

HOUSE BILL 923

D3, M3

3lr0475

By: **Delegate Niemann**

Introduced and read first time: February 7, 2013

Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Certificate of a Qualified Expert – Lead Paint Poisoning Claims**

3 FOR the purpose of requiring the court to dismiss a certain claim filed in a circuit
4 court or a United States District Court against a person for injury caused by the
5 ingestion of lead-based paint or lead-contaminated dust if the claimant does
6 not file a certificate of a qualified expert for each defendant; specifying the
7 contents of the certificate; requiring the certificate to be filed within a certain
8 period of time and be served on certain persons, subject to certain exceptions;
9 requiring a person who files a certificate of a qualified expert to provide a
10 defendant with a certain list of qualifications; requiring a defendant to produce
11 certain evidence under certain circumstances; altering a certain time period for
12 filing a certificate of a qualified expert under certain circumstances; providing
13 that the failure to provide certain evidence constitutes a certain waiver;
14 authorizing the court to waive or modify the requirement to file a certificate of a
15 qualified expert under certain circumstances; requiring a defendant to file a
16 written response to a certificate of a qualified expert; specifying the contents of
17 the written response; requiring the written response to be filed within a certain
18 period of time and be served on certain persons; providing that a failure to file a
19 written response constitutes a certain admission; requiring the court to
20 schedule and hold a hearing regarding the certificate of a qualified expert and
21 the written response to a certificate of a qualified expert; authorizing the court
22 to recall a former judge for temporary assignment for certain purposes;
23 requiring the court to allow the claimant and defendant an opportunity to be
24 heard; authorizing the court to enter summary judgment in favor of or against
25 the claimant or defendant under certain circumstances; defining certain terms;
26 providing for the application of this Act; and generally relating to lead paint
27 poisoning claims.

28 BY adding to

29 Article – Courts and Judicial Proceedings

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 3-2D-01 through 3-2D-04 to be under the new subtitle "Subtitle 2D.
2 Lead Paint Poisoning Claims"
3 Annotated Code of Maryland
4 (2006 Replacement Volume and 2012 Supplement)

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

7 **Article – Courts and Judicial Proceedings**

8 **SUBTITLE 2D. LEAD PAINT POISONING CLAIMS.**

9 **3-2D-01.**

10 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
11 INDICATED.

12 (B) "CLAIM" MEANS A CIVIL ACTION, INCLUDING AN ORIGINAL CLAIM,
13 COUNTERCLAIM, CROSS-CLAIM, OR THIRD-PARTY CLAIM, ORIGINALLY FILED IN
14 A CIRCUIT COURT OR UNITED STATES DISTRICT COURT AGAINST A PERSON
15 FOR INJURY CAUSED BY THE INGESTION OF LEAD-BASED PAINT OR
16 LEAD-CONTAMINATED DUST, AS DEFINED IN § 6-801 OF THE ENVIRONMENT
17 ARTICLE.

18 (C) (1) "QUALIFIED EXPERT" MEANS AN INDIVIDUAL WHO HAS
19 EDUCATION, TRAINING, AND EXPERIENCE IN DETERMINING THE POTENTIAL
20 SOURCES OF INGESTION OF LEAD AND THE HEALTH CONSEQUENCES OF
21 INGESTION OF LEAD.

22 (2) "QUALIFIED EXPERT" DOES NOT INCLUDE:

23 (I) A PARTY TO THE CLAIM;

24 (II) AN EMPLOYEE OR PARTNER OF A PARTY;

25 (III) AN EMPLOYEE OR STOCKHOLDER OF A PROFESSIONAL
26 CORPORATION OF WHICH A PARTY IS A STOCKHOLDER; OR

27 (IV) A PERSON HAVING A FINANCIAL INTEREST IN THE
28 OUTCOME OF THE CLAIM.

29 **3-2D-02.**

30 (A) (1) EXCEPT AS PROVIDED IN SUBSECTIONS (B) AND (C) OF THIS
31 SECTION, THE COURT SHALL DISMISS A CLAIM, WITHOUT PREJUDICE, IF THE

1 CLAIMANT FAILS TO FILE A CERTIFICATE OF A QUALIFIED EXPERT WITH THE
2 COURT FOR EACH DEFENDANT.

3 (2) A CERTIFICATE OF A QUALIFIED EXPERT SHALL:

4 (I) CONTAIN A STATEMENT FROM A QUALIFIED EXPERT
5 ATTESTING THAT, WITH A REASONABLE DEGREE OF PROBABILITY, THE:

6 1. PROPERTY INVOLVED WAS A SOURCE OF THE
7 CLAIMANT'S INGESTION OF LEAD, INCLUDING THE BASIS FOR SUCH A FINDING;
8 AND

9 2. INGESTION OF LEAD FROM THE PROPERTY WAS A
10 SUBSTANTIAL CONTRIBUTING FACTOR TO THE INJURIES ALLEGED BY THE
11 CLAIMANT;

12 (II) SUBJECT TO SUBSECTIONS (B) AND (C) OF THIS
13 SECTION, BE FILED WITHIN 90 DAYS AFTER THE CLAIM IS FILED; AND

14 (III) BE SERVED ON ALL OTHER PARTIES TO THE CLAIM OR
15 THE PARTIES' ATTORNEYS OF RECORD IN ACCORDANCE WITH THE MARYLAND
16 RULES.

17 (3) FOR EACH CERTIFICATE OF A QUALIFIED EXPERT, THE
18 CLAIMANT SHALL PROVIDE THE DEFENDANT WITH A LIST OF:

19 (I) THE QUALIFICATIONS AND PUBLICATIONS OF THE
20 QUALIFIED EXPERT; AND

21 (II) THE CASES IN WHICH THE QUALIFIED EXPERT HAS
22 TESTIFIED, INCLUDING THE PARTY FOR WHICH THE QUALIFIED EXPERT
23 TESTIFIED.

24 (B) (1) ON WRITTEN REQUEST MADE BY THE CLAIMANT WITHIN 30
25 DAYS AFTER THE DATE THE CLAIM IS SERVED, THE DEFENDANT SHALL
26 PRODUCE DOCUMENTARY EVIDENCE THAT OTHERWISE WOULD BE
27 DISCOVERABLE, IF THE DOCUMENTARY EVIDENCE IS REASONABLY NECESSARY
28 IN ORDER TO OBTAIN A CERTIFICATE OF A QUALIFIED EXPERT.

29 (2) THE TIME FOR FILING A CERTIFICATE OF A QUALIFIED
30 EXPERT BEGINS ON THE DATE ON WHICH THE DEFENDANT'S PRODUCTION OF
31 THE DOCUMENTARY EVIDENCE UNDER PARAGRAPH (1) OF THIS SUBSECTION IS
32 COMPLETED.

1 **(3) THE DEFENDANT'S FAILURE TO PRODUCE THE REQUESTED**
2 **DOCUMENTARY EVIDENCE UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL**
3 **CONSTITUTE A WAIVER OF THE REQUIREMENT THAT THE CLAIMANT FILE A**
4 **CERTIFICATE OF A QUALIFIED EXPERT AS TO THAT DEFENDANT.**

5 **(C) (1) ON WRITTEN REQUEST BY THE CLAIMANT AND A FINDING OF**
6 **GOOD CAUSE BY THE COURT, THE COURT MAY WAIVE OR MODIFY THE**
7 **REQUIREMENT FOR THE FILING OF THE CERTIFICATE OF A QUALIFIED EXPERT.**

8 **(2) THE TIME FOR FILING THE CERTIFICATE OF A QUALIFIED**
9 **EXPERT SHALL BE SUSPENDED UNTIL THE COURT RULES ON THE REQUEST AND,**
10 **ABSENT AN ORDER TO THE CONTRARY, THE CERTIFICATE SHALL BE FILED**
11 **WITHIN 90 DAYS OF THE COURT'S RULING.**

12 **(D) DISCOVERY BY THE DEFENDANT AS TO THE BASIS OF THE**
13 **CERTIFICATE OF A QUALIFIED EXPERT SHALL BE AVAILABLE.**

14 **3-2D-03.**

15 **(A) A DEFENDANT WHO RECEIVES A CERTIFICATE OF A QUALIFIED**
16 **EXPERT FROM A CLAIMANT SHALL FILE A WRITTEN RESPONSE WITH THE**
17 **COURT.**

18 **(B) THE WRITTEN RESPONSE TO A CERTIFICATE OF A QUALIFIED**
19 **EXPERT SHALL:**

20 **(1) STATE THE REASONS THAT THE PROPERTY ALLEGED TO BE A**
21 **SOURCE OF THE CLAIMANT'S INGESTION OF LEAD WAS NOT A SUBSTANTIAL**
22 **CONTRIBUTING FACTOR IN THE ALLEGED INJURIES OF THE CLAIMANT;**

23 **(2) BE FILED WITHIN 120 DAYS AFTER RECEIPT OF THE**
24 **CERTIFICATE OF A QUALIFIED EXPERT; AND**

25 **(3) BE SERVED ON ALL OTHER PARTIES TO THE CLAIM OR THE**
26 **PARTIES' ATTORNEYS OF RECORD IN ACCORDANCE WITH THE MARYLAND**
27 **RULES.**

28 **(C) A DEFENDANT'S FAILURE TO FILE A WRITTEN RESPONSE TO A**
29 **CERTIFICATE OF A QUALIFIED EXPERT WITH THE COURT SHALL CONSTITUTE AN**
30 **ADMISSION THAT THERE IS NO DISPUTE AS TO ANY MATERIAL FACT IN THE**
31 **CLAIM.**

32 **3-2D-04.**

1 **(A) (1) THE COURT SHALL SCHEDULE A HEARING AFTER A**
2 **DEFENDANT FILES A WRITTEN RESPONSE TO A CERTIFICATE OF A QUALIFIED**
3 **EXPERT.**

4 **(2) A FORMER JUDGE MAY BE RECALLED FOR TEMPORARY**
5 **ASSIGNMENT UNDER § 1-302 OF THIS ARTICLE FOR PURPOSES RELATING TO**
6 **THE HEARING.**

7 **(B) DURING THE HEARING, THE CLAIMANT AND DEFENDANT EACH**
8 **SHALL HAVE AN OPPORTUNITY TO BE HEARD ON THE CERTIFICATE OF A**
9 **QUALIFIED EXPERT AND THE WRITTEN RESPONSE TO THE CERTIFICATE OF A**
10 **QUALIFIED EXPERT.**

11 **(C) FOLLOWING THE HEARING, THE COURT MAY ENTER JUDGMENT IN**
12 **FAVOR OF OR AGAINST THE CLAIMANT OR DEFENDANT IN ACCORDANCE WITH**
13 **RULE 2-501 OF THE MARYLAND RULES.**

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

17 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
18 June 1, 2013.