

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

H

1

HOUSE BILL 935

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 the Board shall convene a claims
20 review panel which shall consist of:

21 (1) Two architects licensed under this chapter; and

22 (2) One member of the general public who is not employed or experienced
23 in the field of architecture or any related field, and who shall be

1 selected by the plaintiff in the civil action that the panel is convened to
2 review.

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

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

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

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

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

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

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

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

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

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

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

40 a. The commission of any fraud, deceit or misrepresentation in
41 any professional relationship with clients or other persons; or
42 with reference to obtaining or maintaining license, or with
43 reference to qualifications, experience and past or present
44 service; or

1 for responses otherwise required by law are tolled as to those parties until the expiration
2 of the stay. If a request for review by a claims review panel is filed before
3 commencement of an action, the statute of limitations is automatically tolled for that
4 action as to the parties involved in the claims review until 20 days after the claims
5 review panel renders a decision, but shall not remain tolled for a total of more than 110
6 days except by leave of court."

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

9 **"§ 6-21.6. Allowance of attorneys' fees and costs in certain cases involving**
10 **architectural services.**

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

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