

SENATE BILL 213

Unofficial Copy
D3
HB 1347/97 - JUD

1998 Regular Session
8r1552
CF HB 188

By: **Senators Haines, Forehand, and Jimeno**
Introduced and read first time: January 29, 1998
Assigned to: Judicial Proceedings

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
5 the certificate; requiring the certificate to be filed within a certain period of time
6 and be served on certain persons; providing certain exceptions; establishing
7 qualifications of a qualified expert; providing for certain discovery; defining
8 certain terms; providing for the application of this Act; and generally relating to
9 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:

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, INCLUDING AN ORIGINAL CLAIM,
24 COUNTERCLAIM, CROSS-CLAIM, OR THIRD-PARTY CLAIM, FILED IN CIRCUIT COURT
25 AGAINST A LICENSED PROFESSIONAL THAT IS BASED ON THE LICENSED
26 PROFESSIONAL'S ALLEGED ACT OR OMISSION IN RENDERING PROFESSIONAL
27 SERVICES, WITHIN THE SCOPE OF THE PROFESSIONAL'S LICENSE, PERMIT, OR
28 CERTIFICATE, FOR OTHERS.

1 (C) "LICENSED PROFESSIONAL" MEANS:

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

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

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

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

10 (5) A PROFESSIONAL LAND SURVEYOR OR PROPERTY LINE SURVEYOR
11 LICENSED UNDER TITLE 15 OF THE BUSINESS OCCUPATIONS AND PROFESSIONS
12 ARTICLE.

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

14 (I) IS A LICENSED PROFESSIONAL, OR A COMPARABLY LICENSED
15 OR CERTIFIED PROFESSIONAL UNDER THE LAWS OF ANOTHER STATE OR THE
16 DISTRICT OF COLUMBIA, IN THE SAME PROFESSION AS THE LICENSED
17 PROFESSIONAL AGAINST WHOM A CLAIM IS FILED; AND

18 (II) DOES NOT DEVOTE MORE THAN 20% OF THE INDIVIDUAL'S
19 PROFESSIONAL OR OCCUPATIONAL ACTIVITIES ANNUALLY TO ACTIVITIES THAT
20 DIRECTLY RELATE TO EXPERT SERVICES FOR MALPRACTICE CLAIMS.

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

22 (I) A PARTY TO THE CLAIM;

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

24 (III) AN EMPLOYEE OR STOCKHOLDER OF A PROFESSIONAL
25 CORPORATION OF WHICH A PARTY IS A STOCKHOLDER; OR

26 (IV) A PERSON HAVING A FINANCIAL INTEREST IN THE OUTCOME
27 OF THE CLAIM.

28 3-2C-02.

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

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

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

4 (II) BE FILED WITHIN 90 DAYS AFTER THE CLAIM IS FILED OR
5 WITHIN THE PERIOD OF TIME PROVIDED IN SUBSECTION (C)(2) OF THIS SECTION,
6 WHICHEVER IS LATER; AND

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

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

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

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

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

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

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

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

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

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

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

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

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

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