



GOV. MSG. NO. **977**

EXECUTIVE CHAMBERS  
HONOLULU

LINDA LINGLE  
GOVERNOR

June 21, 2007

The Honorable Colleen Hanabusa, President  
and Members of the Senate  
Twenty-Fourth State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

This is to inform you that on June 21, 2007, the following bill was signed into law:

HB1518 HD1 SD2 CD1

A BILL FOR AN ACT RELATING TO DESIGN  
PROFESSIONALS.  
(ACT 207)

Sincerely,

A handwritten signature in black ink, appearing to read "James R. Aiona, Jr.", written in a cursive style.

JAMES R. AIONA, JR.  
Acting Governor

Approved by the Governor

on JUN 21 2007

HOUSE OF REPRESENTATIVES  
TWENTY-FOURTH LEGISLATURE, 2007  
STATE OF HAWAII

**ACT 207**  
**H.B. NO.** 1518  
H.D. 1  
S.D. 2  
C.D. 1

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# A BILL FOR AN ACT

RELATING TO DESIGN PROFESSIONALS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1 SECTION 1. The purpose of this Act is to provide a design  
2 claims conciliation panel.

3 The design professional conciliation panel, established by  
4 Act 228, Session Laws of Hawaii 1981, was repealed by the  
5 legislature in 2004. The lack of a conciliation panel has left  
6 the design professional community with no protection against  
7 frivolous lawsuits.

8 This Act establishes a design claims conciliation panel  
9 modeled after the existing medical claims conciliation panel  
10 established by Act 219, Session Laws of Hawaii 1976. The  
11 purpose of the design claims conciliation panel is to provide  
12 the parties with advisory determinations of the relative merits  
13 of any claim brought against a design professional licensed  
14 under chapter 464, Hawaii Revised Statutes. The design claims  
15 conciliation panel will assist the parties in evaluating whether  
16 the claims should be pursued through the judicial system. The  
17 design claims conciliation panel will also provide opportunities



1 for the parties to exchange information in a relatively  
2 expedited and inexpensive manner, which in turn provides for  
3 opportunities for the parties to explore the conciliation of  
4 meritorious claims prior to the claims being brought before the  
5 courts. Lastly, the requirements of exchanging information  
6 between the parties, and making conscientious and thorough  
7 presentations to the design claims conciliation panel,  
8 discourage the pursuit of frivolous or fraudulent claims, prior  
9 to further legal proceedings being taken by the parties.

10 SECTION 2. The Hawaii Revised Statutes is amended by  
11 adding a new chapter to be appropriately designated and to read  
12 as follows:

13 **"CHAPTER**

14 **DESIGN CLAIMS CONCILIATION PANEL**

15 **§ -1 Definitions.** As used in this chapter:

16 "Department" means the department of commerce and consumer  
17 affairs.

18 "Design professional" means a professional engineer,  
19 architect, surveyor, or landscape architect licensed under  
20 chapter 464.

21 "Director" means the director of commerce and consumer  
22 affairs.



1           **§ -2 Administration of chapter.** The director shall be  
2 responsible for the implementation and administration of this  
3 chapter and shall adopt rules, in conformity with chapter 91,  
4 necessary for the purposes of this chapter.

5           **§ -3 Design claim conciliation panels; composition,**  
6 **selection, compensation.** (a) There are established design  
7 claim conciliation panels that shall review and render findings  
8 and advisory opinions on the issues of liability and damages in  
9 tort claims against design professionals licensed to practice  
10 under chapter 464.

11           (b) If all parties to a tort claim against a design  
12 professional licensed to practice under chapter 464 agree, the  
13 design claim conciliation panel shall not review and render  
14 findings and advisory opinions on the issues of liability and  
15 damages in the tort claim against the design professional  
16 licensed to practice under chapter 464.

17           (c) A design claim conciliation panel shall be formed for  
18 each claim filed pursuant to section -5 and after each panel  
19 renders its decision or the claim is otherwise disposed of, the  
20 panel shall be disbanded. Each design claim conciliation panel  
21 shall consist of one chairperson selected from among persons who  
22 are familiar with and experienced in the claims settlement



1 process, one attorney licensed to practice in the courts of the  
2 State and experienced in trial practice, and one design  
3 professional licensed to practice under chapter 464. The  
4 chairperson shall be appointed by the director from a list of  
5 eligible persons approved by the chief justice of the supreme  
6 court of Hawaii. The attorney shall be appointed by the  
7 chairperson from a list of not less than thirty-five attorneys  
8 experienced in trial practice submitted annually by the supreme  
9 court. The design professional shall be appointed by the  
10 chairperson and shall be currently licensed and in good standing  
11 under chapter 464.

12 (d) The chairperson shall preside at the meetings of the  
13 panel. The chairperson, all panel members, and any consultant  
14 called by the panel to appear before the panel shall be  
15 compensated at the rate of \$300 per claim, which will become  
16 payable when the decision of the panel is submitted. At the  
17 discretion of the director, the chairperson, panel members, and  
18 any consultant called by the panel to appear before the panel,  
19 may be compensated at one-half the amount of compensation  
20 specified in this section, if the claim is disposed of by any  
21 means prior to the hearing by the panel. The chairperson, all  
22 panel members, and any consultant called by the panel to appear



1 before the panel also shall be paid allowances for travel and  
2 living expenses that may be incurred as a result of the  
3 performance of their duties on or for the panel. These costs  
4 shall be paid by the department of commerce and consumer affairs  
5 from the filing fees paid by the parties.

6 (e) The claimant shall pay a filing fee of \$450 to the  
7 department upon the filing of the claim and the failure to do so  
8 shall result in the claim being rejected for filing. Each party  
9 to the claim shall pay a filing fee of \$450 to the department  
10 within twenty days of being served with the claim. Each party  
11 to a claim shall be assessed a non-refundable processing fee by  
12 the department in the amount of \$50. The non-refundable  
13 processing fee shall be retained from each party's filing fee,  
14 and shall be used to defray the administrative costs of the  
15 design claims conciliation panel program.

16 (f) After the panel has made a final decision on a claim,  
17 or after a final disposition of the claim has been made without  
18 a hearing before the panel, the department shall return any  
19 moneys remaining after all panel costs have been paid, to the  
20 respective parties on a pro rata basis.

21 (g) The office and meeting space, secretarial and clerical  
22 assistance, office equipment, and office supplies for the panel



1 shall be furnished by the department. The chairperson may  
2 designate any alternative meeting place or site for the hearing.

3 (h) The board of professional engineers, architects,  
4 surveyors, and landscape architects shall each prepare a list of  
5 design professionals along with their respective specialties.  
6 These design professionals shall be eligible to serve as  
7 consultants to the panel in their respective fields. Panel  
8 members may consult with other legal, design, and insurance  
9 specialists.

10 **§ -4 Waiver of filing fee.** (a) If any party to a claim  
11 cannot pay the required filing fee, the party may file with the  
12 director a motion to waive the filing fee. The motion to waive  
13 the filing fee shall be accompanied by an affidavit in a format  
14 prescribed by the department, showing in detail:

- 15 (1) The party's inability to pay the filing fee;  
16 (2) The party's belief that the party is entitled to  
17 redress; and  
18 (3) A statement of the issues that the party intends to  
19 present at the hearing before a design claims  
20 conciliation panel.



1 (b) The director shall decide on the motion to waive the  
2 filing fee as expeditiously as possible, and no oral arguments  
3 shall be permitted.

4 (c) If the director grants the motion to waive the filing  
5 fee, the party may proceed without further application to the  
6 director or panel, and without payment of the filing fee. If  
7 the motion is denied, the director shall state the reasons for  
8 the denial in writing. The director shall promptly provide the  
9 party with a filed copy of the director's order granting or  
10 denying the motion.

11 (d) If a motion to waive the filing fee is denied by the  
12 director, the party may seek judicial review under section  
13 91-14.

14 (e) If the director denies a party's motion to waive the  
15 filing fee, the party shall pay the filing fee within thirty  
16 days after the denial of the motion, unless the party has filed  
17 an appeal under section 91-14. If the party has filed an appeal  
18 under section 91-14, the party may proceed without payment of  
19 the filing fee, until such time as a final judicial  
20 determination is rendered.

21 (f) If the party files an appeal under section 91-14, and  
22 the court upholds the director's denial of the aggrieved party's



1 motion to waive the filing fee, the party shall pay the filing  
2 fee within thirty days after the court's affirmation of the  
3 denial. If the court determines that the party's motion for  
4 waiver of the filing fee was improperly denied, the party shall  
5 be entitled to proceed without payment of the filing fee.

6       **§ -5 Review by panel required; notice; presentation of**  
7 **claims; request for a more definite statement of the claim. (a)**  
8 Effective January 1, 2008, any person or the person's  
9 representative claiming that a tort has been committed by a  
10 design professional shall submit a statement of the claim to the  
11 design claim conciliation panel before a suit based on the claim  
12 may be commenced in any court of this State. Claims shall be  
13 submitted to the design claim conciliation panel in writing.  
14 The claimant shall set forth facts upon which the claim is based  
15 and shall include the names of all parties against whom the  
16 claim is or may be made who are then known to the claimant.

17       (b) Within five business days thereafter the panel shall  
18 give notice of the claim and the statement of the claim, by  
19 certified mail, to all design professionals and others who are  
20 or may be parties to the claim and shall furnish copies of  
21 written claims to these persons. The notice shall set forth a  
22 date, not more than twenty days after mailing the notice, within



1 which any design professional against whom a claim is made shall  
2 file a written response to the claim, and a date and time, not  
3 less than fourteen days following the last date for filing a  
4 response, for a hearing of the panel. The notice shall describe  
5 the nature and purpose of the panel's proceedings and shall  
6 designate the place of the meeting. The times originally set  
7 forth in the notice may be enlarged by the chairperson, on due  
8 notice to all parties, for good cause.

9 (c) If the statement of the claim in the notice is so  
10 vague or ambiguous that any party receiving notice of the claim  
11 cannot reasonably be required to frame a written response, the  
12 party may submit a written request to the chairperson for a more  
13 definite statement before filing the written response. Copies  
14 of the request shall be provided to the panel, the claimant, and  
15 other affected parties. The request, which shall be ex parte  
16 and stay the proceedings of the panel until notice of the  
17 chairperson's decision is given to the panel and all parties,  
18 shall specify the defects complained of and the details desired.  
19 The chairperson may deny, grant, or modify the request at the  
20 chairperson's own discretion, without the necessity of a  
21 hearing, although the chairperson may reach a decision after  
22 consulting with the panel or the claimant. The chairperson



1 shall provide notice of the decision to the panel, the claimant,  
2 and other affected parties. If the request is granted and the  
3 claimant fails to provide a more definite statement of the claim  
4 within five days after notice of the decision, the panel may  
5 make an order as it deems just. This subsection shall not be  
6 used as a tactic to delay the proceedings.

7       **§ -6 Certificate of consultation.** (a) Any claim filed  
8 with the design claim conciliation panel under this chapter  
9 shall be accompanied by a certificate that declares one of the  
10 following:

11       (1) That the claimant or the claimant's attorney has  
12           consulted with a design professional who is licensed  
13           to practice in this State or any other state, who is  
14           knowledgeable and experienced in Hawaii building codes  
15           and construction practices and the professional  
16           standard of care in Hawaii, and who is knowledgeable  
17           and experienced in the same specialty as the design  
18           professional against whom the primary claim is made,  
19           and that the claimant or claimant's attorney has  
20           concluded on the basis of the consultation that there  
21           is a reasonable and meritorious cause for filing the  
22           claim. If the claimant or the claimant's attorney is



1 not able to consult with a design professional in the  
2 same specialty as the design professional against whom  
3 the primary claim is made, the claimant or claimant's  
4 attorney may consult with a design professional who is  
5 licensed in this State or in any other state, who is  
6 knowledgeable and experienced in Hawaii building codes  
7 and construction practices and the professional  
8 standard of care in Hawaii, and who is knowledgeable  
9 and experienced in a specialty that is as closely  
10 related as practicable to the specialty of the design  
11 professional against whom the primary claim is made.  
12 The design professional consulted by the claimant or  
13 the claimant's attorney may not be a party to the  
14 case, nor be compelled to testify or otherwise  
15 participate in the hearing before the design claim  
16 conciliation panel;

17 (2) That the claimant or the claimant's attorney was  
18 unable to obtain the consultation required by  
19 paragraph (1) because a statute of limitations would  
20 impair the action and that the certificate required by  
21 paragraph (1) could not be obtained before the  
22 impairment of the action. If a certificate is



1           executed pursuant to this paragraph, the certificate  
2           required by paragraph (1) shall be filed by the  
3           claimant or the claimant's attorney within ninety days  
4           after filing the claim; or

5           (3) That the claimant or the claimant's attorney was  
6           unable to obtain the consultation required by  
7           paragraph (1) after the claimant or the claimant's  
8           attorney had made a good faith attempt to obtain the  
9           consultation and the design professional contacted  
10          would not agree to such a consultation. For purposes  
11          of this paragraph, "good faith attempt" refers to the  
12          responsibility of a claimant or claimant's attorney to  
13          make reasonable efforts to contact a design  
14          professional for the purpose of reviewing the  
15          circumstances upon which a claim is based. The  
16          claimant or claimant's attorney may contact design  
17          professionals by letter, telephone, facsimile, or  
18          other electronic means of communication. If the  
19          design professional does not respond within a  
20          reasonable time, the claimant or claimant's attorney  
21          may submit its claim to the design claim conciliation  
22          panel along with a certificate declaring the



1 nonresponse to claimant's good faith attempt. A "good  
2 faith attempt" shall ultimately be evaluated in light  
3 of the goal of having a qualified design professional  
4 assist the claimant or claimant's attorney in  
5 understanding the basis of the claim, and the  
6 determination shall depend upon the circumstances of  
7 each individual case.

8 (b) For the purposes of this section, the claimant or the  
9 claimant's attorney shall not be required to disclose the names  
10 of any design professional consulted to fulfill the requirements  
11 of subsection (a) to any of the other parties to the claim. The  
12 design claims conciliation panel may require the claimant or the  
13 claimant's attorney to disclose the name of any design  
14 professional consulted to fulfill the requirements of subsection  
15 (a). No disclosure of the name of any design professional  
16 consulted to fulfill the requirements of subsection (a) shall be  
17 made to any of the other parties to the claim; provided that the  
18 design claim conciliation panel may contact the design  
19 professional to determine if the requirements of subsection (a)  
20 were met.



1 (c) Unless a certificate is filed pursuant to subsection  
2 (a), the claim shall not be received for filing by the design  
3 claim conciliation panel.

4 **§ -7 Design claim conciliation panel hearing; fact-**  
5 **finding; evidence; voluntary settlement.** (a) Every claim of a  
6 tort against a design professional shall be heard by the design  
7 claim conciliation panel within thirty days after the last date  
8 for filing a response. No persons other than the panel,  
9 witnesses, and consultants called by the panel, and the persons  
10 listed in section -8 shall be present except with the  
11 permission of the chairperson. The panel, in its discretion,  
12 may conduct an inquiry of a party, witness, or consultant  
13 without the presence of any or all parties.

14 (b) The hearing shall be informal. Chapters 91 and 92  
15 shall not apply. The panel may require a stenographic record of  
16 all or part of its proceedings for the use of the panel, but the  
17 record shall not be made available to the parties. The panel  
18 may receive any oral or documentary evidence. Questioning of  
19 parties, witnesses, and consultants may be conducted by the  
20 panel, and the panel, in its discretion, may permit any party,  
21 or any counsel for a party to question other parties, witnesses,  
22 or consultants. The panel may designate who, among the parties,



1 shall have the burden of going forward with the evidence with  
2 respect to the issues as it may consider, and unless otherwise  
3 designated by the panel, the burden shall initially rest with  
4 the claimant at the commencement of the hearing.

5 (c) The panel may require by subpoena the appearance and  
6 testimony of witnesses and the production of documentary  
7 evidence. When subpoena power is utilized, notice shall be  
8 given to all parties. The testimony of witnesses may be taken  
9 either orally before the panel or by deposition. In cases of  
10 refusal to obey a subpoena issued by the panel, the panel may  
11 invoke the aid of any circuit court in the State, which may  
12 issue an order requiring compliance with the subpoena. Failure  
13 to obey the order may be punished by the court as a contempt  
14 thereof. Any member of the panel, the director, or any person  
15 designated by the director may sign subpoenas. Any member of  
16 the panel may administer oaths and affirmations, examine  
17 witnesses, and receive evidence. Notwithstanding these powers,  
18 the panel shall attempt to secure the voluntary appearance,  
19 testimony, and cooperation of parties, witnesses, and  
20 consultants without coercion.

21 (d) At the hearing of the panel and in arriving at its  
22 opinion the panel shall consider, but not be limited to,



1 statements or testimony of witnesses, project records, and other  
2 records kept in the usual course of the practice of the design  
3 professional without the necessity for other identification or  
4 authentication, statement of fact, or opinion on a subject  
5 contained in a published treatise, periodical, book, or  
6 pamphlet, or statements of experts without the necessity of the  
7 experts appearing at the hearing. The panel, upon the  
8 application of any party or upon its own decision, may appoint  
9 as a consultant, an impartial and qualified design professional,  
10 or other professional person or expert to testify before the  
11 panel or to conduct any necessary professional or expert  
12 examination of the claimant or relevant evidentiary matter and  
13 to report to or testify as a witness thereto. Such a consultant  
14 shall not be compensated or reimbursed except for travel and  
15 living expenses to be paid as provided in section -3. Except  
16 for the production of records kept in the usual course of the  
17 practice of the design professional, discovery by the parties  
18 shall not be allowed.

19 During the hearing and at any time prior to the rendition  
20 of an advisory decision pursuant to section -9, the panel may  
21 encourage the parties to settle or otherwise dispose of the case  
22 voluntarily.



1           **§ -8 Design claim conciliation panel hearing; persons**  
2 **attending.** Unless excluded or excused by the panel, the  
3 following persons shall attend hearings before the panel:

- 4           (1) The party or parties making the claim;  
5           (2) The design professional against whom the claim is made  
6                 or representatives thereof; other than counsel,  
7                 authorized to act for the design professional; or  
8           (3) Counsel for the parties, if any.

9           **§ -9 Design claim conciliation panel hearing; decisions.**

10 (a) Within thirty days after the completion of a hearing, the  
11 design claim conciliation panel shall file a written advisory  
12 decision with the department and shall thereupon mail copies to  
13 all parties concerned, and their counsel. The panel shall  
14 decide the issue of liability and shall state its conclusions in  
15 writing.

16           (b) After a finding of liability, the design claim  
17 conciliation panel shall decide the amount of damages, if any,  
18 which should be awarded in the case. The decision as to damages  
19 shall include in simple, concise terms a division as to which  
20 portion of the damages recommended are attributable to the  
21 design professional, economic losses and noneconomic losses;  
22 provided the panel may not recommend punitive damages.



1 (c) The decision shall be signed by all members of the  
2 design claim conciliation panel; provided that any member of the  
3 panel may file a written concurring or dissenting opinion.

4 (d) The advisory decision required by this section need  
5 not be filed if the claim is settled or otherwise disposed of  
6 before the decision is written or filed.

7 **§ -10 Expungement of records; liability insurance rates.**

8 (a) Upon a decision by the design claim conciliation panel  
9 finding for the design professional pursuant to section  
10 -9(a), the design professional may apply to the panel for  
11 expungement of all records of the related proceedings. The  
12 panel shall expunge all records if a majority of the panel finds  
13 that the complaint is fraudulent or frivolous.

14 (b) No insurer providing professional liability insurance  
15 for a design professional shall increase any premium rate for  
16 the design professional on the basis of the filing of a tort  
17 claim against the design professional that is determined by the  
18 design claims conciliation panel to be fraudulent or frivolous.

19 **§ -11 Subsequent litigation; excluded evidence.** The  
20 claimant may institute litigation based upon the claim in an  
21 appropriate court only after a party to a design claim



1 conciliation panel hearing rejects the decision of the panel, or  
2 after the twelve-month period under section -15 has expired.

3 No statement made in the course of the hearing of the  
4 design claim conciliation panel shall be admissible in evidence  
5 either as an admission, to impeach the credibility of a witness,  
6 or for any other purpose in any trial of the action; provided  
7 that the statements may be admissible for the purpose of section  
8 -16. No decision, conclusion, finding, or recommendation of  
9 the design claim conciliation panel on the issue of liability or  
10 on the issue of damages shall be admitted into evidence in any  
11 subsequent trial, nor shall any party to the design claim  
12 conciliation panel hearing, or the counsel or other  
13 representative of the party, refer or comment thereon in an  
14 opening statement, an argument, or at any other time, to the  
15 court or jury; provided that the decision, conclusion, finding,  
16 or recommendation may be admissible for the purpose of section  
17 -16.

18 **§ -12 Arbitration; subsequent litigation.** Any person or  
19 the person's representative claiming that a tort has been  
20 committed by a design professional or any design professional  
21 against whom a claim has been made may elect to bypass the court  
22 annexed arbitration program under section 601-20 after the claim



1 has been submitted to the design claim conciliation panel and  
2 the panel has rendered a decision or has not reached a decision  
3 within the tolling period of the statute of limitations under  
4 section -15.

5 **§ -13 Submission of claim to an alternative dispute**

6 **resolution provider.** (a) Any claim initially filed with the  
7 design claim conciliation panel may be subsequently submitted to  
8 an alternative dispute resolution provider upon the written  
9 agreement of all of the parties to the claim and with the  
10 written approval of the director. The director shall approve  
11 the alternative dispute resolution provider and the alternative  
12 dispute resolution procedures.

13 (b) The parties shall comply with the procedures  
14 established by the alternative dispute resolution provider and  
15 approved by the director. If a party does not comply with those  
16 procedures, any other party may file a motion with the director  
17 to have the claim resubmitted to the design claim conciliation  
18 panel.

19 (c) Within thirty days after the completion of the  
20 alternative dispute resolution process, the alternative dispute  
21 resolution provider shall notify all parties concerned, their  
22 counsel, and the representative of each design professional's



1 liability insurance carrier authorized to act for the carrier,  
2 as appropriate, that the alternative dispute resolution process  
3 has been completed.

4 (d) The claimant may institute litigation based upon the  
5 claim in an appropriate court only if:

6 (1) The parties were not able to resolve the entire claim  
7 through the alternative dispute resolution process and  
8 the matter has not been resubmitted to the design  
9 claim conciliation panel pursuant to subsection (b);  
10 or

11 (2) The claim has not been resolved through the  
12 alternative dispute resolution process after twelve  
13 months from the date the claim was filed with the  
14 approved alternative dispute resolution provider.

15 (e) No statement made in the course of the approved  
16 alternative dispute resolution process shall be admissible in  
17 evidence as an admission, to impeach the credibility of a  
18 witness, or for any other purpose in any trial of the action.  
19 No decision, conclusion, finding, or recommendation of the  
20 approved alternative dispute resolution provider on the issue of  
21 liability or on the issue of damages shall be admitted into  
22 evidence in any subsequent trial, nor shall any party to the



1 approved alternative dispute resolution hearing, their counsel,  
2 or other representative of the party, refer or comment thereon  
3 in an opening statement, in an argument, or at any time, to the  
4 court or jury.

5       **§ -14 Immunity of panel members from liability.** No  
6 member of a design claim conciliation panel shall be liable in  
7 damages for libel, slander, or other defamation of character of  
8 any party to a design claim conciliation panel proceeding for  
9 any action taken or any decision, conclusion, finding, or  
10 recommendation made by the member while acting within the  
11 member's capacity as a member of a design claim conciliation  
12 panel under this chapter.

13       **§ -15 Statute of limitations tolled.** The filing of the  
14 claim with the design claim conciliation panel or with an  
15 approved alternative dispute resolution provider shall toll any  
16 applicable statute of limitations, and any such statute of  
17 limitations shall remain tolled until sixty days after the date  
18 of the decision of the panel or the notification of completion  
19 from the approved alternative dispute resolution provider is  
20 mailed or delivered to the parties. If a decision by the design  
21 claim conciliation panel is not reached within twelve months, or  
22 the alternative dispute resolution process is not completed



1 within twelve months, the statute of limitations shall resume  
2 running and the party filing the claim may commence a suit based  
3 on the claim in any appropriate court of this State. The panel  
4 or the approved alternative dispute resolution provider shall  
5 notify all parties in writing of this provision.

6       **§ -16 Duty to cooperate; assessment of costs and fees.**

7 It shall be the duty of every person who files a claim with the  
8 design claim conciliation panel, every design professional  
9 against whom the claim is made, and every insurance carrier or  
10 other person providing professional tort liability insurance for  
11 the design professional, to cooperate with the design claim  
12 conciliation panel for the purpose of achieving a prompt, fair,  
13 and just disposition or settlement of the claim; provided that  
14 cooperation shall not prejudice the substantive rights of those  
15 persons.

16       Any party may apply to the panel to have the costs of the  
17 action assessed against any party for failure to cooperate with  
18 the panel. The panel may award costs, or a portion thereof,  
19 including attorney's fees, witness fees, including those of  
20 expert witnesses, filing fees, and costs of the design claim  
21 conciliation panel hearing to the party applying therefor.



1           In determining whether any person has failed to cooperate  
2 in good faith, the panel shall consider, but is not limited to,  
3 the following:

4           (1) The attendance of the persons at the hearing of the  
5 design claim conciliation panel;

6           (2) The extent to which representatives of parties and  
7 counsel representing parties came to panel hearings  
8 with knowledge of the claims and defenses and  
9 authority to negotiate a settlement or other  
10 disposition of the claim;

11           (3) The testimony of members of the panel as to the facts  
12 of the person's participation in the panel hearing;

13           (4) The extent of the person's cooperation in providing  
14 the panel with documents and testimony called for by  
15 the panel;

16           (5) The reasons advanced by the person so charged for not  
17 fully cooperating or negotiating; and

18           (6) The failure of the person to submit any required fees  
19 to the department, as required by this chapter.

20           The party against whom costs are awarded may appeal the  
21 award to the circuit court. The court may affirm or remand the  
22 case with instructions for further proceedings, or it may



1 reverse or modify the award if the substantial rights of the  
2 petitioners may have been prejudiced because the award is  
3 characterized as an abuse of discretion.

4       **§ -17 Annual report.** The director shall prepare and  
5 submit to the legislature annually, no later than twenty days  
6 prior to the convening of each regular session, a report  
7 containing the director's evaluation of the operation and  
8 effects of this chapter. The report shall include a summary of  
9 the claims brought before the design claim conciliation panel  
10 and the disposition of the claims, a description and summary of  
11 the work of the panel under this chapter, an appraisal of the  
12 effectiveness of this chapter in securing prompt and fair  
13 disposition of design tort claims, a review of the number and  
14 outcomes of claims brought under section -5 and  
15 recommendations for changes, modifications or repeal of this  
16 chapter or parts thereof with accompanying reasons and data."

17       SECTION 3. This Act does not affect rights and duties that  
18 matured, penalties that were incurred, and proceedings that were  
19 begun, before its effective date.

20       SECTION 4. This Act shall take effect on January 1, 2008.



H.B. NO. 1518  
H.D. 1  
S.D. 2  
C.D. 1

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APPROVED this 21 day of JUN , 2007

  
✓ ACTING GOVERNOR OF THE STATE OF HAWAII