

HOUSE BILL 858

D3
SB 320/19 – JPR

0lr1264
CF SB 249

By: **Delegates McComas, Anderson, Bartlett, Cardin, Chisholm, Hornberger, Lopez, Malone, Metzgar, and Shoemaker**

Introduced and read first time: February 3, 2020

Assigned to: Judiciary

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 providing for the application of this Act; and generally relating to qualified experts
9 and documentary evidence.

10 BY repealing and reenacting, without amendments,
11 Article – Courts and Judicial Proceedings
12 Section 3–2C–01
13 Annotated Code of Maryland
14 (2013 Replacement Volume and 2019 Supplement)

15 BY repealing and reenacting, with amendments,
16 Article – Courts and Judicial Proceedings
17 Section 3–2C–02
18 Annotated Code of Maryland
19 (2013 Replacement Volume and 2019 Supplement)

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

22 **Article – Courts and Judicial Proceedings**

23 3–2C–01.

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

(c) “Licensed professional” means:

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

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

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

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

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

(d) (1) “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 in the same discipline as the licensed professional against whom a claim is filed.

(2) “Qualified expert” does not include:

(i) A party to the claim;

(ii) An employee or partner of a party;

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

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

3–2C–02.

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

(2) A certificate of a qualified expert shall:

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

(ii) Subject to the provisions of subsections (b) and (c) of this section, be filed within 90 days after the claim is filed; and

(iii) Be served on all other parties to the claim or the parties' attorneys of record in accordance with the Maryland Rules.

(b) (1) **[Upon] SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, ON** written request made by the claimant within 30 days of the date the claim is served, the defendant shall produce documentary evidence that would be otherwise discoverable, if the documentary evidence is reasonably necessary in order to obtain a certificate of a qualified expert.

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

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

1. SHALL 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.

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

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

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

(2) The time for filing the certificate of merit of a qualified expert shall be suspended until the court rules on the request and, absent an order to the contrary, the

1 certificate shall be filed within 90 days of the court's ruling.

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

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

7 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
8 October 1, 2020.