

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 935
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Short Title: Architects Claims.

(Public)

Sponsors: Representative Wicker.

Referred to: Judiciary I.

April 19, 1991

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH A CLAIMS REVIEW PANEL FOR CIVIL ACTIONS
3 INVOLVING ARCHITECTURAL SERVICES.

4 The General Assembly of North Carolina enacts:

5 Section 1. Chapter 83A of the General Statutes is amended by adding a new
6 section to read:

7 "**§ 83A-18. Claims review panel.**

8 (a) The purpose of this section is to establish a claims review procedure to
9 evaluate the merit of civil actions involving architects or architectural services. Any
10 party in a civil action arising out of the rendering of or failure to render architectural
11 services may request review of the claim by a claims review panel by filing a request for
12 review with the Board and with the court in which the action is pending. If the party
13 requesting review is a defendant in the action, the request for review shall be filed no
14 later than 10 days after the party is served with the complaint. If the party requesting
15 review is a plaintiff in the action, the request for review shall be filed no later than 10
16 days after the commencement of the action. In addition, any person may, at any time
17 prior to the commencement of an action, request review of a potential claim arising out
18 of the rendering or failure to render architectural services.

19 (b) Upon receipt of the request for review, and upon agreement of both the
20 defendant and the plaintiff, the Board shall convene a claims review panel which shall
21 consist of:

1 (1) Two architects licensed under this chapter chosen from a list furnished
2 by the Board, one by the claimant and one by the respondent or
3 defendant; and

4 (2) One member of the general public who is not employed or experienced
5 in the field of architecture or any related field, and who shall be
6 selected by the the two architects chosen.

7 (c) The Board shall adopt rules governing the claims review panel selection and
8 review procedures in accordance with the following provisions:

9 (1) A new panel shall be convened each time a request for review is filed
10 with the Board and membership on the panel shall be selected on a
11 random or other basis designed to allocate equally the responsibility of
12 licensed architects to participate in the panel.

13 (2) No panel member may be associated with the claim being reviewed or
14 the parties to that claim in a manner that would prevent the panel
15 member from rendering an objective decision.

16 (3) The rules governing the review procedures shall establish a limitation
17 on the length of briefs and exhibits and shall provide that the panel
18 may waive the limitation only if it finds that additional length is
19 essential to the description of the claim.

20 (4) Panel members shall be compensated in the same manner and to the
21 same extent as Board members under G.S. 93B-5.

22 (d) The claims review panel shall determine whether the claim being reviewed
23 has merit. In reaching this decision the panel shall consider whether there is any basis
24 for finding that the defendant failed to adhere to the standard of practice of the
25 profession and whether there was a causal relationship between the damages suffered by
26 the plaintiff and the defendant's actions. The claims review panel shall render a
27 decision no later than 90 days after the request for review is filed with the Board. The
28 decision of a claims review panel is not binding and shall not prevent any party from
29 continuing to pursue the civil action reviewed, subject to the provisions of G.S. 6-21.6.

30 (e) An architect who has served on a claims review panel may be called as an
31 expert witness in the civil action that was the subject of the review, provided that neither
32 the fact that the witness served on the claims review panel, nor the decision of the
33 claims review panel, is admissible in the civil action that was the subject of the review,
34 except for purposes of awarding costs as provided in G.S. 6-21.6.

35 (f) Neither the availability nor the use of the claims review procedure set forth in
36 this section affects any contractual or other agreement requiring arbitration or mediation
37 or claims arising out of the rendering or failure to render architectural services."

38 Sec. 2. G.S. 83A-15(a) reads as rewritten:

39 (a) The Board shall have the power to suspend or revoke a license or certificate
40 of registration, to deny a license or certificate of registration, or to reprimand or levy a
41 civil penalty not in excess of five hundred dollars (\$500.00) per violation against any
42 registrant who is found guilty of:

43 (1) Dishonest conduct, including but not limited to:

- 1 a. The commission of any fraud, deceit or misrepresentation in
 2 any professional relationship with clients or other persons; or
 3 with reference to obtaining or maintaining license, or with
 4 reference to qualifications, experience and past or present
 5 service; or
 6 b. Using or permitting an individual professional seal to be used
 7 by or for others, or otherwise representing registrant as the
 8 author of drawings or specifications other than those prepared
 9 personally by or under direct supervision of registrant.
- 10 (2) Incompetence, including but not limited to:
 11 a. Gross negligence, recklessness, or excessive errors or omissions
 12 or building failures in registrant's record of professional
 13 practice; or
 14 b. Mental or physical disability or addiction to alcohol or drugs so
 15 as to endanger health, safety and interest of the public by
 16 impairing skill and care in professional services.
- 17 (3) Unprofessional conduct, including but not limited to:
 18 a. Practicing or offering to practice architecture without a current
 19 license from this Board;
 20 b. Knowingly aiding or abetting others to evade or violate the
 21 provisions of this Chapter, or the health and safety laws of this
 22 or other states;
 23 c. Knowingly undertaking any activity or having any significant
 24 financial or other interest, or accepting any compensation or
 25 reward except from registrant's clients, any of which would
 26 reasonably appear to compromise registrant's professional
 27 judgment in serving the best interest of clients or public;
 28 d. Willfully violating this Chapter or any rule or standard of
 29 conduct published by the Board, or pleading guilty or **nolo**
 30 **contendere** to a felony or any crime involving moral ~~turpitude~~
 31 turpitude;
 32 e. Refusing without good cause to serve on a claims review panel
 33 or, after serving on a claims review panel, refusing without
 34 good cause to serve as an expert witness in the civil action that
 35 was the subject of the review."

36 Sec. 3. Chapter 1 of the General Statutes is amended by adding a new Article
 37 to read:

38 **"ARTICLE 43E.**

39 **"ACTIONS INVOLVING ARCHITECTURAL SERVICES.**

40 **"§ 1-539.25. Tolling of limitations, stay in actions involving architectural services.**

41 A civil action arising out of the rendering of or failure to render architectural
 42 services, is automatically stayed, to the extent set forth in this section, when a party
 43 requests review of the action by a claims review panel established under Chapter 83A of
 44 the General Statutes. The stay provided for in this section begins on the date that a

1 notice of request for review is filed with the court, and shall remain in effect until 20
2 days after the claims review panel renders a decision, but shall not remain in effect for a
3 total of more than 110 days except by leave of court. While the stay provided for in this
4 section is in effect, the parties involved in the claims review process are not required to
5 respond to pleadings, discovery requests, motions, or other proceedings, and all times
6 for responses otherwise required by law are tolled as to those parties until the expiration
7 of the stay. If a request for review by a claims review panel is filed before
8 commencement of an action, the statute of limitations is automatically tolled for that
9 action as to the parties involved in the claims review until 20 days after the claims
10 review panel renders a decision, but shall not remain tolled for a total of more than 110
11 days except by leave of court."

12 Sec. 4. Article 3 of Chapter 6 of the General Statutes is amended by adding a
13 new section to read:

14 **"§ 6-21.6. Allowance of attorneys' fees and costs in certain cases involving**
15 **architectural services.**

16 In a civil action arising out of the rendering of or failure to render architectural
17 services, court costs, including reasonable attorneys' fees, shall be awarded to the
18 prevailing party, if that party also prevailed in a decision on the same action rendered by
19 a claims review panel convened under Chapter 83A of the General Statutes, unless the
20 nonprevailing party shows to the satisfaction of the court that, notwithstanding the
21 decision of the claims review panel, circumstances particular to the case justified the
22 decision to pursue the action. Any order awarding costs under this section shall also
23 require the nonprevailing party to pay to the appropriate board an amount equal to all
24 compensation and expenses paid by the Board to the members of the claims review
25 panel convened to review the claim that is the subject of the order."

26 Sec. 5. This act is effective upon ratification and applies to civil actions filed
27 on or after October 1, 1991.