

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

Senate Bill 386 (Senator Hough)
Judicial Proceedings

Courts - Certificate of Merit - Provider of Professional Services

This bill alters the required content of a certificate of a qualified expert filed by a claimant in a claim against a licensed design professional or other specified related entity alleging a negligent act or omission by the licensed professional that is within the professional's license. Under the bill, the certificate must contain a statement from a qualified expert attesting that the licensed professional failed to meet the applicable standard of care *and supervision*.

The bill applies prospectively to causes of action arising on or after the bill's October 1, 2015 effective date.

Fiscal Summary

State Effect: The bill is procedural/technical and does not materially affect State finances.

Local Effect: The bill is procedural/technical and does not materially affect local finances.

Small Business Effect: Potential meaningful effect on small businesses that are subject to claims based on the supervision of an individual by a licensed professional that are eventually dismissed for failure to submit a certificate of merit.

Analysis

Current Law: A claim filed in a circuit court or U.S. District Court against a licensed professional, or the employer, partnership, or other entity through which the licensed professional performed professional services, 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: In *Heavenly Days Crematorium LLC v. Harris, Smariga and Associates, Inc.*, No. 128 (September Term 2011), the Maryland Court of Appeals reversed the decision of the Court of Special Appeals and held that an animal crematorium's case against a planning and engineering firm for breach of contract and professional negligence should not have been dismissed for failure to submit a certificate of merit from a qualified expert within the statutory time limits because the crematorium's complaint did not allege negligent acts or omissions of a licensed engineer. Though the complaint did involve negligence in services rendered by an engineering firm, the complaint did not identify a licensed engineer as the individual responsible for the alleged negligence and the employee involved in the majority of the allegedly negligent acts was not identified as a “licensed professional,” as defined in the Courts and Judicial Proceedings Article, § 3-2C-01.

The court noted that while it was premature to grant a motion to dismiss based on the crematorium's failure to file a certificate of merit of a qualified expert, a finding could be made that a certificate was required on a motion for summary judgment once the case is remanded to the trial court.

Additional Information

Prior Introductions: HB 345 of 2014 passed the House with amendments and received a hearing in the Senate Judicial Proceedings Committee. No further action was taken on the bill.

Cross File: HB 40 (Delegate Rosenberg) - Judiciary.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Legislative Services

Fiscal Note History: First Reader - February 8, 2015
min/kdm

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