HOUSE BILL 345

D3 4lr1191

By: **Delegates Rosenberg, Clippinger, Holmes, and Hough**
Introduced and read first time: January 22, 2014
Assigned to: Judiciary

A BILL ENTITLED

AN ACT concerning

Courts – Certificate of Merit – Provider of Professional Services

FOR the purpose of altering the definition of "claim", for purposes of certain provisions of law requiring a person who originally files a certain claim in a circuit court against certain professionals to file a certificate of a qualified expert, to include a certain claim against a certain person or entity through which professional services were performed; altering the definition of "qualified expert", for purposes of certain provisions of law requiring a person who originally files a certain claim in a circuit court against certain professions to file a certificate of a qualified expert, to exclude an individual who is a certain licensed or certified professional under the laws of another jurisdiction; requiring the contents of the certificate to include a statement from a qualified expert that the licensed professional, or a certain person or entity through which professional services were performed, failed to meet a certain standard; providing for the application of this Act; and generally relating to certain negligent actions.

BY repealing and reenacting, with amendments,
Article – Courts and Judicial Proceedings
Section 3–2C–01 and 3–2C–02
Annotated Code of Maryland
(2013 Replacement Volume and 2013 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Courts and Judicial Proceedings

3–2C–01.

(a) In this subtitle the following words have the meanings indicated.

EXPLANATION: **CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.**
[Brackets**]** indicate matter deleted from existing law.

(b) "Claim" means a civil action, including an original claim, counterclaim, cross–claim, or third–party claim, originally filed in a circuit court or United States District Court against a licensed professional or the employer, partnership, or other **PERSON OR** entity through which the **[**licensed professional performed**]** professional services **WERE PERFORMED** that is based on **[**the licensed professional's**] AN** alleged negligent act or omission in rendering professional services, within the scope of **[**the professional's**] A PROFESSIONAL** license, permit, or certificate, for others.

(c) "Licensed professional" means:

(1) An architect licensed under Title 3 of the Business Occupations and Professions Article;

(2) An interior designer certified under Title 8 of the Business Occupations and Professions Article;

(3) A landscape architect licensed under Title 9 of the Business Occupations and Professions Article;

(4) A professional engineer licensed under Title 14 of the Business Occupations and Professions Article; or

(5) A professional land surveyor or property line surveyor licensed under Title 15 of the Business Occupations and Professions Article.

(d) (1) "Qualified expert" means an individual who is a licensed **MARYLAND** professional**[**, or comparably licensed or certified professional under the laws of another jurisdiction,**]** knowledgeable in the accepted standard of care in the same discipline as the licensed professional against whom a claim is filed.

(2) "Qualified expert" does not include:

(i) A party to the claim;

(ii) An employee or partner of a party;

(iii) An employee or stockholder of a professional corporation of which a party is a stockholder; or

(iv) A person having a financial interest in the outcome of the claim.

3–2C–02.

(a) (1) Except as provided in subsections (b) and (c) of this section, a claim shall be dismissed, without prejudice, if the claimant fails to file a certificate of a qualified expert with the court.

(2) A certificate of a qualified expert shall:

(i) Contain a statement from a qualified expert attesting that the licensed professional**, OR THE EMPLOYER, PARTNERSHIP, OR OTHER PERSON OR ENTITY THROUGH WHICH PROFESSIONAL SERVICES WERE PERFORMED,** failed to meet an applicable standard of professional care;

(ii) Subject to the provisions of subsections (b) and (c) of this section, be filed within 90 days after the claim is filed; and

(iii) Be served on all other parties to the claim or the parties' attorneys of record in accordance with the Maryland Rules.

(b) (1) Upon written request made by the claimant within 30 days of the date the claim is served, the defendant shall produce documentary evidence that would be otherwise discoverable, if the documentary evidence is reasonably necessary in order to obtain a certificate of a qualified expert.

(2) The time for filing a certificate of a qualified expert shall begin on the date on which the defendant's production of the documentary evidence under paragraph (1) of this subsection is completed.

(3) The defendant's failure to produce the requested documentary evidence under paragraph (1) of this subsection shall constitute a waiver of the requirement that the claimant file a certificate of a qualified expert as to that defendant.

(c) (1) Upon written request by the claimant and a finding of good cause by the court, the court may waive or modify the requirement for the filing of the certificate of a qualified expert.

(2) The time for filing the certificate of merit of a qualified expert shall be suspended until the court rules on the request and, absent an order to the contrary, the certificate shall be filed within 90 days of the court's ruling.

(d) Discovery by the defendant as to the basis of the certificate of a qualified expert shall be available.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any cause of action arising before the effective date of this Act.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2014.