

SENATE BILL NO. 368—SENATOR GUSTAVSON

MARCH 18, 2013

Referred to Committee on Judiciary

SUMMARY—Revises provisions concerning constructional defects. (BDR 3-425)

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; providing that a claimant may not recover attorney’s fees as damages; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law authorizes a claimant to recover reasonable attorney’s fees for a
2 claim for a constructional defect in certain circumstances. (NRS 40.655) **Section 1**
3 of this bill removes this provision. **Section 2** of this bill provides that this change
4 applies to any claim that arises on or after October 1, 2013.

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
9 cure any constructional defect that the contractor failed to cure and
10 the reasonable expenses of temporary housing reasonably necessary
11 during the repair;
12 ~~(c)~~ (b) The reduction in market value of the residence or
13 accessory structure, if any, to the extent the reduction is because of
14 structural failure;



1 ~~[(d)]~~ (c) The loss of the use of all or any part of the residence;
2 ~~[(e)]~~ (d) The reasonable value of any other property damaged
3 by the constructional defect;
4 ~~[(f)]~~ (e) Any additional costs reasonably incurred by the
5 claimant, including, but not limited to, any costs and fees incurred
6 for the retention of experts to:
7 (1) Ascertain the nature and extent of the constructional
8 defects;
9 (2) Evaluate appropriate corrective measures to estimate the
10 value of loss of use; and
11 (3) Estimate the value of loss of use, the cost of temporary
12 housing and the reduction of market value of the residence; and
13 ~~[(g)]~~ (f) Any interest provided by statute.
14 2. ~~[(The amount of any attorney's fees awarded pursuant to this~~
15 ~~section must be approved by the court.~~
16 ~~—3.]~~ If a contractor complies with the provisions of NRS 40.600
17 to 40.695, inclusive, the claimant may not recover from the
18 contractor, as a result of the constructional defect, anything other
19 than that which is provided pursuant to NRS 40.600 to 40.695,
20 inclusive.
21 ~~[(4)]~~ 3. This section must not be construed as impairing any
22 contractual rights between a contractor and a subcontractor, supplier
23 or design professional.
24 ~~[(5)]~~ 4. As used in this section, “structural failure” means
25 physical damage to the load-bearing portion of a residence or
26 appurtenance caused by a failure of the load-bearing portion of the
27 residence or appurtenance.
28 **Sec. 2.** The amendatory provisions of section 1 of this act
29 apply to any claim that arises on or after October 1, 2013.

