

# SENATE BILL 320

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CF 9lr1711

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By: **Senators Cassilly, Bailey, Eckardt, Gallion, Salling, and West**  
Introduced and read first time: January 30, 2019  
Assigned to: Judicial Proceedings

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## A BILL ENTITLED

1 AN ACT concerning

2 **Courts – Documentary Evidence – Protective Order**

3 FOR the purpose of authorizing a defendant in a malpractice claim against a licensed  
4 professional to move for a protective order to limit the disclosure of certain  
5 documentary evidence under certain circumstances; requiring a court, on a certain  
6 motion by the defendant, to review the claimant's request for documentary evidence  
7 and authorizing the court to issue a certain protective order for good cause shown;  
8 suspending the time for producing documentary evidence until the court makes a  
9 certain ruling; requiring the defendant to produce documentary evidence within a  
10 certain time frame absent an order to the contrary; providing for the application of  
11 this Act; and generally relating to qualified experts and documentary evidence.

12 BY repealing and reenacting, without amendments,  
13 Article – Courts and Judicial Proceedings  
14 Section 3–2C–01  
15 Annotated Code of Maryland  
16 (2013 Replacement Volume and 2018 Supplement)

17 BY repealing and reenacting, with amendments,  
18 Article – Courts and Judicial Proceedings  
19 Section 3–2C–02  
20 Annotated Code of Maryland  
21 (2013 Replacement Volume and 2018 Supplement)

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

24 **Article – Courts and Judicial Proceedings**

25 3–2C–01.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.  
[Brackets] indicate matter deleted from existing law.



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

2 (b) “Claim” means a civil action, including an original claim, counterclaim,  
3 cross-claim, or third-party claim, originally filed in a circuit court or United States District  
4 Court against a licensed professional or the employer, partnership, or other entity through  
5 which the licensed professional performed professional services that is based on the  
6 licensed professional’s alleged negligent act or omission in rendering professional services,  
7 within the scope of the professional’s license, permit, or certificate, for others.

8 (c) “Licensed professional” means:

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

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

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

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

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

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

23 (2) “Qualified expert” does not include:

24 (i) A party to the claim;

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

26 (iii) An employee or stockholder of a professional corporation of which  
27 a party is a stockholder; or

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

29 3-2C-02.

30 (a) (1) Except as provided in subsections (b) and (c) of this section, a claim shall  
31 be dismissed, without prejudice, if the claimant fails to file a certificate of a qualified expert  
32 with the court.

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

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

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] SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, ON**  
9 written request made by the claimant within 30 days of the date the claim is served, the  
10 defendant shall produce documentary evidence that would be otherwise discoverable, if the  
11 documentary evidence is reasonably necessary in order to obtain a certificate of a qualified  
12 expert.

13 (2) **(I) THE DEFENDANT MAY MOVE FOR A PROTECTIVE ORDER TO**  
14 **LIMIT THE DISCLOSURE OF DOCUMENTARY EVIDENCE REQUESTED UNDER THIS**  
15 **SUBSECTION, TO PROTECT THE DEFENDANT FROM ANNOYANCE, EMBARRASSMENT,**  
16 **OPPRESSION, OR UNDUE BURDEN OR EXPENSE.**

17 **(II) ON MOTION BY THE DEFENDANT UNDER THIS PARAGRAPH,**  
18 **THE COURT:**

19 **1. SHALL REVIEW THE CLAIMANT'S REQUEST FOR**  
20 **DOCUMENTARY EVIDENCE; AND**

21 **2. FOR GOOD CAUSE SHOWN, MAY ISSUE A PROTECTIVE**  
22 **ORDER SPECIFYING THE DOCUMENTARY EVIDENCE THAT THE DEFENDANT IS**  
23 **REQUIRED TO PRODUCE.**

24 **(III) 1. THE TIME FOR PRODUCING DOCUMENTARY**  
25 **EVIDENCE REQUESTED UNDER THIS SUBSECTION SHALL BE SUSPENDED UNTIL THE**  
26 **COURT RULES ON THE DEFENDANT'S MOTION FOR A PROTECTIVE ORDER.**

27 **2. ABSENT AN ORDER TO THE CONTRARY, THE**  
28 **DEFENDANT SHALL PRODUCE THE DOCUMENTARY EVIDENCE WITHIN 30 DAYS**  
29 **AFTER THE COURT RULES ON THE DEFENDANT'S MOTION FOR A PROTECTIVE**  
30 **ORDER.**

31 **(3) The time for filing a certificate of a qualified expert shall begin on the**  
32 **date on which the defendant's production of the documentary evidence under paragraph (1)**  
33 **OR (2) of this subsection is completed.**

1            ~~[(3)]~~ **(4)**        The defendant's failure to produce the requested documentary  
2 evidence under paragraph (1) **OR (2)** of this subsection shall constitute a waiver of the  
3 requirement that the claimant file a certificate of a qualified expert as to that defendant.

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

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

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

12          SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to  
13 apply only prospectively and may not be applied or interpreted to have any effect on or  
14 application to any claim filed before the effective date of this Act.

15          SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
16 October 1, 2019.