mrs. Monaghan: "Thank you Mr. Chairman. My question has to do with the amendments you have gone through and it wasn't touched on but it was discussed in committee as far as on page six, Section 15 either (b) or (d), are we going to add that to our amendments."

Mr. Ashelman: "We'll leave it the way it is. The trial lawyers were comfortable with that and I know some committee members had some concerns about it so let's just keep it as it is. At worst, we create some surplusage, perhaps we preserve some additional rights for the home buyer and we're comfortable with that."

Mr. Schneider: "Thank you Mr. Chairman, to you and through you to Mr. Carpenter. 16 looks pretty good to me. My question I guess to the trial lawyers is 'reasonable time' and in the construction industry 'reasonable time' could get out start taking care of something could be like 30 days and then some professions that may not be reasonable but 30-45 day. If there is a major defect, I mean you really have to go look at it and study it before you just take a hammer and start knocking things apart. Is 'reasonable' to you mean 30-45 days?"

Ms. Cooney: "Reasonableness to me would depend upon the nature of the imminent harm or threat that existed. I think it is very, very difficult to express time in certain terms when cases vary greatly on a case by case basis. I think reasonableness would depend upon the totality of the circumstances."

Mr. Ashelman: "I do want to point out to both Mr. Carpenter and Mr. Schneider the home builder, the contractor, has to take reasonable steps to cure the defect as soon as practicable and then the reasonable time is the time to complete those so we tried to put them both in. The 'practicable' I think makes it clear there is urgency in it. You got to get in there as quickly as you can with that kind of a situation. Whether you can fix it quickly or not depends on what the problem is as you say."

Ms. Cooney: "This is an act which creates a legislative expression of the rights and obligations of individuals who contract to build homes and to purchase them. It also creates the procedures to enforce those rights and obligations. The association is very grateful to Mr. Ashelman and his willingness to participate and allow us to help in the amendment of this bill. It is a good bill and we do hope it will serve everyone well in Nevada."

Mr. Jay Parmer, Nevada State Contractor's Board: "Thank you Mr. Chairman. We have no concerns with the bill as written. We have had a chance to review it and have had some consultations with Mr. Ashelman on the bill."

Chairman Anderson: "Are you familiar with the Texas statute from which it is

drawn?"

Mr. Parmer: "Mr. Chairman, one of the members of our professional staff did extensive research on the Texas statutes in evaluating this bill."

Chairman Anderson: "And has she agreed that it is in large part in compliance with this area?"

Mr. Parmer: "I think the best way to answer that question Mr. Chairman, in her absence, is to say that the board feels the language of the bill is workable from the standpoint of the job that the contractor's board is to pursue complaints."

Ms. Buckley: "Did the board vote on this?"

Mr. Parmer: "I am going to have to . . . to my knowledge the board did not vote on this in a public hearing, no."

Ms. Buckley: "Thank you."

Chairman Anderson: "We will hold this bill for a work session tomorrow and I will leave the record open on this in addition, there may be additional information that has been indicated may be coming forward. I will close the hearing on this for today only. The record is still open on the bill."

ASSEMBLY BILL 363 - Revises provisions governing number of justices of the peace in townships.

Chairman Anderson announced the committee took action on A.B. 363 last week wherein he had crafted a workable document relative to the bill and the committee passed out the bill with an Amend & Do Pass. In working out the amendments, it would appear the bill, even with the amendments, would create a problem for the townships of Henderson and North Las Vegas which would preclude them from building a justice court since they would not meet the population threshold.

Therefore, it would be the co-chairmens' recommendation to rescind the previous action and pass the bill in its original form if the committee so chooses.

1995 REGULAR SESSION (68th)

ASSEMBLY ACTION		SENATE ACTION	
Adopted	☐	Adopted	☐
Lost	☐	Lost	☐
Date:		Date:	
Initial:		Initial:	
Concurred in	☐	Concurred in	☐
Not Concurred in	☐	Not Concurred in	☐
Date:		Date:	
Initial:		Initial:	

Senate Amendment to
Senate Bill No. 395
BDR 3-1589
Proposed by Committee
on Judiciary

Amendment No. 805

Replaces Amendment No. 517.

Amend the bill as a whole by deleting sections 1 through 19 and adding new sections designated sections 1 through 22, following the enacting clause, to read as follows:

"**Section 1.** Chapter 40 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 20, inclusive, of this act.

Sec. 2. *As used in sections 2 to 20, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 to 8, inclusive, of this act, have the meanings ascribed to them in those sections.*

Sec. 3. *"Appurtenance" means a structure, installation, facility or amenity that is appurtenant to a residence, but is not a part of the dwelling unit. The term includes, without limitation, recreational facilities, golf courses, walls, sidewalks, driveways.*

Drafted by: SJC:mrw Date: 6/8/95

S.B. No. 395—Regulates recovery for defects in residential construction.

EXHIBIT D

landscaping and other structures, installations, facilities and amenities associated with a residence.

Sec. 4. *"Claimant" means an owner of a residence or appurtenance or a representative of a homeowner's association that is responsible for a residence or appurtenance.*

Sec. 5. *"Constructional defect" includes 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. The term includes physical damage to the residence, an appurtenance or the real property to which the residence or appurtenance is affixed that is proximately caused by a constructional defect.*

Sec. 6. *"Contractor" means a person who, with or without a license issued pursuant to chapter 624 of NRS, by himself or through his agents, employees or subcontractors:*

1. Constructs, alters, repairs, improves or landscapes a residence, appurtenance or any part thereof; or

2. Sells a residence or appurtenance, any part of which the person, by himself or through his agents, employees or subcontractors, has constructed, altered, repaired, improved or landscaped.

The term includes a risk retention group <u>registered under NRS695E [or insurer who or the representative of a homeowner's warranty]</u> which insures all or any part of a contractor's liability for the cost to repair a residential defect.

Sec. 7. *"Homeowner's warranty" means a warranty or contract of insurance for the protection of a homeowner which is issued by an insurer authorized to issue such a warranty or contract in this state or issued by or on behalf of a contractor.*

Sec. 8. *"Residence" means a dwelling designed for not more than four families or a unit in such a dwelling in which title to the individual units is transferred to the owners pursuant to chapter 116 or 117 of NRS.*

Sec. 9. *[1] Sections 2 to 20, inclusive, of this act:*

(a) Apply to a claim or cause of action which arises after July 1, 1995, to recover damages resulting, directly or indirectly, from a constructional defect, except a claim for personal injury or wrongful death, and prevail over any conflicting law otherwise applicable to the claim or cause of action.

(b) Do not bar or limit any defense otherwise available except as otherwise provided in those sections.

[2. As used in this section, "personal injury" does not include mental anguish, suffering, emotional distress, fear or anxiety, unless physically manifested by the claimant.]

Sec. 10. *In a claim or cause of action to recover damages resulting from a constructional defect, a contractor is liable for his acts or omissions or the acts or omissions of his agents, employees or subcontractors and is not liable for any damages caused by:*

1. The acts or omissions of a person other than the contractor or his agent, employee or subcontractor;

2. The failure of a person other than the contractor or his agent, employee or subcontractor to take reasonable action to reduce the damages or maintain the residence;

3. Normal wear, tear or deterioration;

4. Normal shrinkage, swelling, expansion or settlement; or

5. Any constructional defect disclosed to an owner before his purchase of the residence, if the disclosure was provided in a language that is understandable and was written in underlined and boldfaced type with capital letters.

Sec. 11. *Except as otherwise provided in this section and section 16 of this act:*

1. At least 60 days before a claimant brings a cause of action against a contractor for damages arising from a constructional defect, the claimant must give written notice by certified mail, return receipt requested, to the contractor, at the contractor's last known address, specifying in reasonable detail the defects or any damages or injuries that are the subject of the complaint. During the 35-day period after the contractor receives the notice, on his written request, the contractor is entitled to inspect the property that is the subject of the complaint to determine the nature and cause of the defect, damage or injury and the nature and extent of repairs necessary to remedy the defect. The contractor may take reasonable steps to establish the existence of the defect. If the residence is covered by a warranty or contract of insurance issued by an insurer authorized by this state to issue such a warranty or contract, a claimant must diligently pursue a claim under the warranty or contract.

2. *Within 45 days after the contractor receives the notice, the contractor may make a written offer of settlement which may include a monetary offer to the claimant. The offer:*

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

(b) Must respond to each constructional defect set forth in the claimant's notice and describe in reasonable detail the cause of the defect, if known, the nature and extent of the damage or injury resulting from the defect, and the method, adequacy and estimated cost of the proposed repair unless a monetary offer is made.

(c) May include an agreement by the contractor to make the repairs or, at the contractor's expense, to cause the repairs to be made by another contractor who is licensed, bonded and insured. An unlicensed contractor shall not make his own repairs. The repairs must be made within 45 days after the contractor receives written notice of acceptance of the offer, unless completion is delayed by the claimant or by other events beyond the control of the contractor. The claimant and the contractor may agree in writing to extend the periods prescribed by this section.

Sec. 12. *1. If a claimant unreasonably rejects a reasonable written offer of settlement made pursuant to section 11 of this act or does not permit the contractor or independent contractor a reasonable opportunity to repair the defect pursuant to an accepted offer of settlement and thereafter files a cause of action governed by sections 2 to 20, inclusive, of this act, the court in which the cause of action is filed 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 fails to make a reasonable offer of settlement pursuant to section 11 of this act or fails to complete, in a good and workmanlike manner, the repairs specified in an accepted offer, the limitations on damages and defenses to liability provided in sections 2 to 20, inclusive, of this act do not apply.

3. If coverage under a warranty or contract of insurance is denied by an insurer in bad faith, the homeowner and the contractor 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.

Sec. 13. *1. Except as otherwise provided in section 12 of this act, in a claim or cause of action governed by sections 2 to 20, inclusive, of this act, the claimant may only recover the following damages to the extent proximately caused by a constructional defect:*

(a) Any reasonable attorney's fees;

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

(d) The loss of the use of the residence during the time of the repair;

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

(f) Any additional costs incurred by the claimant, including any costs and fees incurred for hiring experts reasonably necessary to ascertain the nature and extent of the constructional defect; and

(g) Any interest provided by statute.

2. 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. 14. *An offer of settlement that is not accepted within 25 days after the offer is received by the claimant is considered rejected if the offer contains a clear and understandable statement notifying the claimant of the consequences of his failure to respond or otherwise accept or reject the offer of settlement. An affidavit certifying rejection of an offer of settlement under this section may be filed with the court.*

Sec. 15. *In addition to any other method provided for settling a claim pursuant to sections 2 to 20, inclusive, of this act, a contractor may, pursuant to a written agreement entered into with a claimant, settle a claim by repurchasing the claimant's residence and the real property upon which it is located. The agreement may include, without limitation, provisions which reimburse the claimant for:*

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

2. Reasonable attorney's fees and fees for experts: and

3. Any costs, including costs and expenses for moving and costs, points and fees for loans.

Sec. 16. *A contractor who receives written notice of a constructional defect resulting from work performed by the contractor or his agent, employee or subcontractor which creates an imminent threat to the health or safety of the inhabitants of the residence shall take reasonable steps to cure the defect as soon as practicable. If the contractor fails to cure the defect in a reasonable time, the owner of the residence may have the defect cured and may recover from the contractor the reasonable cost of the repairs plus reasonable attorney's fees and costs in addition to any other damages recoverable under any other law. An unlicensed contractor shall not make his own repairs.*

Sec. 17. *1. A contractor who makes or provides for repairs under sections 2 to 20, inclusive, of this act may take reasonable steps to prove that the repairs were made and to have them inspected.*

2. the provisions of sections 2 to 20, inclusive, of this act regarding inspection and repair are in addition to any rights of inspection and settlement provided by common law or by another statute.

Sec. 18. *1. Before a complaint in a cause of action governed by sections 2 to 20, inclusive, of this act may be filed in court, the matter must be submitted to mediation, unless mediation is waived in writing by the contractor and the claimant.*

2. The claimant and contractor must select a mediator by agreement. If the claimant and contractor fail to agree upon a mediator within 45 days after a

mediator is first selected by the claimant, either party may petition the American Arbitration Association, the Nevada Arbitration Association, Nevada Dispute Resolution Services or any other mediation service acceptable to the parties for the appointment of a mediator. A mediator so appointed may discover only those documents or records which are necessary to conduct the mediation. The mediator shall convene the mediation within 60 days after the matter is submitted to him, unless the parties agree to extend the time. The contractor shall deposit with the mediator before mediation begins the entire amount estimated by the mediator as necessary to pay the salary and expenses of the mediator, and shall deposit additional amounts demanded by the mediator as incurred for that purpose. The total fees for each day of mediation and the mediator must not exceed $750 per day.

3. If, after undergoing mediation pursuant to subsection 2, the parties do not reach an agreement concerning the matter, the claimant may file his complaint and:

(a) The reasonable costs and fees of the mediation are recoverable as costs of the action.

(b) The claimant may petition the court in which the complaint is filed for the appointment of a special master.

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

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

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

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

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

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

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

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

5. Upon application by a party to the court in which the cause of action is filed, any decision or other action taken by a special master appointed pursuant to this section may be appealed for a trial de novo.

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

Sec. 19. *1. Except as otherwise provided in subsection 2, a written waiver or settlement agreement executed by a claimant after a contractor has corrected or otherwise repaired a constructional defect does not bar a cause of action for the constructional defect if it is determined that the contractor failed to correct or repair the defect properly.*

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

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

(b) The claimant has provided the contractor with a written notice of the defect pursuant to section 11 of this act and a copy of the expert's opinion; and

(c) The claimant and the contractor have complied with the requirements for inspection and repair as provided in sections 2 to 20, inclusive, of this act.

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

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

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

Sec. 20. *1. Any statutes of limitation or repose applicable to a claim or cause of action governed by sections 2 to 20, inclusive, of this act are tolled from the time a claimant provides notice of the claimed defect, damage or injury to the contractor pursuant to section 11 of this act until 30 days after mediation is concluded or waived in writing pursuant to section 18 of this act.*

2. No claim or cause of action governed by sections 2 to 20, inclusive, of this act may be brought by a claimant or contractor against any third parties, including a government, governmental agency or political subdivision of a government, during the period in which a claim or cause of action for a constructional defect is being settled, mediated or otherwise resolved pursuant to sections 2 to 20, inclusive, of this act. The settlement of such a claim or cause of action does not affect the rights or obligations of any person who is not a party to the settlement, and the failure to reach such a settlement does not affect the rights or obligations of the claimant or contractor in any action brought by the claimant or contractor against a third party.

Sec. 21. NRS 624.3011 is hereby amended to read as follows:

624.3011 1. The following acts, among others, constitute cause for disciplinary action under NRS 624.300:

(a) Willful and prejudicial departure from or disregard of plans or specifications in any material respect without the consent of the owner of his [duly] authorized representative and the person entitled to have the particular construction project or operation completed in accordance with the plans and specifications.

(b) Failure to respond to a claim arising out of a constructional defect, as that term is defined in section 5 of this act. [The board shall not take any disciplinary action pursuant to this paragraph during the period in which the claim is being settled, mediated or otherwise resolved pursuant to sections 2 to 20, inclusive, of this act, unless the disciplinary action is necessary to protect the public health or safety.]

(c) Willful or deliberate disregard and violation of:

(1) The building laws of the state or of any political subdivision thereof.

(2) The safety laws or labor laws of the state.

(3) Any provision of the Nevada health and safety laws or the regulations adopted thereunder relating to the digging, boring or drilling of water wells.

(4) The laws of this state regarding industrial insurance.

(2) The board shall not take any disciplinary action arising out of a constructional defect, as that term is defined in section 5 of this act, during the period in which the claim is being settled, mediated or otherwise resolved pursuant to sections 2 to 20, inclusive, of this act, unless the disciplinary action is necessary to protect the public health or safety.

[2] 3. If a contractor performs construction without obtaining any necessary building permit, there is a rebuttable presumption that the contractor willfully and deliberately violated the building laws of this state or of its political subdivisions. The board shall not require the contractor to obtain that permit more than 90 days after the construction is completed.

Sec. 22. This act becomes effective on July 1, 1995.".

Statement by I. R. Ashleman supporting SB 395 prepared at the request of the Assembly Judiciary Committee covering the essential elements of legislative intent as presented by the Southern Nevada Home Builders and the Nevada Trial Lawyers to the Judiciary Committee on June 23, 1995.

The bill is intended to address warranty concerns relating to residential construction. It deals with construction defects as they relate to the use of the home.

It does not deal with personal injury claims, which have been purposefully removed from the bill. Some commentators have raised the concern that the bill imposes strict liability. That is a tort or personal injury-negligence type of claim. The bill has nothing to do with strict liability. It simply covers the method of repair and the measure of damages relating to construction defects as defined in the act.

The bill does not bar any defenses. The reason that it does not is to preserve warranty limitations and defenses found elsewhere in Nevada statutory and common law. An example would be those found in the Uniform Common Interest Ownership Act.

MINUTES OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Sixty-eighth Session
June 25, 1995

The Committee on Judiciary was called to order at 3:00 p.m., on Sunday, June 25, 1995, Chairman Anderson presiding in Room 332 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda.

COMMITTEE MEMBERS PRESENT:

Mr. Bernie Anderson, Chairman
Mr. David E. Humke, Chairman
Mr. Brian Sandoval, Vice Chairman
Mr. Thomas Batten
Mr. Mark Manendo
Mrs. Jan Monaghan
Ms. Genie Ohrenschall
Mr. Richard Perkins
Mr. Michael A. (Mike) Schneider
Ms. Dianne Steel
Ms. Jeannine Stroth

COMMITTEE MEMBERS EXCUSED:

Mr. David Goldwater
Mr. John C. Carpenter
Ms. Barbara E. Buckley, Vice Chairman

STAFF MEMBERS PRESENT:

Dennis Neilander, Research Analyst
Joi Davis, Committee Secretary

Chairman Anderson announced a quorum was present.

ASSEMBLY BILL 715 - Revises provisions governing appeals from final judgments in actions for age discrimination in employment.

Chairman Anderson declared this was an age discrimination bill heard earlier in the

week and no proposed amendments have been suggested.

ASSEMBLYMAN PERKINS MOVED DO PASS A.B. 715.

ASSEMBLYMAN OHRENSCHALL SECONDED THE MOTION.

THE MOTION CARRIED.

Chairman Anderson appointed Mr. Perkins floor assignment of A.B. 715.

* * * * *

SENATE BILL 395 - Regulates recovery for defects in residential construction.

Dennis Neilander, Principal Research Analyst, outlined the bill and the amendments thereto.

ASSEMBLYMAN SCHNEIDER MOVED AMEND & DO PASS S.B. 395.

ASSEMBLYMAN MANENDO SECONDED THE MOTION.

Upon consultation, the co-chairmen decided a vote would be taken on S.B. 395 at a time certain of 3:45 p.m.

ASSEMBLY BILL 288 - Increases number of members of board of parole commissioners and changes number of members required to decide issues involving certain offenders.

Chairman Anderson stated the amendment was back on A.B. 288 and asked Ann Andreini from the Governor's office to come forward to speak on the amendment.

Mr. Neilander stated the amendment was out of bill drafting and contained everything the committee voted on with the exception of one area: the removal of parole board members. The bill drafter has advised this provision cannot be drafted the way submitted as it would be unconstitutional. The case on point, is Robison v. First Judicial District Court of Nevada, 73 Nev. 169, 313 P.2d 436 (1957) which provides the persons so appointed are in essence state officers. Since they

perhaps there would be no need for S.B. 130. Mr. Neilander stated the committee could take action on the bill or hold it to see what takes place with Assembly Bill 520. Chairman Anderson concurred.

The committee returned to discussion on S.B. 395 scheduled for a time certain of 3:45 p.m. Chairman Anderson stated there was a motion on the floor by Mr. Schneider and seconded by Mr. Manendo.

Mr. Schneider stated S.B. 395 has been needed for many years in the construction industry and will likely keep home prices down and therefore he sees it as a good consumer bill.

THE MOTION CARRIED. ASSEMBLYMAN MONAGHAN WAS NOT PRESENT FOR THE VOTE.

Chairman Anderson appointed Mr. Schneider for floor assignment of S.B. 395.

* * * * *

SENATE BILL 531 - **Provides evidentiary privilege for certain medical review committees.**

Chairman Anderson stated the bill was heard on Wednesday, June 21, 1995 and no amendments were present or offered in that regard.

ASSEMBLYMAN SCHNEIDER MOVED TO DO PASS S.B. 531.

ASSEMBLYMAN SANDOVAL SECONDED THE MOTION.

THE MOTION CARRIED. ASSEMBLYMAN MONAGHAN WAS NOT PRESENT FOR THE VOTE.

Chairman Anderson appointed Mr. Manendo for floor assignment of S.B. 531.

* * * * *

SENATE BILL 463 - **Requires notice to operator of jail and opportunity to be heard before issuance of court order affecting conditions of confinement of prisoner.**

Senate Bill No. 395.

Bill read second time.

The following amendment was proposed by the Committee on Judiciary:

Amendment No. 1331.

Amend sec. 6, page 2, by deleting lines 4 and 5 and inserting:

"*The term includes a risk retention group which operates in compliance with chapter 695E of NRS and insures all or any part of a contractor's*".

Amend sec. 9, page 2, line 14, by deleting "*1.*".

Amend sec. 9, page 2, line 15, by deleting "*(a)*" and inserting "*1.*".

Amend sec. 9, page 2, line 19, by deleting "*(b)*" and inserting "2.".

Amend sec. 9, page 2, by deleting lines 21 through 23.

Amend sec. 11, page 3, line 12, by deleting "*and the*" and inserting: "*and, unless the offer is limited to a proposal for monetary compensation, the*".

Amend sec. 11, page 3, by deleting lines 14 through 16 and inserting:

"*(c) May include:*

(1) A proposal for monetary compensation.

(2) If the contractor is licensed to make the repairs, an agreement by the contractor to make the repairs.

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

Amend sec. 13, page 3, line 44, after "*recover*" by inserting "*only*".

Amend sec. 16, page 4, line 37, after "*practicable.*" by inserting: "*The contractor shall not cure the defect by making any repairs for which he is not licensed or by causing any repairs to be made by a person who is not licensed to make those repairs.*".

Amend the bill as a whole by adding a new section designated sec. 19.5, following sec. 19, to read as follows:

"Sec. 19.5. *No claim or cause of action governed by sections 2 to 20, inclusive, of this act may be brought by a claimant or contractor against any third parties, including a government, governmental agency or political subdivision of a government, during the period in which a claim or cause of action for a constructional defect is being settled, mediated or otherwise resolved pursuant to sections 2 to 20, inclusive, of this act. The settlement of such a claim or cause of action does not affect the rights or obligations of any person who is not a party to the settlement, and the failure to reach such a settlement does not affect the rights or obligations of the claimant or contractor in any action brought by the claimant or contractor against a third party.*".

Amend sec. 20, page 6, line 22, by deleting "*1.*".

Amend sec. 20, page 6, by deleting lines 27 through 36.

Amend the bill as a whole by renumbering sec. 21 as sec. 22 and adding a new section designated sec. 21, following sec. 20, to read as follows:

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

624.300 1. [The] *Except as otherwise provided in subsection 3, the* board may suspend or revoke licenses already issued, refuse renewals of

licenses, impose limits on the field, scope and monetary limit of the license, impose an administrative fine of not more than $5,000 or reprimand or take other less severe disciplinary action, including without limitation, increasing the amount of the surety bond or cash deposit of the licensee, if the licensee commits any act which constitutes a cause for disciplinary action.

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

3. *The board shall not take any disciplinary action pursuant to this section regarding a constructional defect, as that term is defined in section 5 of this act, during the period in which any claim arising out of that defect is being settled, mediated or otherwise resolved pursuant to sections 2 to 20, inclusive, of this act, unless the disciplinary action is necessary to protect the public health or safety.*

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

Amend sec. 21, pages 6 and 7, by deleting lines 46 through 48 on page 6 and lines 1 and 2 on page 7 and inserting: "*that term is defined in section 5 of this act.*".

Amend the bill as a whole by renumbering sec. 22 as sec. 24 and adding a new section designated sec. 23, following sec. 21, to read as follows:

"Sec. 23. Section 1 of Senate Bill No. 71 of this session is hereby amended to read as follows:

Section 1. NRS 624.300 is hereby amended to read as follows:

624.300 1. Except as otherwise provided in subsection 3, the board may [suspend] :

(a) Suspend or revoke licenses already issued [, refuse] ;

(b) Refuse renewals of licenses [, impose] ;

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

(d) Impose an administrative fine of not more than $5,000 ;

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

(f) Reprimand or take other less severe disciplinary action, including , without limitation, increasing the amount of the surety bond or cash deposit of the licensee,

if the licensee commits any act which constitutes a cause for disciplinary action.

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

3. The board shall not take any disciplinary action pursuant to this section regarding a constructional defect, as that term is defined in section 5 of [this act,] *Senate Bill No. 395 of this session*, during the period in which any claim arising out of that defect is being settled, mediated or otherwise resolved pursuant to sections 2 to 20, inclusive, of [this act,] *Senate Bill No. 395 of this session*, unless the disciplinary action is necessary to protect the public health or safety.

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

Assemblyman Anderson moved the adoption of the amendment.

Remarks by Assemblyman Anderson.

Amendment adopted.

Bill ordered reprinted, re-engrossed and to third reading.

Senate Bill No. 435.

Bill read second time.

The following amendment was proposed by the Committee on Judiciary:

Amendment No. 1306.

Amend the bill as a whole by renumbering section 1 as sec. 2 and adding a new section designated section 1, following the enacting clause, to read as follows:

"Section 1. NRS 441A.220 is hereby amended to read as follows:

441A.220 All information of a personal nature about any person provided by any other person reporting a case or suspected case of a communicable disease, or by any person who has a communicable disease, or as determined by investigation of the health authority, is confidential medical information and must not be disclosed to any person under any circumstances, including pursuant to any subpoena, search warrant or discovery proceeding, except as follows:

1. For statistical purposes, provided that the identity of the person is not discernible from the information disclosed.

2. In a prosecution for a violation of this chapter.

3. In a proceeding for an injunction brought pursuant to this chapter.

4. In reporting the actual or suspected abuse or neglect of a child or elderly person.

5. To any person who has a medical need to know the information for his own protection or for the well-being of a patient or dependent person, as determined by the health authority in accordance with regulations of the board.

6. If the person who is the subject of the information consents in writing to the disclosure.

7. Pursuant to subsection [2] *3* of NRS 441A.320.

SENATE BILL NO. 395—COMMITTEE ON JUDICIARY

APRIL 21, 1995

Referred to Committee on Judiciary

SUMMARY—Regulates recovery for defects in residential construction. (BDR 3-1589)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

EXPLANATION—Matter in italics is new; matter in brackets [ ] is material to be omitted.

AN ACT relating to civil remedies; providing limits and procedures for recovery on account of defects in residential construction; and providing other matters properly relating thereto.

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

Section 1. Chapter 40 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 20, inclusive, of this act.

Sec. 2. *As used in sections 2 to 20, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 to 8, inclusive, of this act, have the meanings ascribed to them in those sections.*

Sec. 3. *"Appurtenance" means a structure, installation, facility or amenity that is appurtenant to a residence, but is not a part of the dwelling unit. The term includes, without limitation, recreational facilities, golf courses, walls, sidewalks, driveways, landscaping and other structures, installations, facilities and amenities associated with a residence.*

Sec. 4. *"Claimant" means an owner of a residence or appurtenance or a representative of a homeowner's association that is responsible for a residence or appurtenance.*

Sec. 5. *"Constructional defect" includes 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. The term includes physical damage to the residence, an appurtenance or the real property to which the residence or appurtenance is affixed that is proximately caused by a constructional defect.*

Sec. 6. *"Contractor" means a person who, with or without a license issued pursuant to chapter 624 of NRS, by himself or through his agents, employees or subcontractors:*

1. Constructs, alters, repairs, improves or landscapes a residence, appurtenance or any part thereof; or

2. Sells a residence or appurtenance, any part of which the person, by himself or through his agents, employees or subcontractors, has constructed, altered, repaired, improved or landscaped.

The term includes a risk retention group which operates in compliance with chapter 695E of NRS and insures all or any part of a contractor's liability for the cost to repair a residential constructional defect.

Sec. 7. *"Homeowner's warranty" means a warranty or contract of insurance for the protection of a homeowner which is issued by an insurer authorized to issue such a warranty or contract in this state or issued by or on behalf of a contractor.*

Sec. 8. *"Residence" means a dwelling designed for not more than four families or a unit in such a dwelling in which title to the individual units is transferred to the owners pursuant to chapter 116 or 117 of NRS.*

Sec. 9. *Sections 2 to 20, inclusive, of this act:*

1. Apply to a claim or cause of action which arises after July 1, 1995, to recover damages resulting, directly or indirectly, from a constructional defect, except a claim for personal injury or wrongful death, and prevail over any conflicting law otherwise applicable to the claim or cause of action.

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

Sec. 10. *In a claim or cause of action to recover damages resulting from a constructional defect, a contractor is liable for his acts or omissions or the acts or omissions of his agents, employees or subcontractors and is not liable for any damages caused by:*

1. The acts or omissions of a person other than the contractor or his agent, employee or subcontractor;

2. The failure of a person other than the contractor or his agent, employee or subcontractor to take reasonable action to reduce the damages or maintain the residence;

3. Normal wear, tear or deterioration;

4. Normal shrinkage, swelling, expansion or settlement; or

5. Any constructional defect disclosed to an owner before his purchase of the residence, if the disclosure was provided in a language that is understandable and was written in underlined and boldfaced type with capital letters.

Sec. 11. *Except as otherwise provided in this section and section 16 of this act:*

1. At least 60 days before a claimant brings a cause of action against a contractor for damages arising from a constructional defect, the claimant must give written notice by certified mail, return receipt requested, to the contractor, at the contractor's last known address, specifying in reasonable detail the defects or any damages or injuries that are the subject of the complaint. During the 35-day period after the contractor receives the notice, on his written request, the contractor is entitled to inspect the property that is the subject of the complaint to determine the nature and cause of the defect, damage or injury and the nature and extent of repairs necessary to remedy the defect. The contractor may take reasonable steps to establish the existence of the defect. If the residence is covered by a warranty or contract of insurance issued by an insurer authorized by this state to issue such a warranty or

contract, a claimant must diligently pursue a claim under the warranty or contract.

2. Within 45 days after the contractor receives the notice, the contractor may make a written offer of settlement to the claimant. The offer:

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

(b) Must respond to each constructional defect set forth in the claimant's notice, and describe in reasonable detail the cause of the defect, if known, the nature and extent of the damage or injury resulting from the defect, and, unless the offer is limited to a proposal for monetary compensation, the method, adequacy and estimated cost of the proposed repair.

(c) May include:

(1) A proposal for monetary compensation.

(2) If the contractor is licensed to make the repairs, an agreement by the contractor to make the repairs.

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

The repairs must be made within 45 days after the contractor receives written notice of acceptance of the offer, unless completion is delayed by the claimant or by other events beyond the control of the contractor. The claimant and the contractor may agree in writing to extend the periods prescribed by this section.

Sec. 12. *1. If a claimant unreasonably rejects a reasonable written offer of settlement made pursuant to section 11 of this act or does not permit the contractor or independent contractor a reasonable opportunity to repair the defect pursuant to an accepted offer of settlement and thereafter files a cause of action governed by sections 2 to 20, inclusive, of this act, the court in which the cause of action is filed 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 fails to make a reasonable offer of settlement pursuant to section 11 of this act or fails to complete, in a good and workmanlike manner, the repairs specified in an accepted offer, the limitations on damages and defenses to liability provided in sections 2 to 20, inclusive, of this act do not apply.

3. If coverage under a warranty or contract of insurance is denied by an insurer in bad faith, the homeowner and the contractor 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.

Sec. 13. *1. Except as otherwise provided in section 12 of this act, in a claim or cause of action governed by sections 2 to 20, inclusive, 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 repairs 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) The reduction in market value of the residence or accessory structure, if any, to the extent the reduction is because of structural failure;

(d) The loss of the use of the residence during the time of the repair;

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

(f) Any additional costs incurred by the claimant, including any costs and fees incurred for hiring experts reasonably necessary to ascertain the nature and extent of the constructional defect; and

(g) Any interest provided by statute.

2. 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. 14. *An offer of settlement that is not accepted within 25 days after the offer is received by the claimant is considered rejected if the offer contains a clear and understandable statement notifying the claimant of the consequences of his failure to respond or otherwise accept or reject the offer of settlement. An affidavit certifying rejection of an offer of settlement under this section may be filed with the court.*

Sec. 15. *In addition to any other method provided for settling a claim pursuant to sections 2 to 20, inclusive, of this act, a contractor may, pursuant to a written agreement entered into with a claimant, settle a claim by repurchasing the claimant's residence and the real property upon which it is located. The agreement may include, without limitation, provisions which reimburse the claimant for:*

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

2. Reasonable attorney's fees and fees for experts; and

3. Any costs, including costs and expenses for moving and costs, points and fees for loans.

Sec. 16. *A contractor who receives written notice of a constructional defect resulting from work performed by the contractor or his agent, employee or subcontractor which creates an imminent threat to the health or safety of the inhabitants of the residence shall take reasonable steps to cure the defect as soon as practicable. The contractor shall not cure the defect by making any repairs for which he is not licensed or by causing any repairs to be made by a person who is not licensed to make those repairs. If the contractor fails to cure the defect in a reasonable time, the owner of the residence may have the defect cured and may recover from the contractor the reasonable cost of the repairs plus reasonable attorney's fees and costs in addition to any other damages recoverable under any other law.*

Sec. 17. *1. A contractor who makes or provides for repairs under sections 2 to 20, inclusive, of this act may take reasonable steps to prove that the repairs were made and to have them inspected.*

2. The provisions of sections 2 to 20, inclusive, of this act regarding inspection and repair are in addition to any rights of inspection and settlement provided by common law or by another statute.

Sec. 18. *1. Before a complaint in a cause of action governed by sections 2 to 20, inclusive, of this act may be filed in court, the matter must be submitted to mediation, unless mediation is waived in writing by the contractor and the claimant.*

2. The claimant and contractor must select a mediator by agreement. If the claimant and contractor fail to agree upon a mediator within 45 days after a mediator is first selected by the claimant, either party may petition the American Arbitration Association, the Nevada Arbitration Association, Nevada Dispute Resolution Services or any other mediation service acceptable to the parties for the appointment of a mediator. A mediator so appointed may discover only those documents or records which are necessary to conduct the mediation. The mediator shall convene the mediation within 60 days after the matter is submitted to him, unless the parties agree to extend the time. The contractor shall deposit with the mediator before mediation begins the entire amount estimated by the mediator as necessary to pay the salary and expenses of the mediator, and shall deposit additional amounts demanded by the mediator as incurred for that purpose. The total fees for each day of mediation and the mediator must not exceed $750 per day.

3. If, after undergoing mediation pursuant to subsection 2, the parties do not reach an agreement concerning the matter, the claimant may file his complaint and:

(a) The reasonable costs and fees of the mediation are recoverable as costs of the action.

(b) The claimant may petition the court in which the complaint is filed for the appointment of a special master.

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

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

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

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

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

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

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

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

5. Upon application by a party to the court in which the cause of action is filed, any decision or other action taken by a special master appointed pursuant to this section may be appealed for a trial de novo.

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

Sec. 19. *1. Except as otherwise provided in subsection 2, a written waiver or settlement agreement executed by a claimant after a contractor has corrected or otherwise repaired a constructional defect does not bar a cause of action for the constructional defect if it is determined that the contractor failed to correct or repair the defect properly.*

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

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

(b) The claimant has provided the contractor with a written notice of the defect pursuant to section 11 of this act and a copy of the expert's opinion; and

(c) The claimant and the contractor have complied with the requirements for inspection and repair as provided in sections 2 to 20, inclusive, of this act.

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

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

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

Sec. 19.5. *No claim or cause of action governed by sections 2 to 20, inclusive, of this act may be brought by a claimant or contractor against any third parties, including a government, governmental agency or political subdivision of a government, during the period in which a claim or cause of action for a constructional defect is being settled, mediated or otherwise resolved pursuant to sections 2 to 20, inclusive, of this act. The settlement of such a claim or cause of action does not affect the rights or obligations of any person who is not a party to the settlement, and the failure to reach such a settlement does not affect the rights or obligations of the claimant or contractor in any action brought by the claimant or contractor against a third party.*

Sec. 20. *Any statutes of limitation or repose applicable to a claim or cause of action governed by sections 2 to 20, inclusive, of this act are tolled from the time a claimant provides notice of the claimed defect, damage or injury to the contractor pursuant to section 11 of this act until 30 days after mediation is concluded or waived in writing pursuant to section 18 of this act.*

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

624.300 1. **[**The**]** *Except as otherwise provided in subsection 3, the* board may suspend or revoke licenses already issued, refuse renewals of licenses, impose limits on the field, scope and monetary limit of the license, impose an administrative fine of not more than $5,000 or reprimand or take other less severe disciplinary action, including without limitation, increasing

the amount of the surety bond or cash deposit of the licensee, if the licensee commits any act which constitutes a cause for disciplinary action.

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

3. *The board shall not take any disciplinary action pursuant to this section regarding a constructional defect, as that term is defined in section 5 of this act, during the period in which any claim arising out of that defect is being settled, mediated or otherwise resolved pursuant to sections 2 to 20, inclusive, of this act, unless the disciplinary action is necessary to protect the public health or safety.*

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

Sec. 22. NRS 624.3011 is hereby amended to read as follows:

624.3011 1. The following acts, among others, constitute cause for disciplinary action under NRS 624.300:

(a) Willful and prejudicial departure from or disregard of plans or specifications in any material respect without the consent of the owner or his **[**duly**]** authorized representative and the person entitled to have the particular construction project or operation completed in accordance with the plans and specifications.

(b) *Failure to respond to a claim arising out of a constructional defect, as that term is defined in section 5 of this act.*

(c) Willful or deliberate disregard and violation of:

(1) The building laws of the state or of any political subdivision thereof.

(2) The safety laws or labor laws of the state.

(3) Any provision of the Nevada health and safety laws or the regulations adopted thereunder relating to the digging, boring or drilling of water wells.

(4) The laws of this state regarding industrial insurance.

2. If a contractor performs construction without obtaining any necessary building permit, there is a rebuttable presumption that the contractor willfully and deliberately violated the building laws of this state or of its political subdivisions. The board shall not require the contractor to obtain that permit more than 90 days after the construction is completed.

Sec. 23. Section 1 of Senate Bill No. 71 of this session is hereby amended to read as follows:

Section 1. NRS 624.300 is hereby amended to read as follows:

624.300 1. Except as otherwise provided in subsection 3, the board may **[**suspend**]** :

(a) Suspend or revoke licenses already issued **[**, refuse**]** ;

(b) Refuse renewals of licenses **[**, impose**]** ;

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

(d) Impose an administrative fine of not more than $5,000 ;

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

(f) Reprimand or take other less severe disciplinary action, including, without limitation, increasing the amount of the surety bond or cash deposit of the licensee,

if the licensee commits any act which constitutes a cause for disciplinary action.

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

3. The board shall not take any disciplinary action pursuant to this section regarding a constructional defect, as that term is defined in section 5 of [this act,] *Senate Bill No. 395 of this session,* during the period in which any claim arising out of that defect is being settled, mediated or otherwise resolved pursuant to sections 2 to 20, inclusive, of [this act,] *Senate Bill No. 395 of this session,* unless the disciplinary action is necessary to protect the public health or safety.

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

Sec. 24. This act becomes effective on July 1, 1995.

Amend sec. 19, page 12, by deleting lines 10 and 11 and inserting: "legislative counsel bureau, the sum of $3,400,000 for remodeling the legislative building.".

Assemblyman Giunchigliani moved the adoption of the amendment.

Remarks by Assemblymen Giunchigliani, Marvel, Dini, Price, Schneider, Evans, Freeman and Carpenter.

Amendment lost.

Remarks by Assemblymen Marvel, Monaghan, Freeman and Carpenter.

Roll call on Assembly Bill No. 738:

YEAS—28.

NAYS—Bache, Brower, Buckley, Close, Giunchigliani, Harrington, Lambert, Manendo, Monaghan, Ohrenschall, Schneider, Segerblom, Spitler, Tiffany—14.

Assembly Bill No. 738 having received a constitutional majority, Mr. Speaker declared it passed.

Bill ordered transmitted to the Senate.

MOTIONS, RESOLUTIONS AND NOTICES

Assemblyman Ernaut moved that Senate Bill No. 231 be taken from the General File and placed on the Chief Clerk's desk.

Motion carried.

GENERAL FILE AND THIRD READING

Senate Bill No. 341.

Bill read third time.

The following amendment was proposed by Assemblyman Segerblom:

Amendment No. 1462.

Amend sec. 2, page 2, line 41, by deleting "*counselor;*" and inserting: "*counselor, psychologist or social worker;*".

Amend the title of the bill, fifth line, by deleting: "providing a penalty;".

Assemblyman Segerblom moved the adoption of the amendment.

Remarks by Assemblymen Segerblom, Bennett and Price.

Amendment adopted.

Bill ordered reprinted, re-engrossed and to third reading.

Senate Bill No. 395.

Bill read third time.

Remarks by Assemblyman Schneider.

Roll call on Senate Bill No. 395:

YEAS—42.

NAYS—None.

Senate Bill No. 395 having received a constitutional majority, Mr. Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

Senate Bill No. 491.

Bill read third time.

Remarks by Assemblymen Giunchigliani and Tiffany.

Potential conflict of interest declared by Assemblyman Krenzer.

MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Sixty-eighth Session
July 1, 1995

The Senate Committee on Judiciary was called to order by Chairman Mark A. James, at 12:22 p.m., on Saturday, July 1, 1995, on the Senate floor of the Legislative Building, Carson City, Nevada. There was no Agenda. There was no Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Mark A. James, Chairman
Senator Jon Porter, Vice Chairman
Senator Maurice Washington
Senator Dina Titus
Senator O. C. Lee

COMMITTEE MEMBERS ABSENT:

Senator Mike McGinness (excused)
Senator Ernest E. Adler (excused)

STAFF MEMBERS PRESENT:

Maddie Fischer, Committee Secretary

Chairman James called the meeting to order at the back bar of the Senate floor gallery to discuss the Assembly amendments to Senate Bill (S.B.) 395.

SENATE BILL 395 — Regulates recovery for defects in residential construction. (BDR 3-1589)

Senator James explained the amendments are largely technical, and added that Ivan R. Ashleman, a lobbyist for the Southern Nevada Home Builders Association, has informed him that these amendments are agreed to by all parties which previously testified before the committee on this measure.

SENATOR WASHINGTON MOVED TO CONCUR IN ASSEMBLY AMENDMENT NO. 1331 TO S.B. 395.

SENATOR PORTER SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS MCGINNESS AND ADLER WERE ABSENT FOR THE VOTE.)

There being no further matters before the committee, Chairman James adjourned the meeting at 12:23 p.m.

RESPECTFULLY SUBMITTED:

Maddie Fischer

Maddie Fischer,
Committee Secretary

APPROVED BY:

Senator Mark A. James, Chairman

DATE: 7-14-95

Sec. 7. The provisions of subsection 1 of NRS 354.599 do not apply to any additional expenses of a local government which are related to the provisions of this act.

Sec. 8. 1. This section and sections 3 to 6, inclusive, of this act become effective upon passage and approval.

2. Sections 1 and 2 of this act become effective:

(a) Upon passage and approval for the purpose of adopting any rules necessary to carry out the amendatory provisions of those sections; and

(b) On January 1, 1996, for all other purposes.

Senate Bill No. 395—Committee on Judiciary

CHAPTER 661

AN ACT relating to civil remedies; providing limits and procedures for recovery on account of defects in residential construction; and providing other matters properly relating thereto.

[Approved July 5, 1995]

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 to 20, inclusive, of this act.

Sec. 2. *As used in sections 2 to 20, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 to 8, inclusive, of this act, have the meanings ascribed to them in those sections.*

Sec. 3. *"Appurtenance" means a structure, installation, facility or amenity that is appurtenant to a residence, but is not a part of the dwelling unit. The term includes, without limitation, recreational facilities, golf courses, walls, sidewalks, driveways, landscaping and other structures, installations, facilities and amenities associated with a residence.*

Sec. 4. *"Claimant" means an owner of a residence or appurtenance or a representative of a homeowner's association that is responsible for a residence or appurtenance.*

Sec. 5. *"Constructional defect" includes 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. The term includes physical damage to the residence, an appurtenance or the real property to which the residence or appurtenance is affixed that is proximately caused by a constructional defect.*

Sec. 6. *"Contractor" means a person who, with or without a license issued pursuant to chapter 624 of NRS, by himself or through his agents, employees or subcontractors:*

1. Constructs, alters, repairs, improves or landscapes a residence, appurtenance or any part thereof; or

2. Sells a residence or appurtenance, any part of which the person, by himself or through his agents, employees or subcontractors, has constructed, altered, repaired, improved or landscaped.

The term includes a risk retention group which operates in compliance with chapter 695E of NRS and insures all or any part of a contractor's liability for the cost to repair a residential constructional defect.

Sec. 7. *"Homeowner's warranty" means a warranty or contract of insurance for the protection of a homeowner which is issued by an insurer authorized to issue such a warranty or contract in this state or issued by or on behalf of a contractor.*

Sec. 8. *"Residence" means a dwelling designed for not more than four families or a unit in such a dwelling in which title to the individual units is transferred to the owners pursuant to chapter 116 or 117 of NRS.*

Sec. 9. *Sections 2 to 20, inclusive, of this act:*

1. Apply to a claim or cause of action which arises after July 1, 1995, to recover damages resulting, directly or indirectly, from a constructional defect, except a claim for personal injury or wrongful death, and prevail over any conflicting law otherwise applicable to the claim or cause of action.

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

Sec. 10. *In a claim or cause of action to recover damages resulting from a constructional defect, a contractor is liable for his acts or omissions or the acts or omissions of his agents, employees or subcontractors and is not liable for any damages caused by:*

1. The acts or omissions of a person other than the contractor or his agent, employee or subcontractor;

2. The failure of a person other than the contractor or his agent, employee or subcontractor to take reasonable action to reduce the damages or maintain the residence;

3. Normal wear, tear or deterioration;

4. Normal shrinkage, swelling, expansion or settlement; or

5. Any constructional defect disclosed to an owner before his purchase of the residence, if the disclosure was provided in a language that is understandable and was written in underlined and boldfaced type with capital letters.

Sec. 11. *Except as otherwise provided in this section and section 16 of this act:*

1. At least 60 days before a claimant brings a cause of action against a contractor for damages arising from a constructional defect, the claimant must give written notice by certified mail, return receipt requested, to the contractor, at the contractor's last known address, specifying in reasonable detail the defects or any damages or injuries that are the subject of the complaint. During the 35-day period after the contractor receives the notice, on his written request, the contractor is entitled to inspect the property that is the subject of the complaint to determine the nature and cause of the defect, damage or injury and the nature and extent of repairs necessary to remedy the defect. The contractor may take reasonable steps to establish the existence of the defect. If the residence is covered by a warranty or contract of insurance issued by an insurer authorized by this state to issue such a warranty or

contract, a claimant must diligently pursue a claim under the warranty or contract.

2. Within 45 days after the contractor receives the notice, the contractor may make a written offer of settlement to the claimant. The offer:

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

(b) Must respond to each constructional defect set forth in the claimant's notice, and describe in reasonable detail the cause of the defect, if known, the nature and extent of the damage or injury resulting from the defect, and, unless the offer is limited to a proposal for monetary compensation, the method, adequacy and estimated cost of the proposed repair.

(c) May include:

(1) A proposal for monetary compensation.

(2) If the contractor is licensed to make the repairs, an agreement by the contractor to make the repairs.

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

The repairs must be made within 45 days after the contractor receives written notice of acceptance of the offer, unless completion is delayed by the claimant or by other events beyond the control of the contractor. The claimant and the contractor may agree in writing to extend the periods prescribed by this section.

Sec. 12. *1. If a claimant unreasonably rejects a reasonable written offer of settlement made pursuant to section 11 of this act or does not permit the contractor or independent contractor a reasonable opportunity to repair the defect pursuant to an accepted offer of settlement and thereafter files a cause of action governed by sections 2 to 20, inclusive, of this act, the court in which the cause of action is filed 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 fails to make a reasonable offer of settlement pursuant to section 11 of this act or fails to complete, in a good and workmanlike manner, the repairs specified in an accepted offer, the limitations on damages and defenses to liability provided in sections 2 to 20, inclusive, of this act do not apply.

3. If coverage under a warranty or contract of insurance is denied by an insurer in bad faith, the homeowner and the contractor 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.

Sec. 13. *1. Except as otherwise provided in section 12 of this act, in a claim or cause of action governed by sections 2 to 20, inclusive, 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 repairs 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) The reduction in market value of the residence or accessory structure, if any, to the extent the reduction is because of structural failure;

(d) The loss of the use of the residence during the time of the repair;

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

(f) Any additional costs incurred by the claimant, including any costs and fees incurred for hiring experts reasonably necessary to ascertain the nature and extent of the constructional defect; and

(g) Any interest provided by statute.

2. 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. 14. *An offer of settlement that is not accepted within 25 days after the offer is received by the claimant is considered rejected if the offer contains a clear and understandable statement notifying the claimant of the consequences of his failure to respond or otherwise accept or reject the offer of settlement. An affidavit certifying rejection of an offer of settlement under this section may be filed with the court.*

Sec. 15. *In addition to any other method provided for settling a claim pursuant to sections 2 to 20, inclusive, of this act, a contractor may, pursuant to a written agreement entered into with a claimant, settle a claim by repurchasing the claimant's residence and the real property upon which it is located. The agreement may include, without limitation, provisions which reimburse the claimant for:*

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

2. Reasonable attorney's fees and fees for experts; and

3. Any costs, including costs and expenses for moving and costs, points and fees for loans.

Sec. 16. *A contractor who receives written notice of a constructional defect resulting from work performed by the contractor or his agent, employee or subcontractor which creates an imminent threat to the health or safety of the inhabitants of the residence shall take reasonable steps to cure the defect as soon as practicable. The contractor shall not cure the defect by making any repairs for which he is not licensed or by causing any repairs to be made by a person who is not licensed to make those repairs. If the contractor fails to cure the defect in a reasonable time, the owner of the residence may have the defect cured and may recover from the contractor the reasonable cost of the repairs plus reasonable attorney's fees and costs in addition to any other damages recoverable under any other law.*

Sec. 17. *1. A contractor who makes or provides for repairs under sections 2 to 20, inclusive, of this act may take reasonable steps to prove that the repairs were made and to have them inspected.*

2. The provisions of sections 2 to 20, inclusive, of this act regarding inspection and repair are in addition to any rights of inspection and settlement provided by common law or by another statute.

Sec. 18. *1. Before a complaint in a cause of action governed by sections 2 to 20, inclusive, of this act may be filed in court, the matter must be submitted to mediation, unless mediation is waived in writing by the contractor and the claimant.*

2. The claimant and contractor must select a mediator by agreement. If the claimant and contractor fail to agree upon a mediator within 45 days after a mediator is first selected by the claimant, either party may petition the American Arbitration Association, the Nevada Arbitration Association, Nevada Dispute Resolution Services or any other mediation service acceptable to the parties for the appointment of a mediator. A mediator so appointed may discover only those documents or records which are necessary to conduct the mediation. The mediator shall convene the mediation within 60 days after the matter is submitted to him, unless the parties agree to extend the time. The contractor shall deposit with the mediator before mediation begins the entire amount estimated by the mediator as necessary to pay the salary and expenses of the mediator, and shall deposit additional amounts demanded by the mediator as incurred for that purpose. The total fees for each day of mediation and the mediator must not exceed $750 per day.

3. If, after undergoing mediation pursuant to subsection 2, the parties do not reach an agreement concerning the matter, the claimant may file his complaint and:

(a) The reasonable costs and fees of the mediation are recoverable as costs of the action.

(b) The claimant may petition the court in which the complaint is filed for the appointment of a special master.

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

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

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

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

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

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

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

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

5. Upon application by a party to the court in which the cause of action is filed, any decision or other action taken by a special master appointed pursuant to this section may be appealed for a trial de novo.

6. A report issued by a mediator or special master that indicates that either party has failed to appear before him or to mediate in good faith is

admissible in the cause of action, but a statement or admission made by either party in the course of mediation is not admissible.

Sec. 19. *1. Except as otherwise provided in subsection 2, a written waiver or settlement agreement executed by a claimant after a contractor has corrected or otherwise repaired a constructional defect does not bar a cause of action for the constructional defect if it is determined that the contractor failed to correct or repair the defect properly.*

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

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

(b) The claimant has provided the contractor with a written notice of the defect pursuant to section 11 of this act and a copy of the expert's opinion; and

(c) The claimant and the contractor have complied with the requirements for inspection and repair as provided in sections 2 to 20, inclusive, of this act.

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

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

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

Sec. 19.5. *No claim or cause of action governed by sections 2 to 20, inclusive, of this act may be brought by a claimant or contractor against any third parties, including a government, governmental agency or political subdivision of a government, during the period in which a claim or cause of action for a constructional defect is being settled, mediated or otherwise resolved pursuant to sections 2 to 20, inclusive, of this act. The settlement of such a claim or cause of action does not affect the rights or obligations of any person who is not a party to the settlement, and the failure to reach such a settlement does not affect the rights or obligations of the claimant or contractor in any action brought by the claimant or contractor against a third party.*

Sec. 20. *Any statutes of limitation or repose applicable to a claim or cause of action governed by sections 2 to 20, inclusive, of this act are tolled from the time a claimant provides notice of the claimed defect, damage or injury to the contractor pursuant to section 11 of this act until 30 days after mediation is concluded or waived in writing pursuant to section 18 of this act.*

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

624.300 1. [The] *Except as otherwise provided in subsection 3, the* board may suspend or revoke licenses already issued, refuse renewals of licenses, impose limits on the field, scope and monetary limit of the license, impose an administrative fine of not more than $5,000 or reprimand or take other less severe disciplinary action, including without limitation, increasing the amount of the surety bond or cash deposit of the licensee, if the licensee commits any act which constitutes a cause for disciplinary action.

2. If the board suspends or revokes the license of a contractor for failure to establish financial responsibility, the board may, in addition to any other conditions for reinstating or renewing the license, require that each contract undertaken by the licensee for a period to be designated by the board, not to exceed 12 months, be separately covered by a bond or bonds approved by the

board and conditioned upon the performance of and the payment of labor and materials required by the contract.

3. *The board shall not take any disciplinary action pursuant to this section regarding a constructional defect, as that term is defined in section 5 of this act, during the period in which any claim arising out of that defect is being settled, mediated or otherwise resolved pursuant to sections 2 to 20, inclusive, of this act, unless the disciplinary action is necessary to protect the public health or safety.*

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

Sec. 22. NRS 624.3011 is hereby amended to read as follows:

624.3011 1. The following acts, among others, constitute cause for disciplinary action under NRS 624.300:

(a) Willful and prejudicial departure from or disregard of plans or specifications in any material respect without the consent of the owner or his [duly] authorized representative and the person entitled to have the particular construction project or operation completed in accordance with the plans and specifications.

(b) *Failure to respond to a claim arising out of a constructional defect, as that term is defined in section 5 of this act.*

(c) Willful or deliberate disregard and violation of:

(1) The building laws of the state or of any political subdivision thereof.

(2) The safety laws or labor laws of the state.

(3) Any provision of the Nevada health and safety laws or the regulations adopted thereunder relating to the digging, boring or drilling of water wells.

(4) The laws of this state regarding industrial insurance.

2. If a contractor performs construction without obtaining any necessary building permit, there is a rebuttable presumption that the contractor willfully and deliberately violated the building laws of this state or of its political subdivisions. The board shall not require the contractor to obtain that permit more than 90 days after the construction is completed.

Sec. 23. Section 1 of Senate Bill No. 71 of this session is hereby amended to read as follows:

Section 1. NRS 624.300 is hereby amended to read as follows:

624.300 1. Except as otherwise provided in subsection 3, the board may [suspend] :

(a) Suspend or revoke licenses already issued [, refuse] ;

(b) Refuse renewals of licenses [, impose] ;

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

(d) Impose an administrative fine of not more than $5,000 ;

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

(f) Reprimand or take other less severe disciplinary action, including, without limitation, increasing the amount of the surety bond or cash deposit of the licensee,

if the licensee commits any act which constitutes a cause for disciplinary action.

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

3. The board shall not take any disciplinary action pursuant to this section regarding a constructional defect, as that term is defined in section 5 of [this act,] *Senate Bill No. 395 of this session,* during the period in which any claim arising out of that defect is being settled, mediated or otherwise resolved pursuant to sections 2 to 20, inclusive, of [this act,] *Senate Bill No. 395 of this session,* unless the disciplinary action is necessary to protect the public health or safety.

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

Sec. 24. This act becomes effective on July 1, 1995.

Senate Bill No. 430—Committee on Human Resources and Facilities

CHAPTER 662

AN ACT relating to emergency medical services; removing the jurisdiction of a district health department over such services in certain counties; eliminating the power of local authorities in certain counties to adopt more restrictive rules and regulations concerning such services than those adopted by the state board of health; requiring the state board of health to adopt regulations concerning certain administrative hearings and appeals; making an appropriation; and providing other matters properly relating thereto.

[Approved July 5, 1995]

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

Section 1. NRS 439.410 is hereby amended to read as follows:

439.410 1. The district board of health has the powers, duties and authority of a county board of health in the health district.

2. The district health department has jurisdiction over all public health matters in the health district [.] , *except in matters concerning emergency medical services pursuant to the provisions of chapter 450B of NRS in a county whose population is less than 400,000.*

3. In addition to any other powers, duties and authority conferred on a district board of health by this section, the district board of health may by