
By: Delegates Doory, Montague, Preis, Fry, Harkins, Jacobs, Love, M. Burns, and Krysiak

Introduced and read first time: February 21, 1997

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Certificates of Merit - Licensed Professionals**

3 FOR the purpose of requiring a person who files a certain claim against certain
4 professionals to file a certificate of a qualified expert; specifying the contents of the
5 certificate; requiring the certificate to be filed within a certain period of time and be
6 served on certain persons; providing certain exceptions; establishing qualifications
7 of a qualified expert; defining certain terms; providing for the application of this
8 Act; and generally relating to malpractice actions against certain professionals.

9 BY adding to

10 Article - Courts and Judicial Proceedings
11 Section 3-2C-01 and 3-2C-02 to be under the new subtitle "Subtitle 2C.
12 Malpractice Claims Against Licensed Professionals"
13 Annotated Code of Maryland
14 (1995 Replacement Volume and 1996 Supplement)

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

17 **Article - Courts and Judicial Proceedings**

18 SUBTITLE 2C. MALPRACTICE CLAIMS AGAINST LICENSED PROFESSIONALS.

19 3-2C-01.

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

22 (B) "CLAIM" MEANS A CIVIL ACTION FILED IN CIRCUIT COURT AGAINST A
23 LICENSED PROFESSIONAL THAT IS BASED ON THE LICENSED PROFESSIONAL'S
24 ALLEGED ACT OR OMISSIONS IN RENDERING PROFESSIONAL SERVICES FOR
25 OTHERS.

26 (C) "LICENSED PROFESSIONAL" MEANS:

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

2

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

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

5 (4) A PROFESSIONAL ENGINEER LICENSED UNDER TITLE 14 OF THE
6 BUSINESS OCCUPATIONS AND PROFESSIONS ARTICLE; OR

7 (5) A PROFESSIONAL LAND SURVEYOR OR PROPERTY LINE SURVEYOR
8 LICENSED UNDER TITLE 15 OF THE BUSINESS OCCUPATIONS AND PROFESSIONS
9 ARTICLE.

10 (D) (1) "QUALIFIED EXPERT" MEANS AN INDIVIDUAL WHO:

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

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

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

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

19 (I) A PARTY TO THE CLAIM;

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

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

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

25 3-2C-02.

26 (A) (1) EXCEPT AS PROVIDED IN SUBSECTIONS (B) AND (C) OF THIS
27 SECTION, A CLAIM SHALL BE DISMISSED, WITHOUT PREJUDICE, IF THE CLAIMANT
28 FAILS TO FILE A CERTIFICATE OF A QUALIFIED EXPERT WITH THE COURT.

29 (2) A CERTIFICATE OF A QUALIFIED EXPERT SHALL:

30 (I) CONTAIN A STATEMENT FROM A QUALIFIED EXPERT
31 ATTESTING THAT THE LICENSED PROFESSIONAL AGAINST WHOM THE CLAIM IS
32 FILED FAILED TO MEET PROFESSIONAL STANDARDS OF CARE;

33 (II) BE FILED WITHIN 90 DAYS AFTER THE CLAIM IS FILED; AND

34 (III) BE SERVED ON ALL OTHER PARTIES TO THE CLAIM OR THE
35 PARTIES' ATTORNEYS OF RECORD IN ACCORDANCE WITH THE MARYLAND RULES.

3

1 (B) UPON WRITTEN REQUEST BY THE CLAIMANT, THE COURT MAY GRANT
2 AN EXTENSION OF NO MORE THAN 90 DAYS FOR FILING THE CERTIFICATE OF A
3 QUALIFIED EXPERT, IF:

4 (1) THE CLAIMANT FAILED TO FILE THE CERTIFICATE OF A QUALIFIED
5 EXPERT WITHIN 90 DAYS AFTER THE CLAIM WAS FILED; AND

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

8 (C) (1) UPON WRITTEN REQUEST BY THE CLAIMANT AND A FINDING OF
9 GOOD CAUSE BY THE COURT, THE COURT MAY WAIVE OR MODIFY THE
10 REQUIREMENT FOR THE FILING OF A CERTIFICATE OF A QUALIFIED EXPERT
11 UNDER THIS SECTION.

12 (2) THE TIME FOR FILING THE CERTIFICATE SHALL BE SUSPENDED
13 UNTIL THE COURT RULES ON THE REQUEST AND, ABSENT AN ORDER TO THE
14 CONTRARY, THE CERTIFICATE SHALL BE FILED WITHIN 90 DAYS FROM THE DATE OF
15 THE COURT'S RULING.

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

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

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

24 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
25 October 1, 1997.