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

Introduced and read first time: February 21, 1997

Assigned to: Judiciary

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 21, 1997

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CHAPTER \_\_\_\_

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; providing for certain discovery; defining certain terms;  
8 providing for the application of this Act; and generally relating to malpractice  
9 actions against certain professionals.

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 1996 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.

2

1 (B) "CLAIM" MEANS A CIVIL ACTION, INCLUDING AN ORIGINAL CLAIM,  
2 COUNTERCLAIM, CROSS-CLAIM, OR THIRD-PARTY CLAIM, FILED IN CIRCUIT COURT  
3 AGAINST A LICENSED PROFESSIONAL THAT IS BASED ON THE LICENSED  
4 PROFESSIONAL'S ALLEGED ACT OR ~~OMISSIONS~~ OMISSION IN RENDERING  
5 PROFESSIONAL SERVICES, WITHIN THE SCOPE OF THE PROFESSIONAL'S LICENSE,  
6 PERMIT, OR CERTIFICATE, FOR OTHERS.

7 (C) "LICENSED PROFESSIONAL" MEANS:

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

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

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

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

16 (5) A PROFESSIONAL LAND SURVEYOR OR PROPERTY LINE SURVEYOR  
17 LICENSED OR PRACTICING UNDER A PERMIT UNDER TITLE 15 OF THE BUSINESS  
18 OCCUPATIONS AND PROFESSIONS ARTICLE.

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

20 (I) IS A LICENSED PROFESSIONAL, OR A COMPARABLY LICENSED  
21 OR CERTIFIED PROFESSIONAL UNDER THE LAWS OF ANOTHER STATE OR THE  
22 DISTRICT OF COLUMBIA, IN THE SAME PROFESSION AS THE LICENSED  
23 PROFESSIONAL AGAINST WHOM A CLAIM IS FILED; AND

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

26 ~~(III)~~ (II) DOES NOT DEVOTE MORE THAN 20% OF THE  
27 INDIVIDUAL'S PROFESSIONAL OR OCCUPATIONAL ACTIVITIES ANNUALLY TO  
28 ACTIVITIES THAT DIRECTLY RELATE TO EXPERT SERVICES FOR MALPRACTICE  
29 CLAIMS.

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

31 (I) A PARTY TO THE CLAIM;

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

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

35 (IV) ANY PERSON HAVING A FINANCIAL INTEREST IN THE  
36 OUTCOME OF THE CLAIM.

3

1 3-2C-02.

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

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

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

9 (II) BE FILED WITHIN 90 DAYS AFTER THE CLAIM IS FILED OR  
10 WITHIN THE PERIOD OF TIME PROVIDED IN SUBSECTION (C)(3) OF THIS SECTION,  
11 WHICHEVER IS LATER; AND

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

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

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

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

21 ~~(C) (1) UPON WRITTEN REQUEST BY THE CLAIMANT AND A FINDING OF~~  
22 ~~GOOD CAUSE BY THE COURT, THE COURT MAY WAIVE OR MODIFY THE~~  
23 ~~REQUIREMENT FOR THE FILING OF A CERTIFICATE OF A QUALIFIED EXPERT~~  
24 ~~UNDER THIS SECTION.~~

25 (C) (1) UPON WRITTEN REQUEST BY THE CLAIMANT AND A FINDING OF  
26 GOOD CAUSE BY THE COURT, THE COURT:

27 (I) SHALL ALLOW THE CLAIMANT TO REQUEST, WITHIN 30 DAYS  
28 AFTER THE DATE THE CLAIM IS FILED, DOCUMENTARY INFORMATION THAT  
29 WOULD BE OTHERWISE DISCOVERABLE IF THE INFORMATION IS REASONABLY  
30 NECESSARY IN ORDER TO OBTAIN A CERTIFICATE OF A QUALIFIED EXPERT; OR

31 (II) MAY WAIVE OR MODIFY THE REQUIREMENT FOR THE FILING  
32 OF THE CERTIFICATE OF A QUALIFIED EXPERT.

33 (2) THE TIME FOR FILING THE CERTIFICATE SHALL BE SUSPENDED  
34 UNTIL THE COURT RULES ON THE REQUEST AND, ABSENT AN ORDER TO THE  
35 CONTRARY, THE CERTIFICATE SHALL BE FILED WITHIN THE LATER OF:

36 (I) 90 DAYS FROM THE DATE OF THE COURT'S RULING; OR

37 (II) 30 DAYS OF THE DATE THAT THE PARTY OR PERSON FROM  
38 WHOM INFORMATION DESCRIBED IN THIS SECTION IS SOUGHT MEETS THE  
39 REQUIREMENTS OF A COURT ORDER UNDER THIS SECTION.

4

1 (D) DISCOVERY BY THE DEFENDANT AS TO THE BASIS OF THE CERTIFICATE  
2 OF A QUALIFIED EXPERT SHALL BE AVAILABLE.

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

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

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