

HOUSE BILL 188

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HB 1347/97 - JUD

1998 Regular Session
8lr0064
CF 8lr1552

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

Introduced and read first time: January 22, 1998

Assigned to: Judiciary

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 17, 1998

CHAPTER _____

1 AN ACT concerning

2 **Certificates of Merit - Licensed Professionals**

3 FOR the purpose of requiring a person who originally files a certain claim in a circuit
4 court against certain professionals to file a certificate of a qualified expert;
5 specifying the contents of the certificate; requiring the certificate to be filed
6 within a certain period of time and be served on certain persons; providing
7 certain exceptions; establishing qualifications of a qualified expert; providing for
8 certain discovery; defining certain terms; providing for the application of this
9 Act; and generally relating to malpractice 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 1997 Supplement)

16 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF

17 MARYLAND, That the Laws of Maryland read as follows:

1 **Article - Courts and Judicial Proceedings**

2 SUBTITLE 2C. MALPRACTICE CLAIMS AGAINST LICENSED PROFESSIONALS.

3 3-2C-01.

4 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
5 INDICATED.6 (B) "CLAIM" MEANS A CIVIL ACTION, INCLUDING AN ORIGINAL CLAIM,
7 COUNTERCLAIM, CROSS-CLAIM, OR THIRD-PARTY CLAIM, ORIGINALLY FILED IN
8 CIRCUIT COURT AGAINST A LICENSED PROFESSIONAL THAT IS BASED ON THE
9 LICENSED PROFESSIONAL'S ALLEGED NEGLIGENT ACT OR OMISSION IN RENDERING
10 PROFESSIONAL SERVICES, WITHIN THE SCOPE OF THE PROFESSIONAL'S LICENSE,
11 PERMIT, OR CERTIFICATE, FOR OTHERS.

12 (C) "LICENSED PROFESSIONAL" MEANS:

13 (1) AN ARCHITECT LICENSED UNDER TITLE 3 OF THE BUSINESS
14 OCCUPATIONS AND PROFESSIONS ARTICLE;15 (2) AN INTERIOR DESIGNER CERTIFIED UNDER TITLE 8 OF THE
16 BUSINESS OCCUPATIONS AND PROFESSIONS ARTICLE;17 (3) A LANDSCAPE ARCHITECT LICENSED UNDER TITLE 9 OF THE
18 BUSINESS OCCUPATIONS AND PROFESSIONS ARTICLE;19 (4) A PROFESSIONAL ENGINEER LICENSED UNDER TITLE 14 OF THE
20 BUSINESS OCCUPATIONS AND PROFESSIONS ARTICLE; OR21 (5) A PROFESSIONAL LAND SURVEYOR OR PROPERTY LINE SURVEYOR
22 LICENSED UNDER TITLE 15 OF THE BUSINESS OCCUPATIONS AND PROFESSIONS
23 ARTICLE.

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

25 ~~(I) IS A LICENSED PROFESSIONAL, OR A COMPARABLY LICENSED~~
26 ~~OR CERTIFIED PROFESSIONAL UNDER THE LAWS OF ANOTHER STATE OR THE~~
27 ~~DISTRICT OF COLUMBIA, IN THE SAME PROFESSION AS THE LICENSED~~
28 ~~PROFESSIONAL AGAINST WHOM A CLAIM IS FILED; AND~~29 ~~(II) DOES NOT DEVOTE MORE THAN 20% OF THE INDIVIDUAL'S~~
30 ~~PROFESSIONAL OR OCCUPATIONAL ACTIVITIES ANNUALLY TO ACTIVITIES THAT~~
31 ~~DIRECTLY RELATE TO EXPERT SERVICES FOR MALPRACTICE CLAIMS IS A LICENSED~~
32 ~~PROFESSIONAL, OR COMPARABLY LICENSED OR CERTIFIED PROFESSIONAL UNDER~~
33 ~~THE LAWS OF ANOTHER JURISDICTION, KNOWLEDGEABLE IN THE ACCEPTED~~
34 ~~STANDARD OF CARE IN THE SAME DISCIPLINE AS THE LICENSED PROFESSIONAL~~
35 ~~AGAINST WHOM A CLAIM IS FILED.~~

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

- 1 (I) A PARTY TO THE CLAIM;
- 2 (II) AN EMPLOYEE OR PARTNER OF A PARTY;
- 3 (III) AN EMPLOYEE OR STOCKHOLDER OF A PROFESSIONAL
4 CORPORATION OF WHICH A PARTY IS A STOCKHOLDER; OR
- 5 (IV) A PERSON HAVING A FINANCIAL INTEREST IN THE OUTCOME
6 OF THE CLAIM.

7 3-2C-02.

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

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

12 (I) CONTAIN A STATEMENT FROM A QUALIFIED EXPERT
13 ATTESTING THAT THE LICENSED PROFESSIONAL AGAINST WHOM THE CLAIM IS
14 FILED FAILED TO MEET AN APPLICABLE STANDARD OF PROFESSIONAL STANDARDS
15 ~~OF CARE~~;

16 (II) SUBJECT TO THE PROVISIONS OF SUBSECTIONS (B) AND (C) OF
17 THIS SECTION, BE FILED WITHIN 90 DAYS AFTER THE CLAIM IS FILED ~~OR WITHIN~~
18 ~~THE PERIOD OF TIME PROVIDED IN SUBSECTION (C)(2) OF THIS SECTION,~~
19 ~~WHICHEVER IS LATER~~; AND

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

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

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

27 ~~(2) THE FAILURE TO FILE THE CERTIFICATE WAS NEITHER WILLFUL~~
28 ~~NOR THE RESULT OF GROSS NEGLIGENCE.~~

29 ~~(C) (1) UPON WRITTEN REQUEST BY THE CLAIMANT AND A FINDING OF~~
30 ~~GOOD CAUSE BY THE COURT, THE COURT:~~

31 ~~(i) SHALL ALLOW THE CLAIMANT TO REQUEST, WITHIN 30 DAYS~~
32 ~~AFTER THE DATE THE CLAIM IS FILED, DOCUMENTARY INFORMATION THAT WOULD~~
33 ~~BE OTHERWISE DISCOVERABLE IF THE INFORMATION IS REASONABLY NECESSARY~~
34 ~~IN ORDER TO OBTAIN A CERTIFICATE OF A QUALIFIED EXPERT; OR~~

35 ~~(ii) MAY WAIVE OR MODIFY THE REQUIREMENT FOR THE FILING~~
36 ~~OF THE CERTIFICATE OF A QUALIFIED EXPERT.~~

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

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

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

8 (B) (1) UPON WRITTEN REQUEST MADE BY THE CLAIMANT WITHIN 30 DAYS
9 OF THE DATE THE CLAIM IS SERVED, THE DEFENDANT SHALL PRODUCE
10 DOCUMENTARY EVIDENCE THAT WOULD BE OTHERWISE DISCOVERABLE, IF THE
11 DOCUMENTARY EVIDENCE IS REASONABLY NECESSARY IN ORDER TO OBTAIN A
12 CERTIFICATE OF A QUALIFIED EXPERT.

13 (2) THE TIME FOR FILING A CERTIFICATE OF A QUALIFIED EXPERT
14 SHALL BEGIN ON THE DATE ON WHICH THE DEFENDANT'S PRODUCTION OF THE
15 DOCUMENTARY EVIDENCE UNDER PARAGRAPH (1) OF THIS SUBSECTION IS
16 COMPLETED.

17 (3) THE DEFENDANT'S FAILURE TO PRODUCE THE REQUESTED
18 DOCUMENTARY EVIDENCE UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL
19 CONSTITUTE A WAIVER OF THE REQUIREMENT THAT THE CLAIMANT FILE A
20 CERTIFICATE OF A QUALIFIED EXPERT AS TO THAT DEFENDANT.

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 THE CERTIFICATE OF A QUALIFIED EXPERT.

24 (2) THE TIME FOR FILING THE CERTIFICATE OF MERIT OF A QUALIFIED
25 EXPERT SHALL BE SUSPENDED UNTIL THE COURT RULES ON THE REQUEST AND,
26 ABSENT AN ORDER TO THE CONTRARY, THE CERTIFICATE SHALL BE FILED WITHIN 90
27 DAYS OF THE COURT'S RULING.

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

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

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

36 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
37 October 1, 1998.

