

SENATE BILL NO. 119

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY SENATOR LEMAN

Introduced: 3/9/95

Referred: L&C, JUD

A BILL

FOR AN ACT ENTITLED

1 "An Act requiring conciliation panel review in a civil action against an architect,
2 engineer, or land surveyor; and providing for an effective date."

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * **Section 1.** AS 09.55 is amended by adding new sections to read:

5 **ARTICLE 9. MALPRACTICE ACTION AGAINST DESIGN PROFESSIONAL.**

6 **Sec. 09.55.700. MANDATORY CONCILIATION PANEL REVIEW.** (a) A
7 person who files a civil action against a design professional seeking damages resulting
8 from professional negligence shall also submit the claim to the court for review by the
9 design professional conciliation panel. Within 20 days after an answer to the
10 complaint is filed, the court shall appoint a three-person expert advisory panel to
11 review the claim, unless the parties sign a written agreement waiving the panel review
12 required under this section.

13 (b) The panel required under this section shall consist of one person, appointed
14 as chair, who is experienced in settling negligence claims, one person who is an

1 attorney licensed in this state, and one person who is a design professional. The panel
2 may compel the attendance of witnesses, interview the parties, physically examine the
3 claimant if alive, consult with specialists if appropriate, and compel the production of
4 and examine all relevant records or materials relating to the claim. The panel may
5 meet in camera, but shall maintain a record of any testimony or oral statements of
6 witnesses and shall keep copies of all written statements it receives.

7 (c) Not more than 30 days after the panel is appointed, the panel shall hold a
8 hearing on the claim. The hearing shall be informal and shall be attended, either in
9 person or by teleconference, by each party, each party's legal counsel, witnesses, and
10 consultants called by the panel. The panel may

- 11 (1) record the hearing;
- 12 (2) receive oral or documentary evidence;
- 13 (3) question witnesses, or allow examination of witnesses by a party;
- 14 (4) place a burden of proof or burden of going forward with evidence
15 on a party; and

- 16 (5) consider any relevant evidence.

17 (d) Within 15 days after the hearing, the panel shall file a written advisory
18 decision with the court and mail copies to each party. Each member of the panel
19 shall sign the decision, and the decision may include concurring or dissenting opinions.
20 The decision must contain one of the following conclusions:

- 21 (1) the evidence does not indicate that the design professional failed to
22 comply with the applicable standard of care;

- 23 (2) the evidence does indicate that the design professional failed to
24 comply with the applicable standard of care and that failure is the proximate cause of
25 the alleged damages;

- 26 (3) the evidence indicates that the design professional failed to comply
27 with the applicable standard of care, but the failure is not a proximate cause of the
28 alleged damages; or

- 29 (4) the evidence indicates that there is a material issue of fact, not
30 requiring an expert opinion, bearing on liability that should be considered by a court
31 or jury.

1 (e) If the decision of the panel is rejected by a party, the action may proceed
2 in the appropriate court. The report of the panel with any dissenting or concurring
3 opinion is not admissible in evidence, and a member of the panel may not be called
4 by a party or cross-examined as to the contents of the report or of that member's
5 dissenting or concurring opinion.

6 (f) A member of a panel is not civilly liable for an act or omission occurring
7 when acting as a member of the panel unless the member acts with intentional
8 misconduct.

9 (g) A member of a panel serves without compensation, but is entitled to per
10 diem and travel expenses authorized by law for boards and commissions under
11 AS 39.20.180 for all time spent in preparing its report. All expenses incurred by the
12 panel shall be paid by the court. However, in any case in which the court determines
13 that a party has made a patently frivolous claim or a patently frivolous denial of
14 liability, it shall order that all costs of the expert advisory panel be borne by the party
15 making that claim or denial.

16 (h) In this section,

17 (1) "design professional" means an architect, engineer, or land surveyor
18 licensed in this state;

19 (2) "panel" means the design professional conciliation panel;

20 (3) "professional negligence" means a negligent act or omission by a
21 design professional in providing professional services;

22 (4) "professional services" means services provided by a design
23 professional that are within the scope of the services for which the design professional
24 is licensed.

25 * **Sec. 2.** This Act applies to causes of action that accrue on or after the effective date of
26 this Act.

27 * **Sec. 3.** This Act takes effect July 1, 1995.