

SENATE No. 958

By Mr. Lewis, a petition (accompanied by bill, Senate, No. 958) of the Massachusetts Society of Professional Engineers, by John F. Dacey, Jr., executive director, and Arthur Joseph Lewis, Jr., for legislation to protect certain professions from unwarranted malpractice actions. The Judiciary.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-three.

AN ACT TO PREVENT CERTAIN PROFESSIONS FROM UNWARRANTED
MALPRACTICE ACTIONS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 231 of the General Laws is hereby
2 amended by adding the following section 60F: —

3 *Section 60F.*

4 (1) For the purposes of this section: —

5 (a) "Accountant" means a person authorized to practice
6 the profession of accountancy in the commonwealth under
7 section eighty-seven A of chapter one hundred twelve;

8 (b) "Architect" means a person authorized to practice the
9 profession of architect in the commonwealth under section
10 sixty A of chapter one hundred twelve.

11 (c) "Engineer" means a person authorized to practice the
12 profession of engineering in the commonwealth under section
13 eighty-one D of chapter one hundred twelve;

14 (d) "Land surveyor" means a person authorized to practice
15 the profession of land surveying in the commonwealth under
16 section eighty-one D of chapter one hundred twelve;

17 (e) "Layperson" means a person who is at least eighteen
18 years of age, a resident of the commonwealth, and not a mem-
19 ber of a profession defined in subsections (a) through (e);

20 (f) "Prima Facie case" means a case where, upon the pres-
21 entation of evidence, reasonable persons in the impartial exer-
22 cise of their judgment could reach the conclusion that the de-
23 fendant should be found liable.

24 (2) Within fifteen days of the filing of a complaint for mal-
25 practice, error, or mistake against an accountant, architect,
26 engineer, or land surveyor, or against a partnership, profes-
27 sional corporation, or other enterprise composed of such pro-
28 fessionals, the defendant may file a request with the superior
29 court that it convenes a tribunal to determine if the evidence
30 presented to the tribunal, if properly substantiated, is suffi-
31 cient to raise a legitimate question of liability appropriate for
32 judicial inquiry or whether the plaintiff's case is merely an
33 unfortunate result. The tribunal shall hear the matter within
34 thirty days after a request is filed by the defendant, unless the
35 defendant has requested an extension at the time of filing, and
36 has been granted the extension by the superior court. An ex-
37 tension under this section shall not exceed thirty days.

38 (3) The tribunal shall consist of one judge of the common-
39 wealth, one member of the defendant's profession, and one lay-
40 person. They shall be selected as follows: —

41 (a) The judge shall be the judge who ruled on the defend-
42 ant's request for a tribunal or such other judge as the presid-
43 ing justice of the court may appoint.

44 (b) The boards of registration of the commonwealth of ac-
45 countancy, architecture, and engineering and land surveying
46 shall each maintain at the superior court a list of one hundred
47 members of those professions who have expressed a willing-
48 ness to serve on a tribunal under this statute. Each list shall
49 be generally representative of the profession with respect to
50 geographical background and areas of specialization within
51 the profession. The judge shall elect one member of the de-
52 fendant's profession from the appropriate list.

53 The office of consumer affairs of the commonwealth shall
54 provide to the Supreme Judicial Court a list of one hundred
55 laypersons who have expressed a willingness to serve on a tri-
56 bunal under this act. The list shall be generally representa-
57 tive of the social, economic, linguistic, racial and geographic
58 populations of the commonwealth. The judge shall elect one
59 member from the list of laypersons.

60 The boards of registration for accountancy, architecture,
61 engineering and land surveying, and the office of consumer
62 affairs shall revise the lists every two years.

63 (4) Upon the selection of the tribunal, the clerk of the supe-
64 rior court shall notify the plaintiff and the defendant of the
65 composition of the tribunal. This notification shall be made at
66 least fifteen days before the tribunal is convened. Either
67 party may request the disqualification, for cause, of any per-
68 son on a tribunal. In addition, the court shall permit each
69 party three peremptory challenges to laypersons or profes-
70 sionals selected for the tribunal. Requests for disqualifications
71 or peremptory challenges shall be filed with the clerk of the
72 superior court no later than seven days before the scheduled
73 date of the tribunal.

74 (5) The hearing called under this section shall be conducted
75 in accordance with the following: —

76 (a) The tribunal shall not observe the rules of evidence ob-
77 served by courts, but shall observe the rules of privilege rec-
78 ognized by law. Evidence shall be admitted and given proba-
79 tive effect only if it is the kind of evidence on which reason-
80 able persons are accustomed to rely on the conduct of serious
81 affairs. The tribunal may exclude unduly repetitious evidence,
82 whether offered on direct examination or cross-examination
83 of witnesses.

84 (b) Every party shall have the right to call and examine
85 witnesses, to introduce exhibits, to cross-examine witnesses
86 who testify, and to submit rebuttal evidence.

87 (c) Documentary evidence may be received in evidence in
88 the form of copies or excerpts, or by incorporation by refer-
89 ence. Documents created during the professional work in-
90 volved in the matter, including contracts, bills, invoices, re-
91 ports, plans, identification or authentication. Statements of
92 fact or opinion on a subject contained in a published treatise,
93 periodical, book or pamphlet or statements by experts shall be
94 admitted without the necessity of such experts appearing at
95 said hearing.

96 (d) The tribunal shall take notice of any fact which may
97 be judicially noticed by the courts and general, technical or
98 scientific facts within the specialized knowledge of the profes-
99 sional on the tribunal. Parties shall be notified of the mate-
100 rial so noticed, and they shall be afforded an opportunity to
101 contest facts so noticed. The tribunal shall utilize this experi-
102 ence, technical competence, and specialized knowledge in the

103 evaluation of the evidence presented to it.

104 (e) The tribunal may upon the application of either party
105 or upon its own decision summon or subpoena any records or
106 individuals to substantiate or clarify any evidence which has
107 been presented before it and may appoint an impartial and
108 qualified professional person or expert to conduct any neces-
109 sary professional or expert examination of the claimant or
110 relevant evidentiary matter and to report or to testify as a
111 witness thereto. Witness shall be allowed traveling expenses
112 and a reasonable fee to be fixed by the tribunal and these ex-
113 penses shall be assessed as costs.

114 (6) Following the presentation of evidence, the tribunal
115 shall deliberate and vote on whether the plaintiff has estab-
116 lished a prima facie case. Within one week of that presenta-
117 tion, the tribunal shall file, in superior court, a written re-
118 port of its decision and the vote by which that decision was
119 reached.

120 (7) If a finding is made for the defendant, the plaintiff
121 may pursue the claim through the usual judicial process only
122 upon filing bond in the amount of five thousand dollars se-
123 cured by cash or its equivalent with the clerk of the court in
124 which the case is pending. The bond shall be payable to the
125 defendant for costs assessed, including witness and experts
126 fees and attorney fees, if the plaintiff does not prevail in the
127 final judgment. The judge may, at his discretion, increase the
128 amount of the bond required to be filed in the case of multi-
129 ple plaintiffs, or where the plaintiff is a business, corporation,
130 institution or association.

131 If the bond is not posted within thirty days of the tribunal's
132 findings, the action shall be dismissed.

133 Upon a motion filed by the plaintiff and a determination by
134 the judge of the plaintiff's indigency, the judge may decrease
135 or eliminate the bond.

136 (8) The plaintiff shall forfeit the bond if he does not pre-
137 vail in the final judgment of his case. The plaintiff does not
138 prevail in the final judgment of his case if, when his case ter-
139 minates, no liability has been placed on the defendant by a
140 judicial order or decision for the malpractice that was the ob-
141 ject of the hearing before the tribunal.

142 (9) The proceeds of the plaintiff's bond, if forfeited, shall

143 be paid to the defendant for his reasonable attorney fees and
144 all costs related to the superior court action and to the hear-
145 ing before the tribunal. Any remaining proceeds shall be dis-
146 tributed to the plaintiff. The superior court shall determine
147 the distribution of the bond after notice and a hearing.

148 (10) At a trial upon a claim which has been heard by a tri-
149 bunal under either party may introduce a certified copy of the
150 written report of the tribunal's decision into evidence, if the
151 tribunal reached its decision by a unanimous vote. The trial
152 judge shall instruct the jury that it shall not consider this de-
153 cision to be conclusive but shall consider it in conjunction with
154 all evidence presented at trial. Other evidence of the tribu-
155 nal's proceedings shall not be admissible at trial. No person
156 who served on a tribunal shall be called as a witness at a trial
157 for malpractice on the same claim as was before the tribunal.

158 (11) The expense of each tribunal shall be paid by the supe-
159 rior court in which the plaintiff's action was on file at the
160 time of the hearing. Each professional and layperson serving
161 on a tribunal shall be paid fifty dollars for each day, or portion
162 thereof, he serves.

163 (12) A complaint for malpractice heard by a tribunal under
164 the provisions of this section shall not contain an ad damnum
165 or monetary amount claimed against the defendant.

1 SECTION 2. Chapter 6A of the General Laws is hereby
2 amended by adding the following Section 9C: —

3 The office of Consumer Affairs shall provide to the Superior
4 Courta list of one hundred laypersons, and periodically revise
5 that list, pursuant to Section 60F of Chapter 231 of the Gen-
6 eral Laws.

1 SECTION 3. Section 60C of Chapter 112 of the General Laws
2 as amended by Section 4 of Chapter 390 of the Acts of 1971 is
3 hereby further amended by adding the following sentence: —

4 The board shall provide to the Superior Court a list of one
5 hundred architects, and periodically revise that list, pursuant
6 to Section 60F of Chapter 231 of the General Laws.

1 SECTION 4. Section 811 of Chapter 112 of the General Laws
2 as amended by Section 9C of Chapter 722 of the Acts of 1941
3 is hereby further amended by adding the following sentence: —

4 The board shall provide to the Superior Court a list of one
5 hundred engineers and land surveyors, and periodically revise
6 that list, pursuant to Section 60f of Chapter 231 of the General
7 Laws.

1 SECTION 5. Section 87C of Chapter 112 of the General Laws
2 as most recently amended by Section 2 of Chapter 693 of the
3 Acts of 1972 is hereby further amended by adding the following
4 paragraph: —

5 (e) The board shall provide to the superior court a list of
6 one hundred accountants, and periodically revise that list, pur-
7 suant to Section 60F of Chapter 231 of the General Laws.

De la nature de la vie humaine

Il est évident que la vie humaine est un phénomène complexe, qui ne peut être compris que par une étude approfondie de ses divers aspects. Cette étude doit porter sur la nature physique, intellectuelle et morale de l'homme, ainsi que sur les conditions de son développement et de son épanouissement.

La vie humaine est un processus continu, qui se déroule dans le temps et dans l'espace. Elle est soumise à des lois naturelles, mais elle est également influencée par des facteurs sociaux et culturels. C'est pourquoi il est essentiel de considérer l'homme dans son ensemble, et non pas isolément.

La nature physique de l'homme est déterminée par ses caractéristiques biologiques, telles que sa structure corporelle, ses fonctions vitales et sa sensibilité. Ces caractéristiques sont le résultat de l'évolution et de l'adaptation à l'environnement.

La nature intellectuelle de l'homme est caractérisée par sa capacité de réflexion, de raisonnement et de création. Elle est le fruit de l'éducation et de l'expérience, et elle permet à l'homme de dépasser les limites de sa nature physique.

La nature morale de l'homme est liée à sa conscience et à ses valeurs. Elle est le résultat de l'éducation et de l'influence de la culture, et elle guide l'homme dans ses actions et ses décisions.

En conclusion, la vie humaine est un phénomène complexe et multidimensionnel. Elle est le résultat de l'interaction entre la nature physique, intellectuelle et morale de l'homme, et elle est influencée par les conditions sociales et culturelles de son existence.

