

FIRST REGULAR SESSION

[P E R F E C T E D]

SENATE BILL NO. 89

90TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR MUELLER.

Pre-filed December 1, 1998, and 1,000 copies ordered printed.

Read 2nd time January 14, 1999, and referred to the Committee on Pensions and General Laws.

Reported from the Committee March 25, 1999, with recommendation that the bill do pass.

Taken up for Perfection April 7, 1999. Bill declared Perfected and Ordered Printed, as amended.

TERRY L. SPIELER, Secretary.

S0631.01P

AN ACT

To repeal section 431.180, RSMo Supp. 1998, relating to claims against certain licensed professionals, and to enact in lieu thereof two new sections relating to the same subject.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 431.180, RSMo Supp. 1998, is repealed and two new sections enacted in lieu thereof, to be known as sections 431.180 and 537.800, to read as follows:

431.180. 1. All persons who enter into a contract for private **design or** construction work after August 28, 1995, shall make all scheduled payments pursuant to the terms of the contract.

2. Any person who has not been paid in accordance with subsection 1 of this section may bring an action in a court of competent jurisdiction against a person who has failed to pay. The court may in addition to any other award for damages, award interest at the rate of up to one and one-half percent per month from the date payment was due pursuant to the terms of the contract, and reasonable attorney fees, to the prevailing party. If the parties elect to resolve the dispute by arbitration pursuant to section 435.350, RSMo, the arbitrator may award any remedy that a court is authorized to award hereunder.

3. The provisions of this section shall not apply to contracts for private construction work for the building, improvement, repair or remodeling of owner-occupied residential property of four units or less.

4. For purposes of this section, design or construction work shall include design, construction, alteration, repair or maintenance of any building, roadway or other structure or improvement to real property, or demolition or excavation connected therewith, and shall include the furnishing of surveying, architectural, engineering or

landscape design, planning or management services, labor or materials, in connection with such work.

537.800. 1. In any action against a licensed professional for damages or injuries on account of the rendering of or failure to render professional services, the plaintiff or his attorney shall file an affidavit with the court stating that he has obtained the written opinion of a legally qualified like licensed professional which states that the defendant licensed professional failed to use such care as a reasonably prudent and careful licensed professional would have under similar circumstances and that such failure to use such reasonable care directly caused or directly contributed to cause the damages claimed in the petition.

2. The affidavit shall state the qualifications of such like licensed professional to offer such opinion.

3. A separate affidavit shall be filed for each defendant named in the petition.

4. Such affidavit shall be filed no later than ninety days after the filing of the petition unless the court, for good cause shown, orders that such time be extended.

5. If the plaintiff or his attorney fails to file such affidavit, the court may, upon motion of any party, dismiss the action against such moving party without prejudice.

6. For purposes of this act, the term "licensed professional" shall mean every licensed architect, professional engineer, land surveyor or any corporation authorized to render any of the aforementioned professional services. This section shall not apply to any "health care provider" as that term is defined in section 538.205, RSMo.

7. The provisions of this section shall not apply to actions filed in small claims court pursuant to chapter 482, RSMo.

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