

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 848
Judiciary

(Delegate McComas, *et al.*)

Judicial Proceedings

Courts - Documentary Evidence - Protective Order

This bill authorizes a defendant to seek a protective order from the court limiting the disclosure of documentary evidence that is requested by a claimant who is seeking to obtain a certificate of a qualified expert, to protect the defendant from annoyance, embarrassment, oppression, or undue burden or expense. The bill applies prospectively to a claim filed on or after the bill's October 1, 2019 effective date.

Fiscal Summary

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

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

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: If a defendant makes a motion for a protective order, the court (1) must review the claimant's request for documentary evidence and (2) for good cause shown, may issue a protective order specifying the documentary evidence that the defendant is required to produce.

The bill's creation of and authorization for issuance of a protective order is incorporated into existing statutory provisions on time limits for filing a certificate of a qualified expert and failure to produce requested documentary evidence.

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. The term 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.

A defendant must produce documentary evidence that would otherwise be discoverable if the documentary evidence is reasonably necessary in order to obtain a certificate of a qualified expert. A defendant is subject to this requirement if the claimant made a written request for the evidence within 30 days of the date the claim is served. The time during which the claimant must file a certificate of a qualified expert begins when the defendant completes production of this documentary evidence. A defendant's failure to produce this documentary evidence constitutes a waiver of the requirement that the claimant file a certificate of a qualified expert with respect to the defendant.

The court may waive or modify the requirement for filing a certificate of merit of a qualified expert if a claimant makes a written request for waiver/modification and the court makes a finding of good cause for the waiver/modification. The time for filing the certificate must be suspended until the court rules on the request. Absent an order to the contrary, the certificate must be filed within 90 days of the court's ruling.

Discovery by the defendant as to the basis of the certificate of a qualified expert must be available.

Small Business Effect: The bill may have a meaningful effect on small businesses granted protective orders as a result of the bill.

Additional Information

Prior Introductions: None.

Cross File: SB 320 (Senator Cassilly, *et al.*) - Judicial Proceedings.

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 13, 2019
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