

SENATE BILL 386

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5lr2205
CF HB 40

By: **Senator Hough**

Introduced and read first time: February 6, 2015

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Courts – Certificate of Merit – Provider of Professional Services**

3 FOR the purpose of requiring the contents of the certificate of a qualified expert to include
4 a statement from a qualified expert that the licensed professional failed to meet a
5 certain standard; making a certain clarifying change; providing for the application
6 of this Act; and generally relating to a certain certificate of merit for certain negligent
7 actions.

8 BY repealing and reenacting, without amendments,
9 Article – Courts and Judicial Proceedings
10 Section 3–2C–01
11 Annotated Code of Maryland
12 (2013 Replacement Volume and 2014 Supplement)

13 BY repealing and reenacting, with amendments,
14 Article – Courts and Judicial Proceedings
15 Section 3–2C–02
16 Annotated Code of Maryland
17 (2013 Replacement Volume and 2014 Supplement)

18 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
19 That the Laws of Maryland read as follows:

20 **Article – Courts and Judicial Proceedings**

21 3–2C–01.

22 (a) In this subtitle the following words have the meanings indicated.

23 (b) “Claim” means a civil action, including an original claim, counterclaim,
24 cross–claim, or third–party claim, originally filed in a circuit court or United States District

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Court against a licensed professional or the employer, partnership, or other entity through
2 which the licensed professional performed professional services that is based on the
3 licensed professional's alleged negligent act or omission in rendering professional services,
4 within the scope of the professional's license, permit, or certificate, for others.

5 (c) "Licensed professional" means:

6 (1) An architect licensed under Title 3 of the Business Occupations and
7 Professions Article;

8 (2) An interior designer certified under Title 8 of the Business Occupations
9 and Professions Article;

10 (3) A landscape architect licensed under Title 9 of the Business
11 Occupations and Professions Article;

12 (4) A professional engineer licensed under Title 14 of the Business
13 Occupations and Professions Article; or

14 (5) A professional land surveyor or property line surveyor licensed under
15 Title 15 of the Business Occupations and Professions Article.

16 (d) (1) "Qualified expert" means an individual who is a licensed professional,
17 or comparably licensed or certified professional under the laws of another jurisdiction,
18 knowledgeable in the accepted standard of care in the same discipline as the licensed
19 professional against whom a claim is filed.

20 (2) "Qualified expert" does not include:

21 (i) A party to the claim;

22 (ii) An employee or partner of a party;

23 (iii) An employee or stockholder of a professional corporation of which
24 a party is a stockholder; or

25 (iv) A person having a financial interest in the outcome of the claim.

26 3-2C-02.

27 (a) (1) Except as provided in subsections (b) and (c) of this section, a claim shall
28 be dismissed, **ON A MOTION TO DISMISS** without prejudice, if the claimant fails to file a
29 certificate of a qualified expert with the court.

30 (2) A certificate of a qualified expert shall:

1 (i) Contain a statement from a qualified expert attesting that the
2 licensed professional failed to meet an applicable standard of professional care AND
3 SUPERVISION;

4 (ii) Subject to the provisions of subsections (b) and (c) of this section,
5 be filed within 90 days after the claim is filed; and

6 (iii) Be served on all other parties to the claim or the parties'
7 attorneys of record in accordance with the Maryland Rules.

8 (b) (1) Upon written request made by the claimant within 30 days of the date
9 the claim is served, the defendant shall produce documentary evidence that would be
10 otherwise discoverable, if the documentary evidence is reasonably necessary in order to
11 obtain a certificate of a qualified expert.

12 (2) The time for filing a certificate of a qualified expert shall begin on the
13 date on which the defendant's production of the documentary evidence under paragraph (1)
14 of this subsection is completed.

15 (3) The defendant's failure to produce the requested documentary evidence
16 under paragraph (1) of this subsection shall constitute a waiver of the requirement that the
17 claimant file a certificate of a qualified expert as to that defendant.

18 (c) (1) Upon written request by the claimant and a finding of good cause by
19 the court, the court may waive or modify the requirement for the filing of the certificate of
20 a qualified expert.

21 (2) The time for filing the certificate of merit of a qualified expert shall be
22 suspended until the court rules on the request and, absent an order to the contrary, the
23 certificate shall be filed within 90 days of the court's ruling.

24 (d) Discovery by the defendant as to the basis of the certificate of a qualified
25 expert shall be available.

26 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to
27 apply only prospectively and may not be applied or interpreted to have any effect on or
28 application to any cause of action arising before the effective date of this Act.

29 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
30 October 1, 2015.