

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

No. 498

S.P. 190

In Senate, February 10, 1995

**An Act Requiring Pretrial Review of Disputes Involving Engineers,
Architects and Surveyors.**

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "May M. Ross".

MAY M. ROSS
Secretary of the Senate

Presented by Senator SMALL of Sagadahoc.
Cosponsored by Representative: AULT of Wayne.

2 **Be it enacted by the People of the State of Maine as follows:**

4 **Sec. 1. 4 MRSA c. 12 is enacted to read:**

6 **CHAPTER 12**

8 **PRETRIAL PEER REVIEW PANELS**

10 **§511. Purpose**

12 The purpose of pretrial peer review panels is to ensure that
14 cases involving a high degree of specialized knowledge are
16 considered by peers trained in the same profession; to encourage
18 early settlement of claims through mediation; and to reduce the
20 burden on the courts caused by frivolous claims.

22 **§512. Definitions**

24 As used in this chapter, unless the context otherwise
26 indicates, the following terms have the following meanings.

28 1. Chair. "Chair" means the chair of the pretrial peer
30 review panel.

32 2. Licensed professional. "Licensed professional" means a
34 person licensed, certified, registered or otherwise permitted by
36 the State to practice as an engineer, architect or surveyor.

38 3. Panel. "Panel" means a pretrial peer review panel.

40 **§513. Pretrial panel**

42 If a civil suit filed in Superior Court directly involves
44 the work of a licensed professional, the court shall submit the
46 issue to a panel of 2 professional peers and one attorney. The
48 use of a panel is appropriate when the resolution of one or more
50 claims is dependent upon an assessment of the work of a licensed
professional subject to this chapter. This may include actions
between parties where one or more parties have retained the
services of a licensed professional or an action between a client
and a licensed professional. Actions arising out of alleged
professional negligence are specifically included.

§514. Exceptions

The court may determine a dispute to be unsuitable for
disposition under this chapter after considering:

1. Magnitude of award; broad public concern. The magnitude
of potential award or the existence of an issue of broad public
concern raised by the subject matter underlying the dispute;

2 2. Court supervision of discovery anticipated. The
4 likelihood of extensive discovery where court supervision of the
 discovery process is anticipated;

6 3. Matters involved not covered by this section. The
8 extent to which the dispute involves matters not covered by this
 section;

10 4. Work of secondary importance to dispute. The fact that
12 the licensed professional's work is of secondary importance to
 the dispute;

14 5. Potential for delay. The potential for unreasonable
16 delays in reaching resolution if assigned to a panel; and

18 6. Multiple parties; issues. Whether the dispute involves
20 too many parties or issues to be effectively handled by the
 informal process of this chapter.

22 **§515. Panel selection**

24 1. Creation of panel lists. Each clerk of the Superior
26 Court shall maintain lists of qualified professionals and
28 attorneys recommended by the boards of the professions involved
30 to serve on panels under this chapter. The list of available
 panel members may be enlarged in order to select a panel member
 who is agreed to by the parties but who is not on the clerk's
 list.

32 2. Selection of panel. When the court determines a suit or
34 issue appropriate for referral under this chapter, the court
36 shall select 2 members from the same profession or specialty
 concerning which there is an issue in question and one attorney
 to serve on the panel. The court shall designate one panel
 member to serve as chair.

38 **§516. Panel authority; hearings**

40 All business of the panel must be conducted in accordance
42 with this section.

44 1. Discovery. The chair, upon application of a party, may
46 permit reasonable discovery. The chair may rule on requests
48 regarding discovery or may allow the parties to seek a ruling in
 Superior Court. In a subsequent Superior Court action in the
 same case, all discovery conducted during the pretrial review
 process is deemed discovery as part of that court action.

50 2. Subpoenas, depositions, witnesses. Any panel member may
52 sign subpoenas, administer oaths and affirmations, examine
 witnesses and receive evidence. Notwithstanding its subpoena
 powers, the panel shall attempt to secure voluntary appearance,

2 testimony and cooperation of parties, witnesses and consultants.
3 The testimony of witnesses may be taken orally before the panel
4 or by deposition.

5 **3. Evidence.** The Maine Rules of Evidence do not apply
6 under this chapter. Evidence must be admitted if it is the kind
7 of evidence upon which reasonable persons are accustomed to rely
8 in the conduct of serious affairs. The panel shall make its
9 findings upon the evidence as is presented at the hearing, the
10 records and any expert opinions provided. After presentation by
11 the parties, the panel may request from either party additional
12 facts, records or other information to be submitted in writing or
13 at a continued hearing to be held as soon as possible.

14 **4. Procedure.** The chair shall conduct the hearings in an
15 informal manner as the chair considers appropriate. The chair
16 shall make all procedural rulings and the chair's rulings are
17 final. Proceedings of the panel must be recorded either by
18 electronic means or by a court stenographer. The record may not
19 be made public and the hearings may not be public without the
20 consent of all parties.

21 **5. Failure to comply.** Failure of a party without good
22 cause to attend a properly scheduled hearing, to participate in
23 authorized discovery or to otherwise substantially comply with
24 this chapter must be reported in the panel's findings and may
25 serve as the basis for a finding against that party.

26 **§517. Duties; findings**

27 The panel shall attempt to mediate and effect settlement
28 without court action. If the dispute is not settled, the panel
29 shall furnish the court with an opinion on whether the suit is
30 justified or frivolous. If the panel considers the suit
31 justified, the panel shall provide its recommendations to the
32 court on final disposition of the suit based primarily on
33 consideration of the professional services involved. The panel
34 shall make its findings in writing within 30 days of the
35 conclusion of the hearing.

36 **§518. Effect of panel findings**

37 The court is not bound by the panel's recommendations of
38 final disposition but shall take such recommendations into full
39 account when reaching its own conclusions.

40 **§519. Confidentiality and admissibility**

41 Persons other than the panel, witnesses, parties to the
42 dispute and their counsel may not be present except with the
43 express consent of the chair.

2 The deliberations of the panel are confidential and a person
4 may not be asked or compelled to testify at a later court
6 proceeding concerning the deliberations, discussions, findings or
8 expert testimony or opinions expressed during the panel hearing.
10 A statement made in the course of hearings or discovery is not
12 admissible in evidence at a later court proceeding either as an
14 admission, to impeach the credibility of a witness, or for any
16 other purpose except as may be required to prove an allegation of
18 fraud.

20 **§520. Liability**

22 A member of a panel is not liable in damages for libel,
24 slander or other defamation of character of any party to panel
26 proceedings, for any action taken or for any decision,
28 conclusion, finding or recommendation made by a member while
30 acting as a member of a panel.

32 **§521. Fees**

34 The court shall compensate panel members at the rate of \$300
36 per day plus mileage and expenses. The total cost for panel
38 members must be borne equally by the various parties to the
40 suit. Each party to the suit shall deposit \$900 with the court
42 prior to the panel being named to be used for the payment of
 panel members.

The court shall provide meeting space, clerical assistance,
 office equipment and office supplies for the panel.

32 **STATEMENT OF FACT**

34 This bill provides for the use of pretrial peer review
36 panels in civil suits where resolution of a claim requires an
38 assessment of the work of an engineer, architect or surveyor,
40 including claims of professional negligence. A court-appointed
42 panel comprised of one attorney and 2 professionals from the same
 field is authorized to mediate the dispute, hold hearings and
 make recommendations on the final disposition of the case. A
 pretrial review panel is not required if the court considers it
 unsuitable for consideration by a panel.