### GENERAL ASSEMBLY OF NORTH CAROLINA

### **SESSION 1991**

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#### HOUSE BILL 935

Short Title: Architects Claims.	(Public)
Sponsors: Representative Wicker.	
Referred to: Judiciary I.	

## April 19, 1991

1 A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A CLAIMS REVIEW PANEL FOR CIVIL ACTIONS INVOLVING ARCHITECTURAL SERVICES.

The General Assembly of North Carolina enacts:

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

# "§ 83A-18. Claims review panel.

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- (a) The purpose of this section is to establish a claims review procedure to evaluate the merit of civil actions involving architects or architectural services. Any party in a civil action arising out of the rendering of or failure to render architectural services may request review of the claim by a claims review panel by filing a request for review with the Board and with the court in which the action is pending. If the party requesting review is a defendant in the action, the request for review shall be filed no later than 10 days after the party is served with the complaint. If the party requesting review is a plaintiff in the action, the request for review shall be filed no later than 10 days after the commencement of the action. In addition, any person may, at any time prior to the commencement of an action, request review of a potential claim arising out of the rendering or failure to render architectural services.
- (b) Upon receipt of the request for review the Board shall convene a claims review panel which shall consist of:
  - (1) Two architects licensed under this chapter; and
  - (2) One member of the general public who is not employed or experienced 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	* *	oard shall adopt rules governing the claims review panel selection and	
4	review procedure	es in accordance with the following provisions:	
5	<u>(1)</u>	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	<u>(2)</u>	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	<u>(3)</u>	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	<u>(4)</u>	Panel members shall be compensated in the same manner and to the	
17		same extent as Board members under G.S. 93B-5.	
18	1 1	laims review panel shall determine whether the claim being reviewed	
19		aching this decision the panel shall consider whether there is any basis	
20	_	the defendant failed to adhere to the standard of practice of the	
21	•	hether 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		than 90 days after the request for review is filed with the Board. The	
24		sims review panel is not binding and shall not prevent any party from	
25		rsue 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		
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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	<del> </del>	ses of awarding costs as provided in G.S. 6-21.6.	
31	* *	er the availability nor the use of the claims review procedure set forth in	
32		ets any contractual or other agreement requiring arbitration or mediation	
33		out of the rendering or failure to render architectural services."	
34		. G.S. 83A-15(a) reads as rewritten:	
35	` '	oard shall have the power to suspend or revoke a license or certificate	
36	_	o deny a license or certificate of registration, or to reprimand or levy a	
37		in excess of five hundred dollars (\$500.00) per violation against any	
38	registrant who is		
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	

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43 44 to read:

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

Sec. 3. Chapter 1 of the General Statutes is amended by adding a new Article

## "ARTICLE 43E.

## "ACTIONS INVOLVING ARCHITECTURAL SERVICES.

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

A civil action arising out of the rendering of or failure to render architectural services, is automatically stayed, to the extent set forth in this section, when a party requests review of the action by a claims review panel established under Chapter 83A of the General Statutes. The stay provided for in this section begins on the date that a notice of request for review is filed with the court, and shall remain in effect until 20 days after the claims review panel renders a decision, but shall not remain in effect for a total of more than 110 days except by leave of court. While the stay provided for in this section is in effect, the parties involved in the claims review process are not required to respond to pleadings, discovery requests, motions, or other proceedings, and all times

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

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

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

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

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