

SENATE BILL 773

D3

9lr2391
CF 9lr3142

By: **Senator Smith**

Introduced and read first time: February 4, 2019

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Health Care Malpractice Qualified Expert – Qualification**

3 FOR the purpose of exempting certain documents relating to a health care professional's
4 income from discovery and admission on the question of whether the health care
5 provider qualifies as an expert in a certain health care malpractice proceeding;
6 altering the percentage of an expert's professional activities that may have been
7 devoted to certain activities that directly involve testimony in personal injury claims
8 in order for the expert to qualify to testify in relation to a certain proceeding;
9 providing that a certain attestation creates a presumption that a health care
10 provider is qualified to testify in a certain proceeding concerning compliance with or
11 departure from standards of care, under certain circumstances; providing that a
12 certain presumption may be rebutted only in a certain manner; prohibiting a court
13 from dismissing a claim or action with prejudice solely because of a certain failure of
14 a party; authorizing a party to commence a new claim or action within a certain time
15 frame if a previous claim or action was dismissed under certain circumstances;
16 defining a certain term; providing for the application of this Act; and generally
17 relating to qualified experts in health care malpractice proceedings.

18 BY repealing and reenacting, with amendments,
19 Article – Courts and Judicial Proceedings
20 Section 3–2A–04(b)(3) and (4)
21 Annotated Code of Maryland
22 (2013 Replacement Volume and 2018 Supplement)

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

25 **Article – Courts and Judicial Proceedings**

26 3–2A–04.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (b) Unless the sole issue in the claim is lack of informed consent:

2 (3) (i) The attorney representing each party, or the party proceeding
3 pro se, shall file the appropriate certificate with a report of the attesting expert attached.

4 (ii) [Discovery] **SUBJECT TO SUBPARAGRAPH (III) OF THIS**
5 **PARAGRAPH, DISCOVERY** is available as to the basis of the certificate.

6 (iii) **DOCUMENTS REFLECTING INCOME EARNED BY A HEALTH**
7 **CARE PROFESSIONAL AND TAX OR FINANCIAL DOCUMENTS OF A HEALTH CARE**
8 **PROFESSIONAL ARE NOT DISCOVERABLE AND ARE NOT ADMISSIBLE AS EVIDENCE**
9 **ON THE ISSUE OF WHETHER THE HEALTH CARE PROVIDER QUALIFIES AS AN EXPERT**
10 **UNDER THIS SECTION.**

11 (4) (i) **IN THIS PARAGRAPH, “PROFESSIONAL ACTIVITIES” MEANS**
12 **ALL ACTIVITIES ARISING FROM OR RELATED TO HEALTH CARE, REGARDLESS OF**
13 **WHETHER THE ACTIVITIES CONTRIBUTE TO OR ADVANCE A HEALTH CARE**
14 **PROVIDER’S PROFESSION.**

15 (ii) A health care provider who attests in a certificate of a qualified
16 expert or who testifies in relation to a proceeding before an arbitration panel or a court
17 concerning compliance with or departure from standards of care may not [devote annually]
18 **HAVE DEVOTED** more than [20 percent] **50%** of the expert’s professional activities to
19 activities that directly involve testimony in personal injury claims **DURING THE**
20 **CALENDAR YEAR WHEN THE ALLEGED EVENT OR OMISSION GIVING RISE TO THE**
21 **CAUSE OF ACTION OCCURRED.**

22 (iii) **A HEALTH CARE PROVIDER’S ATTESTATION OF**
23 **COMPLIANCE WITH THE REQUIREMENTS OF THIS SUBSECTION CREATES A**
24 **PRESUMPTION THAT, IF OTHERWISE QUALIFIED UNDER THE MARYLAND RULES,**
25 **THE HEALTH CARE PROVIDER IS QUALIFIED TO TESTIFY IN A PROCEEDING BEFORE**
26 **AN ARBITRATION PANEL OR A COURT CONCERNING COMPLIANCE WITH OR**
27 **DEPARTURE FROM STANDARDS OF CARE.**

28 (iv) **THE PRESUMPTION UNDER SUBPARAGRAPH (III) OF THIS**
29 **PARAGRAPH MAY BE REBUTTED ONLY BY CLEAR AND CONVINCING EVIDENCE THAT**
30 **THE HEALTH CARE PROVIDER’S ATTESTATION WAS KNOWINGLY FALSE.**

31 (v) **A COURT MAY NOT DISMISS A CLAIM OR ACTION WITH**
32 **PREJUDICE SOLELY BECAUSE A QUALIFIED EXPERT FAILED TO COMPLY WITH THE**
33 **REQUIREMENTS OF THIS SUBSECTION.**

34 (vi) **IF A COURT DISMISSES A CLAIM OR ACTION BECAUSE A**
35 **QUALIFIED EXPERT FAILED TO COMPLY WITH THE REQUIREMENTS OF THIS**

1 SUBSECTION, A PARTY MAY COMMENCE A NEW CLAIM OR ACTION BEFORE THE
2 LATER OF:

3 1. THE EXPIRATION OF THE APPLICABLE PERIOD OF
4 LIMITATION; OR

5 2. 180 DAYS AFTER THE DATE OF THE DISMISSAL.

6 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply to any
7 proceeding filed or pending on or after the effective date of this Act.

8 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
9 October 1, 2019.