SENATE BILL 636

D36lr2423

By: Senator Cassilly

Introduced and read first time: February 5, 2016

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

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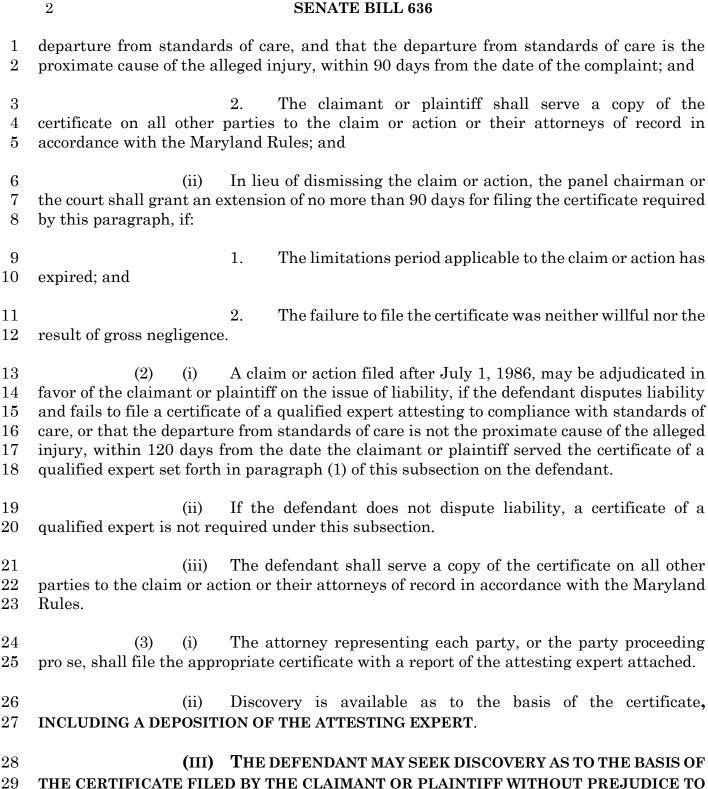
Medical Malpractice - Discovery

- FOR the purpose of clarifying that the discovery available as to the basis of a certain certificate of a qualified expert in a claim filed with the Health Care Alternative 4 Dispute Resolution Office includes a deposition of the attesting expert; establishing that a defendant in a claim filed with the Office may seek discovery as to the basis of the certificate filed by the claimant or plaintiff without prejudice to later discovery if the attesting expert is designated as a trial expert; prohibiting a deposition of a defendant health care provider from being required until the claimant has filed and served a certain certificate of a qualified expert; providing for the application of this Act; and generally relating to discovery in health care malpractice actions.
- 12 BY repealing and reenacting, with amendments,
- 13 Article – Courts and Judicial Proceedings
- 14 Section 3–2A–04(b) and 3–2A–05(b)
- 15 Annotated Code of Maryland
- 16 (2013 Replacement Volume and 2015 Supplement)
- 17 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND.
- That the Laws of Maryland read as follows: 18

Article - Courts and Judicial Proceedings

- 20 3-2A-04.
- 21 (b) Unless the sole issue in the claim is lack of informed consent:
- 22 (1) Except as provided in item (ii) of this paragraph, a claim (i) 1.
- 23 or action filed after July 1, 1986, shall be dismissed, without prejudice, if the claimant or
- plaintiff fails to file a certificate of a qualified expert with the Director attesting to 24





(4) A health care provider who attests in a certificate of a qualified expert or who testifies in relation to a proceeding before an arbitration panel or a court concerning compliance with or departure from standards of care may not devote annually more than 20 percent of the expert's professional activities to activities that directly involve testimony

LATER DISCOVERY IF THE ATTESTING EXPERT IS DESIGNATED AS A TRIAL EXPERT.

in personal injury claims.

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- 1 An extension of the time allowed for filing a certificate of a qualified (5)2 expert under this subsection shall be granted for good cause shown. 3 In the case of a claim or action against a physician, the Director shall forward copies of the certificates filed under paragraphs (1) and (2) of this subsection to the 4 State Board of Physicians. 5 6 For purposes of the certification requirements of this subsection for any 7 claim or action filed on or after July 1, 1989: 8 (i) A party may not serve as a party's expert; and The certificate may not be signed by: 9 (ii) 10 1. A party; 11 2. An employee or partner of a party; or 12 or stockholder of any 3. An employee professional corporation of which the party is a stockholder. 13 3-2A-05. 14 15 (b) (1) The provisions of §§ 3–212 through 3–217 of this title are applicable to 16 proceedings under this subtitle. 17 Except for the provisions of the Maryland Rules relating to time (2)(I)for the completion of discovery, the provisions of the Maryland Rules relating to discovery 18 are applicable to proceedings under this subtitle. 19 20 A DEPOSITION OF A DEFENDANT HEALTH CARE PROVIDER (II)21MAY NOT BE REQUIRED UNTIL THE CLAIMANT HAS FILED THE CERTIFICATE OF A 22QUALIFIED EXPERT REQUIRED UNDER § 3–2A–04(B) OF THIS SUBTITLE AND SERVED 23THE CERTIFICATE ON ALL OTHER PARTIES TO THE CLAIM OR ACTION OR ON THE 24ATTORNEYS OF RECORD IN ACCORDANCE WITH THE MARYLAND RULES. 25(III) All discovery in any action under this subtitle shall be completed 26within 270 days from the date on which all defendants have been served, unless extended 27 by the panel chairman for good cause shown.
- 28 (3) Properly authenticated hospital records and the records of treating 29 health care providers are admissible without the necessity of calling the physician, subject 30 to reasonable notice and the right of the opposing party to depose.

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 claim filed before the effective date of this Act.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect 5 October 1, 2016.