

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 858
Judiciary

(Delegate McComas, *et al.*)

Judicial Proceedings

Courts - Documentary Evidence - Protective Order

This bill authorizes a defendant in a malpractice claim against a “licensed professional” 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, 2020 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: “Licensed professional” means an architect; an interior designer; a landscape architect; a professional engineer; or a professional land surveyor or property line surveyor.

Generally, a claimant that files a claim against a licensed professional for an alleged negligent act or omission in rendering services that are within the scope of the professional’s license must also file a certificate of a “qualified expert” attesting that the licensed professional failed to meet the applicable standard of care. A court may waive this requirement upon written request of the claimant and for good cause shown. If a claimant is required to file a certificate and fails to do so in a timely manner, the court must dismiss the claim without prejudice.

On written request of the claimant, a defendant/licensed professional must produce any documentary evidence that is otherwise discoverable and reasonably necessary to obtain a certificate of a qualified expert. 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 filing of the certificate and associated steps in the process are subject to specified timelines and procedures. Also, discovery by the defendant as to the basis of the certificate of a qualified expert must be available.

“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.

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: HB 848 of 2019 passed the House with amendments and was referred to the Senate Judicial Proceedings Committee, but no further action was taken. Its cross file, SB 320, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken.

Designated Cross File: SB 249 (Senator Cassilly, *et al.*) - Judicial Proceedings.

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

Fiscal Note History: First Reader - February 5, 2020
rh/jkb Third Reader - March 16, 2020
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