

# HOUSE BILL 1581

D3

8lr2288  
CF SB 30

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By: **Delegates Vallario, Anderson, Angel, J. Lewis, Moon, and Sanchez**

Introduced and read first time: February 9, 2018

Assigned to: Judiciary

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 19, 2018

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Health Care Malpractice Qualified Expert – Limitation on Testimony in**  
3 **Personal Injury Claims ~~—Repeal~~**

4 FOR the purpose of ~~repealing~~ altering the requirement that a health care provider who  
5 attests in a certificate of a qualified expert or who testifies in relation to a proceeding  
6 before an arbitration panel or a court concerning compliance with or departure from  
7 standards of care devote no more than a certain percentage of the provider's  
8 professional activities to activities that directly involve testimony in personal injury  
9 claims; providing for the application of this Act; and generally relating to qualified  
10 experts in health care malpractice claims.

11 BY repealing and reenacting, with amendments,  
12 Article – Courts and Judicial Proceedings  
13 Section 3–2A–04(b)  
14 Annotated Code of Maryland  
15 (2013 Replacement Volume and 2017 Supplement)

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

18 **Article – Courts and Judicial Proceedings**

19 3–2A–04.

20 (b) Unless the sole issue in the claim is lack of informed consent:

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1           (1)   (i)   1.    Except as provided in item (ii) of this paragraph, a claim  
2 or action filed after July 1, 1986, shall be dismissed, without prejudice, if the claimant or  
3 plaintiff fails to file a certificate of a qualified expert with the Director attesting to  
4 departure from standards of care, and that the departure from standards of care is the  
5 proximate cause of the alleged injury, within 90 days from the date of the complaint; and

6                           2.    The claimant or plaintiff shall serve a copy of the  
7 certificate on all other parties to the claim or action or their attorneys of record in  
8 accordance with the Maryland Rules; and

9                           (ii)   In lieu of dismissing the claim or action, the panel chairman or  
10 the court shall grant an extension of no more than 90 days for filing the certificate required  
11 by this paragraph, if:

12                                   1.    The limitations period applicable to the claim or action has  
13 expired; and

14                                   2.    The failure to file the certificate was neither willful nor the  
15 result of gross negligence.

16           (2)   (i)    A claim or action filed after July 1, 1986, may be adjudicated in  
17 favor of the claimant or plaintiff on the issue of liability, if the defendant disputes liability  
18 and fails to file a certificate of a qualified expert attesting to compliance with standards of  
19 care, or that the departure from standards of care is not the proximate cause of the alleged  
20 injury, within 120 days from the date the claimant or plaintiff served the certificate of a  
21 qualified expert set forth in paragraph (1) of this subsection on the defendant.

22                           (ii)   If the defendant does not dispute liability, a certificate of a  
23 qualified expert is not required under this subsection.

24                           (iii)   The defendant shall serve a copy of the certificate on all other  
25 parties to the claim or action or their attorneys of record in accordance with the Maryland  
26 Rules.

27           (3)   (i)    The attorney representing each party, or the party proceeding  
28 pro se, shall file the appropriate certificate with a report of the attesting expert attached.

29                           (ii)   Discovery is available as to the basis of the certificate.

30           (4)   **(I)**   ~~¶~~A health care provider who attests in a certificate of a qualified  
31 expert or who testifies in relation to a proceeding before an arbitration panel or a court  
32 concerning compliance with or departure from standards of care may not ~~devote annually~~  
33 **HAVE DEVOTED** more than 20 percent of the expert's professional activities to activities  
34 that directly involve testimony in personal injury claims **DURING THE 12 MONTHS**  
35 **IMMEDIATELY PRECEDING THE DATE ON WHICH:**

1                   **1. THE CERTIFICATE OF A QUALIFIED EXPERT WAS**  
2 **FILED; OR**

3                   **2. THE EXPERT WAS DESIGNATED BY A PARTY TO**  
4 **TESTIFY BEFORE AN ARBITRATION PANEL OR A COURT, IF THE DESIGNATED EXPERT**  
5 **IS NOT THE PERSON WHO PREPARED THE CERTIFICATE OF A QUALIFIED EXPERT.**

6                   **(II) ONCE A HEALTH CARE PROVIDER MEETS THE**  
7 **REQUIREMENTS OF SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE HEALTH CARE**  
8 **PROVIDER MAY NOT BE DISQUALIFIED DURING THE PENDENCY OF THE CASE FOR**  
9 **EXCEEDING THE 20% LIMIT UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH.**

10                   ~~(5)~~ An extension of the time allowed for filing a certificate of a qualified  
11 expert under this subsection shall be granted for good cause shown.

12                   ~~{(6)}~~ ~~(5)~~ In the case of a claim or action against a physician, the Director  
13 shall forward copies of the certificates filed under paragraphs (1) and (2) of this subsection  
14 to the State Board of Physicians.

15                   ~~{(7)}~~ ~~(6)~~ For purposes of the certification requirements of this subsection  
16 for any claim or action filed on or after July 1, 1989:

17                   (i) A party may not serve as a party's expert; and

18                   (ii) The certificate may not be signed by:

19                   1. A party;

20                   2. An employee or partner of a party; or

21                   3. An employee or stockholder of any professional  
22 corporation of which the party is a stockholder.

23                   **SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply to any**  
24 **proceeding filed or pending on or after the effective date of this Act.**

25                   SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
26 October 1, 2018.