

SENATE BILL 773

D3

9lr2391
CF 9lr3142

By: **Senator Smith**

Introduced and read first time: February 4, 2019

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 28, 2019

CHAPTER _____

1 AN ACT concerning

2 **Health Care Malpractice Qualified Expert – Qualification**

3 FOR the purpose of ~~exempting certain documents relating to a health care professional's~~
4 ~~income from discovery and admission on the question of whether the health care~~
5 ~~provider qualifies as an expert in a certain health care malpractice proceeding;~~
6 altering the percentage of an expert's professional activities that may have been
7 devoted to certain activities that directly involve testimony in personal injury claims
8 in order for the expert to qualify to testify in relation to a certain proceeding;
9 ~~providing that a certain attestation creates a presumption that a health care~~
10 ~~provider is qualified to testify in a certain proceeding concerning compliance with or~~
11 ~~departure from standards of care, under certain circumstances; providing that a~~
12 ~~certain presumption may be rebutted only in a certain manner; prohibiting a court~~
13 ~~from dismissing a claim or action with prejudice solely because of a certain failure of~~
14 ~~a party; establishing that a certain health care provider shall be deemed to have met~~
15 ~~a certain requirement during the pendency of a claim under certain circumstances;~~
16 authorizing a party to ~~commence a new~~ refile the same claim or action once within a
17 certain time frame if a ~~previous~~ claim or action was dismissed under certain
18 circumstances; defining a certain term; providing for the application of this Act; and
19 generally relating to qualified experts in health care malpractice proceedings.

20 BY repealing and reenacting, with amendments,
21 Article – Courts and Judicial Proceedings
22 Section 3–2A–04(b)(3) and (4)
23 Annotated Code of Maryland
24 (2013 Replacement Volume and 2018 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



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

3 **Article – Courts and Judicial Proceedings**

4 3–2A–04.

5 (b) Unless the sole issue in the claim is lack of informed consent:

6 (3) (i) The attorney representing each party, or the party proceeding
7 pro se, shall file the appropriate certificate with a report of the attesting expert attached.

8 (ii) ~~{Discovery}~~ ~~SUBJECT TO SUBPARAGRAPH (III) OF THIS~~
9 ~~PARAGRAPH, DISCOVERY~~ is available as to the basis of the certificate.

10 ~~(III) DOCUMENTS REFLECTING INCOME EARNED BY A HEALTH~~
11 ~~CARE PROFESSIONAL AND TAX OR FINANCIAL DOCUMENTS OF A HEALTH CARE~~
12 ~~PROFESSIONAL ARE NOT DISCOVERABLE AND ARE NOT ADMISSIBLE AS EVIDENCE~~
13 ~~ON THE ISSUE OF WHETHER THE HEALTH CARE PROVIDER QUALIFIES AS AN EXPERT~~
14 ~~UNDER THIS SECTION.~~

15 (4) (I) IN THIS PARAGRAPH, “PROFESSIONAL ACTIVITIES” MEANS
16 ALL ACTIVITIES ARISING FROM OR RELATED TO THE HEALTH CARE, ~~REGARDLESS OF~~
17 ~~WHETHER THE ACTIVITIES CONTRIBUTE TO OR ADVANCE A HEALTH CARE~~
18 ~~PROVIDER’S PROFESSION.~~

19 (II) A health care provider who attests in a certificate of a qualified
20 expert or who testifies in relation to a proceeding before an arbitration panel or a court
21 concerning compliance with or departure from standards of care may not [devote annually]
22 ~~HAVE DEVOTED~~ more than [20 percent] ~~50%~~ 25% of the expert’s professional activities to
23 activities that directly involve testimony in personal injury claims DURING THE
24 ~~CALENDAR YEAR WHEN THE ALLEGED EVENT OR OMISSION GIVING RISE TO THE~~
25 ~~CAUSE OF ACTION OCCURRED~~ 12 MONTHS IMMEDIATELY BEFORE THE DATE WHEN
26 THE CLAIM WAS FIRST FILED.

27 ~~(III) A HEALTH CARE PROVIDER’S ATTESTATION OF~~
28 ~~COMPLIANCE WITH THE REQUIREMENTS OF THIS SUBSECTION CREATES A~~
29 ~~PRESUMPTION THAT, IF OTHERWISE QUALIFIED UNDER THE MARYLAND RULES,~~
30 ~~THE HEALTH CARE PROVIDER IS QUALIFIED TO TESTIFY IN A PROCEEDING BEFORE~~
31 ~~AN ARBITRATION PANEL OR A COURT CONCERNING COMPLIANCE WITH OR~~
32 ~~DEPARTURE FROM STANDARDS OF CARE.~~

~~(IV) THE PRESUMPTION UNDER SUBPARAGRAPH (III) OF THIS PARAGRAPH MAY BE REBUTTED ONLY BY CLEAR AND CONVINCING EVIDENCE THAT THE HEALTH CARE PROVIDER'S ATTESTATION WAS KNOWINGLY FALSE.~~

~~(V) A COURT MAY NOT DISMISS A CLAIM OR ACTION WITH PREJUDICE SOLELY BECAUSE A QUALIFIED EXPERT FAILED TO COMPLY WITH THE REQUIREMENTS OF THIS SUBSECTION.~~

(III) ONCE A HEALTH CARE PROVIDER MEETS THE REQUIREMENTS OF SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE HEALTH CARE PROVIDER SHALL BE DEEMED TO BE A QUALIFIED EXPERT AS TO SUBPARAGRAPH (II) OF THIS PARAGRAPH DURING THE PENDENCY OF THE CLAIM.

~~(VI) (IV) IF A COURT DISMISSES A CLAIM OR ACTION BECAUSE A QUALIFIED EXPERT FAILED TO COMPLY WITH THE REQUIREMENTS OF THIS SUBSECTION, A PARTY MAY COMMENCE A NEW UNLESS THERE IS A SHOWING OF BAD FAITH, A PARTY MAY REFILE THE SAME CLAIM OR ACTION BEFORE THE LATER OF:~~

- 1. THE EXPIRATION OF THE APPLICABLE PERIOD OF LIMITATION; OR
- 2. ~~180~~ 120 DAYS AFTER THE DATE OF THE DISMISSAL.

(V) A CLAIM OR AN ACTION MAY BE REFILED UNDER SUBPARAGRAPH (IV) OF THIS PARAGRAPH ONLY ONCE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply to any proceeding filed ~~or pending~~ on or after the effective date of this Act.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2019.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.