
By: Delegates Doory, Montague, Bissett, Krysiak, Love, Jacobs, Harkins, and Barve
Introduced and read first time: February 2, 1996
Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Certificate of Merit - Licensed Professionals**

3 FOR the purpose of requiring that a person who files a claim against certain licensed or
4 certified professionals file a certificate of a qualified expert; specifying the contents
5 of a certificate of a qualified expert; requiring that a certificate of a qualified expert
6 be filed within a certain period of time and be served on certain persons; providing
7 certain exceptions; establishing who is eligible to serve as a qualified expert;
8 defining certain terms; providing for the application of this Act; and generally
9 relating to malpractice claims and filing a certificate of a qualified expert.

10 BY adding to

11 Article - Courts and Judicial Proceedings
12 Section 3-2C-01 and 3-2C-02, to be under the new subtitle "Subtitle 2C.
13 Malpractice Claims Against Licensed Professionals"
14 Annotated Code of Maryland
15 (1995 Replacement Volume and 1995 Supplement)

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

18 **Article - Courts and Judicial Proceedings**

19 SUBTITLE 2C. MALPRACTICE CLAIMS AGAINST LICENSED PROFESSIONALS.

20 3-2C-01.

21 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
22 INDICATED.

23 (B) "CLAIM" MEANS A CIVIL ACTION AGAINST A LICENSED PROFESSIONAL
24 THAT IS:

25 (1) BASED ON THE LICENSED PROFESSIONAL'S ALLEGED NEGLIGENCE,
26 MISCONDUCT, ERROR, OR OMISSION IN RENDERING PROFESSIONAL SERVICES; AND

27 (2) ASSERTED IN A COMPLAINT, CROSS CLAIM, COUNTERCLAIM OR
28 THIRD PARTY COMPLAINT.

29 (C) "LICENSED PROFESSIONAL" MEANS:

2

1 (1) AN ARCHITECT LICENSED UNDER TITLE 3 OF THE BUSINESS
2 OCCUPATIONS AND PROFESSIONS ARTICLE;

3 (2) AN INTERIOR DESIGNER CERTIFIED UNDER TITLE 8 OF THE
4 BUSINESS OCCUPATIONS AND PROFESSIONS ARTICLE;

5 (3) A LANDSCAPE ARCHITECT LICENSED UNDER TITLE 9 OF THE
6 BUSINESS OCCUPATIONS AND PROFESSIONS ARTICLE;

7 (4) A PROFESSIONAL ENGINEER LICENSED UNDER TITLE 14 OF THE
8 BUSINESS OCCUPATIONS AND PROFESSIONS ARTICLE; AND

9 (5) A PROFESSIONAL LAND SURVEYOR LICENSED UNDER TITLE 15 OF
10 THE BUSINESS OCCUPATIONS AND PROFESSIONS ARTICLE.

11 (D) (1) "QUALIFIED EXPERT" MEANS A PERSON WHO:

12 (I) IS A LICENSED PROFESSIONAL IN THE STATE IN THE SAME
13 PROFESSION AS THE LICENSED PROFESSIONAL AGAINST WHOM A CLAIM IS FILED;

14 (II) DEVOTES AT LEAST 80% OF THE PERSON'S PROFESSIONAL OR
15 OCCUPATIONAL TIME TO THE PRACTICE OF THE PROFESSION; AND

16 (III) DOES NOT DEVOTE MORE THAN 20% OF THE PERSON'S
17 PROFESSIONAL OR OCCUPATIONAL ACTIVITIES ANNUALLY TO ACTIVITIES THAT
18 DIRECTLY RELATE TO MALPRACTICE CLAIMS.

19 (2) "QUALIFIED EXPERT" DOES NOT INCLUDE:

20 (I) A PARTY TO THE CLAIM;

21 (II) AN EMPLOYEE OR PARTNER OF A PARTY;

22 (III) AN EMPLOYEE OR STOCKHOLDER OF ANY PROFESSIONAL
23 CORPORATION OF WHICH A PARTY IS A STOCKHOLDER; OR

24 (IV) ANY PERSON HAVING A FINANCIAL INTEREST IN THE
25 OUTCOME OF THE CLAIM.

26 3-2C-02.

27 (A) (1) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, A CLAIM
28 FILED AFTER OCTOBER 1, 1996 SHALL BE DISMISSED, WITHOUT PREJUDICE, IF THE
29 CLAIMANT FAILS TO FILE A CERTIFICATE OF A QUALIFIED EXPERT WITH THE
30 COURT.

31 (2) THE CERTIFICATE OF A QUALIFIED EXPERT SHALL:

32 (I) CONTAIN A STATEMENT BY THE QUALIFIED EXPERT
33 ATTESTING THAT THE LICENSED PROFESSIONAL AGAINST WHOM THE CLAIM IS
34 FILED FAILED TO MEET THE PROFESSIONAL STANDARDS OF CARE AND THAT THE
35 DEPARTURE FROM THE PROFESSIONAL STANDARDS OF CARE CAUSED THE
36 ALLEGED INJURY;

3

1 (II) BE FILED WITHIN 90 DAYS AFTER THE DATE THE CLAIMANT
2 FILED THE CLAIM; AND

3 (III) BE SERVED ON ALL OTHER PARTIES TO THE CLAIM OR THEIR
4 ATTORNEYS OF RECORD IN ACCORDANCE WITH THE MARYLAND RULES.

5 (B) THE COURT SHALL GRANT AN EXTENSION OF NO MORE THAN 90 DAYS
6 FOR FILING A CERTIFICATE OF A QUALIFIED EXPERT IF:

7 (1) THE LIMITATIONS PERIOD APPLICABLE TO THE CLAIM HAS
8 EXPIRED; AND

9 (2) THE FAILURE TO FILE THE CERTIFICATE WAS NEITHER WILLFUL
10 NOR THE RESULT OF GROSS NEGLIGENCE.

11 (C) THE COURT SHALL GRANT AN EXTENSION OF THE TIME ALLOWED FOR
12 FILING A CERTIFICATE OF A QUALIFIED EXPERT UNDER THIS SECTION UPON A
13 FINDING OF GOOD CAUSE.

14 (D) DISCOVERY AS TO THE BASIS OF THE CERTIFICATE OF A QUALIFIED
15 EXPERT SHALL BE AVAILABLE.

16 SECTION 2. AND BE IT FURTHER ENACTED, That this Act may not be
17 construed to extend or otherwise modify any applicable statute of limitation or statute of
18 repose.

19 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall be construed
20 only prospectively and may not be applied or interpreted to have any effect on or
21 application to any claim filed before the effective date of this Act.

22 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
23 October 1, 1996.