

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 143

(Senator Haines, *et al.*)

Judicial Proceedings

Judiciary

Courts - Certificate of Merit - Employer of Licensed Professional

This bill applies the requirement to file a certificate of merit in claims against licensed design professionals to claims against the employer of a licensed professional. The bill also specifies that the requirement to file a certificate of merit applies to claims filed in a U.S. District Court.

The bill does not extend or otherwise modify any statute of limitations or statute of repose and only applies prospectively to claims filed after the bill's October 1, 2005 effective date.

Fiscal Summary

State Effect: None. The change is not expected to have a significant impact on judicial operations or expenditures.

Local Effect: None. See above.

Small Business Effect: The bill would require that individuals bringing certain lawsuits against professional associations file a certificate of merit and may result in the dismissal of some claims, but its effect on small business is expected to be minimal.

Analysis

Current Law: A claim filed in a circuit court against a licensed professional, based on the licensed professional's alleged negligent act or omission in rendering professional services that are within the scope of the professional's license, must be dismissed unless

the claimant files a certificate of a qualified expert, within 90 days after the claim is filed, attesting that the professional failed to meet an applicable standard of care.

Licensed professional means:

- an architect;
- an interior designer;
- a landscape architect;
- a professional engineer; or
- a professional land surveyor or property line surveyor.

Qualified expert means an individual who is a licensed professional, or comparably licensed or certified professional under the laws of another jurisdiction, knowledgeable in the accepted standard of care of the discipline of the professional against whom the claim was filed. Qualified expert does not include: (1) a party to the claim; (2) an employee or partner of a party; (3) an employee or stockholder of a professional corporation of which a party is a stockholder; or (4) any person having a financial interest in the outcome of the claim.

Background: This bill legislatively reverses the Court of Appeals April 2004 holding in *Baltimore County v. RTKL Associates Inc.*, 380 Md. 670. Baltimore County entered into an agreement with RTKL Associates (RTKL) in which RTKL agreed to provide design development, construction documents, and bid assistance for a project in the county. RTKL subcontracted with Andrews, Miller & Associates (AMA) to perform certain engineering services associated with the grading of the property. The county survey crew subsequently discovered that the benchmarks that were set by AMA were off by 0.092 feet, requiring more dirt to be brought in, foundation walls to be disassembled and use of additional concrete and other changes to the grade. Baltimore County filed suit against RTKL and AMA for breach of contract and negligence. Although reversing and remanding on other grounds, the court held that although the law allows the corporate practice of architecture and other professions, only individuals must be licensed and therefore the requirement that a certificate of merit be filed does not apply to professional associations.

Additional Information

Prior Introductions: None.

Cross File: HB 404 (Delegate Dorry, *et al.*) – Judiciary.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Department of Legislative Services

Fiscal Note History: First Reader - February 9, 2005
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