

SENATE BILL 213

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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

Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: March 25, 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:

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.

1 (B) "CLAIM" MEANS A CIVIL ACTION, INCLUDING AN ORIGINAL CLAIM,
2 COUNTERCLAIM, CROSS-CLAIM, OR THIRD-PARTY CLAIM, ORIGINALLY FILED IN
3 CIRCUIT COURT AGAINST A LICENSED PROFESSIONAL THAT IS BASED ON THE
4 LICENSED PROFESSIONAL'S ALLEGED NEGLIGENT ACT OR 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 UNDER TITLE 15 OF THE BUSINESS OCCUPATIONS AND PROFESSIONS
18 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) DOES NOT DEVOTE MORE THAN 20% OF THE INDIVIDUAL'S~~
25 ~~PROFESSIONAL OR OCCUPATIONAL ACTIVITIES ANNUALLY TO ACTIVITIES THAT~~
26 ~~DIRECTLY RELATE TO EXPERT SERVICES FOR MALPRACTICE CLAIMS IS A LICENSED~~
27 ~~PROFESSIONAL, OR COMPARABLY LICENSED OR CERTIFIED PROFESSIONAL UNDER~~
28 ~~THE LAWS OF ANOTHER JURISDICTION, KNOWLEDGEABLE IN THE ACCEPTED~~
29 ~~STANDARD OF CARE IN THE SAME DISCIPLINE AS THE LICENSED PROFESSIONAL~~
30 ~~AGAINST WHOM A CLAIM IS FILED.~~

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

32 (I) A PARTY TO THE CLAIM;

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

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

1 (IV) A PERSON HAVING A FINANCIAL INTEREST IN THE OUTCOME
2 OF THE CLAIM.

3 3-2C-02.

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

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

8 (I) CONTAIN A STATEMENT FROM A QUALIFIED EXPERT
9 ATTESTING THAT THE LICENSED PROFESSIONAL AGAINST WHOM THE CLAIM IS
10 FILED FAILED TO MEET AN APPLICABLE STANDARD OF PROFESSIONAL STANDARDS
11 OF CARE;

12 (II) SUBJECT TO THE PROVISIONS OF SUBSECTIONS (B) AND (C) OF
13 THIS SECTION, BE FILED WITHIN 90 DAYS AFTER THE CLAIM IS FILED OR WITHIN
14 THE PERIOD OF TIME PROVIDED IN SUBSECTION (C)(2) OF THIS SECTION,
15 WHICHEVER IS LATER; AND

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

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

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

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

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 WOULD~~
29 ~~BE OTHERWISE DISCOVERABLE IF THE INFORMATION IS REASONABLY NECESSARY~~
30 ~~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~~

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

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

9 (2) THE TIME FOR FILING A CERTIFICATE OF A QUALIFIED EXPERT
10 SHALL BEGIN ON THE DATE ON WHICH THE DEFENDANT'S PRODUCTION OF THE
11 DOCUMENTARY EVIDENCE UNDER PARAGRAPH (1) OF THIS SUBSECTION IS
12 COMPLETED.

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

17 (C) (1) UPON WRITTEN REQUEST BY THE CLAIMANT AND A FINDING OF
18 GOOD CAUSE BY THE COURT, THE COURT MAY WAIVE OR MODIFY THE
19 REQUIREMENT FOR THE FILING OF THE CERTIFICATE OF A QUALIFIED EXPERT.

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

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

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

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

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

