

SENATE BILL NO. 306—SENATOR COPENING

MARCH 21, 2011

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing an award of attorney’s fees in causes of action for constructional defects. (BDR 3-245)

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

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to constructional defects; revising provisions governing an award of attorney’s fees in causes of action for constructional defects; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

1 Existing law generally provides that a claimant may recover reasonable  
2 attorney’s fees as part of the claimant’s damages in a cause of action for  
3 constructional defects. (NRS 40.655) This bill removes this provision and instead  
4 authorizes a court to award reasonable attorney’s fees to a prevailing party involved  
5 in such a cause of action if an independent basis for the award exists pursuant to  
6 existing law which authorizes a court to award attorney’s fees in certain  
7 circumstances, or Rule 68 of the Nevada Rules of Civil Procedure, which provides  
8 for the payment of reasonable attorney’s fees by an offeree who rejects an offer and  
9 subsequently fails to obtain a more favorable judgment.

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

1 **Section 1.** NRS 40.655 is hereby amended to read as follows:  
2 40.655 1. Except as otherwise provided in NRS 40.650, in a  
3 claim governed by NRS 40.600 to 40.695, inclusive, the claimant  
4 may recover only the following damages to the extent proximately  
5 caused by a constructional defect:  
6 (a) ~~Any reasonable attorney’s fees;~~  
7 ~~(b)~~ The reasonable cost of any repairs already made that were  
8 necessary and of any repairs yet to be made that are necessary to



- 1 cure any constructional defect that the contractor failed to cure and  
2 the reasonable expenses of temporary housing reasonably necessary  
3 during the repair;
- 4 ~~[(e)]~~ (b) The reduction in market value of the residence or  
5 accessory structure, if any, to the extent the reduction is because of  
6 structural failure;
- 7 ~~[(d)]~~ (c) The loss of the use of all or any part of the residence;
- 8 ~~[(e)]~~ (d) The reasonable value of any other property damaged  
9 by the constructional defect;
- 10 ~~[(f)]~~ (e) Any additional costs reasonably incurred by the  
11 claimant, including, but not limited to, any costs and fees incurred  
12 for the retention of experts to:
- 13 (1) Ascertain the nature and extent of the constructional  
14 defects;
- 15 (2) Evaluate appropriate corrective measures to estimate the  
16 value of loss of use; and
- 17 (3) Estimate the value of loss of use, the cost of temporary  
18 housing and the reduction of market value of the residence; and
- 19 ~~[(e)]~~ (f) Any interest provided by statute.
- 20 2. The ~~amount of any~~ *court may award reasonable* attorney's  
21 fees ~~awarded pursuant to this section must be approved by the~~  
22 ~~court.~~ *to a prevailing party in a claim governed by NRS 40.600 to*  
23 *40.695, inclusive, if an independent basis for such an award exists*  
24 *pursuant to NRS 17.115, 18.010 or 40.650, or Rule 68 of the*  
25 *Nevada Rules of Civil Procedure.*
- 26 3. If a contractor complies with the provisions of NRS 40.600  
27 to 40.695, inclusive, the claimant may not recover from the  
28 contractor, as a result of the constructional defect, anything other  
29 than that which is provided pursuant to NRS 40.600 to 40.695,  
30 inclusive.
- 31 4. This section must not be construed as impairing any  
32 contractual rights between a contractor and a subcontractor, supplier  
33 or design professional.
- 34 5. As used in this section, "structural failure" means physical  
35 damage to the load-bearing portion of a residence or appurtenance  
36 caused by a failure of the load-bearing portion of the residence or  
37 appurtenance.
- 38 **Sec. 2.** The amendatory provisions of this act apply to any  
39 claim that arises on or after October 1, 2011.

