

SENATE BILL 187

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By: **Senator West**

Introduced and read first time: January 15, 2020

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Civil Actions – Health Care Malpractice Claims**
3 **(Life Care Act)**

4 FOR the purpose of authorizing an expert witness in a certain health care malpractice
5 claim, suit, or action to testify in the form of an opinion or otherwise under certain
6 circumstances; requiring an expert witness testifying under certain circumstances
7 in a certain health care malpractice claim, suit, or action to meet certain
8 qualifications; requiring that, in a certain health care malpractice claim involving a
9 contingency fee, the injured plaintiff be awarded a certain percentage of any award
10 and the plaintiff's attorney receive payment for court costs and witness fees;
11 prohibiting an injured plaintiff from waiving contingency fee limits; and generally
12 relating to health care malpractice claims.

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

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

20 **Article – Courts and Judicial Proceedings**

21 3–2A–02.

22 (a) (1) All claims, suits, and actions, including cross claims, third-party
23 claims, and actions under Subtitle 9 of this title, by a person against a health care provider
24 for medical injury allegedly suffered by the person in which damages of more than the limit
25 of the concurrent jurisdiction of the District Court are sought are subject to and shall be
26 governed by the provisions of this subtitle.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2) An action or suit of that type may not be brought or pursued in any
2 court of this State except in accordance with this subtitle.

3 (3) Except for the procedures stated in § 3-2A-06(f) of this subtitle, an
4 action within the concurrent jurisdiction of the District Court is not subject to the
5 provisions of this subtitle.

6 (b) A claim filed under this subtitle and an initial pleading filed in any subsequent
7 action may not contain a statement of the amount of damages sought other than that they
8 are more than a required jurisdictional amount.

9 (c) (1) In any action for damages filed under this subtitle, the health care
10 provider is not liable for the payment of damages unless it is established that the care given
11 by the health care provider is not in accordance with the standards of practice among
12 members of the same health care profession with similar training and experience situated
13 in the same or similar communities at the time of the alleged act giving rise to the cause of
14 action.

15 (2) (i) This paragraph applies to a claim or action filed on or after
16 January 1, 2005.

17 (ii) 1. In addition to any other qualifications, a health care
18 provider who attests in a certificate of a qualified expert or testifies in relation to a
19 proceeding before a panel or court concerning a defendant's compliance with or departure
20 from standards of care:

21 A. Shall have had clinical experience, provided consultation
22 relating to clinical practice, or taught medicine in the defendant's specialty or a related
23 field of health care, or in the field of health care in which the defendant provided care or
24 treatment to the plaintiff, within 5 years of the date of the alleged act or omission giving
25 rise to the cause of action; and

26 B. Except as provided in subsubparagraph 2 of this
27 subparagraph, if the defendant is board certified in a specialty, shall be board certified in
28 the same or a related specialty as the defendant.

29 2. Subsubparagraph 1B of this subparagraph does not apply
30 if:

31 A. The defendant was providing care or treatment to the
32 plaintiff unrelated to the area in which the defendant is board certified; or

33 B. The health care provider taught medicine in the
34 defendant's specialty or a related field of health care.

1 **(3) (I) A WITNESS WHO IS QUALIFIED AS AN EXPERT BY**
2 **KNOWLEDGE, SKILL, EXPERIENCE, TRAINING, OR EDUCATION MAY TESTIFY IN THE**
3 **FORM OF AN OPINION OR OTHERWISE ONLY IF:**

4 **1. THE EXPERT'S SCIENTIFIC, TECHNICAL, OR OTHER**
5 **SPECIALIZED KNOWLEDGE WILL HELP THE TRIER OF FACT UNDERSTAND THE**
6 **EVIDENCE OR DETERMINE A FACT IN ISSUE;**

7 **2. THE TESTIMONY IS BASED ON SUFFICIENT FACTS OR**
8 **DATA;**

9 **3. THE TESTIMONY IS THE PRODUCT OF RELIABLE**
10 **PRINCIPLES AND METHODS; AND**

11 **4. THE EXPERT HAS RELIABLY APPLIED THE**
12 **PRINCIPLES AND METHODS TO THE FACTS OF THE CASE.**

13 **(II) IF A WITNESS IS RETAINED OR SPECIALLY EMPLOYED TO**
14 **PROVIDE EXPERT TESTIMONY ON THE ISSUE OF FUTURE MEDICAL SERVICES, THE**
15 **WITNESS MUST HAVE EXPERTISE IN THE SPECIFIC MEDICAL SERVICES REQUIRED BY**
16 **THE PLAINTIFF.**

17 (d) Except as otherwise provided, the Maryland Rules shall apply to all practice
18 and procedure issues arising under this subtitle.

19 **(E) IN ANY ACTION BROUGHT UNDER THIS SUBTITLE INVOLVING A**
20 **CONTINGENCY FEE:**

21 **(1) THE INJURED PLAINTIFF SHALL RECEIVE AT LEAST 70% OF THE**
22 **FIRST \$250,000 AWARDED AND 90% OF FUTURE ECONOMIC DAMAGES;**

23 **(2) THE PLAINTIFF'S ATTORNEY SHALL RECEIVE PAYMENT FOR**
24 **COURT COSTS AND WITNESS FEES; AND**

25 **(3) THE INJURED PLAINTIFF MAY NOT WAIVE CONTINGENCY FEE**
26 **LIMITS.**

27 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
28 October 1, 2020.