

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 435
PROPOSED COMMITTEE SUBSTITUTE S435-PCS95098-TG-26

Short Title: Civil Pro./Require Certificate of Merit.

(Public)

Sponsors:

Referred to:

March 29, 2011

1 A BILL TO BE ENTITLED
2 AN ACT REQUIRING A CERTIFICATE OF MERIT IN CIVIL ACTIONS OR
3 ARBITRATION PROCEEDINGS BROUGHT AGAINST A PERSON OR FIRM
4 PROVIDING ARCHITECTURE OR ENGINEERING SERVICES IN THIS STATE.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** Subchapter VI of Chapter 1 of the General Statutes is amended by
7 adding the following new Article to read:

8 "Article 12A.

9 "Certificate of Merit in Malpractice Claims Against Design Professionals.

10 **"§ 1-123.1. Definitions.**

11 The following definitions shall apply in this Article:

- 12 (1) Claim. – A claim, counterclaim, cross-claim, or third-party claim alleging
13 malpractice against a design professional.
14 (2) Defendant. – A design professional against whom a claim of malpractice is
15 asserted.
16 (3) Design professional. – A professional engineer licensed pursuant to Chapter
17 89C of the General Statutes, an architect licensed pursuant to Chapter 83A
18 of the General Statutes, or any firm in which the licensed engineer or
19 architect practices, including a corporation, professional corporation, limited
20 liability corporation, partnership, limited liability partnership, sole
21 proprietorship, joint venture, or any other business entity.
22 (4) Practice of architecture. – As defined by G.S. 83A-1(7).
23 (5) Practice of engineering. – As defined by G.S. 89C-3(6).

24 **"§ 1-123.2. Certificate of merit in malpractice claims against design professionals.**

25 (a) Any claim in a civil action or arbitration proceeding asserting malpractice by a
26 design professional shall be dismissed unless both of the following conditions are met:

- 27 (1) The pleading asserting the claim specifically asserts that the professional
28 services provided by the defendant and all records pertaining to the alleged
29 negligence that are available to the claimant after reasonable inquiry have
30 been reviewed by a licensed professional engineer or licensed architect who
31 holds the same type of professional license and practices in the same area of
32 practice as the design professional against whom the claim is being brought,
33 who is willing to testify that the professional services provided by the



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1 defendant did not comply with the applicable standard of care, and who
2 either is reasonably expected to qualify as an expert witness under
3 G.S. 8C-1, Rule 702, or is a person whom the claimant will seek to have
4 qualified as an expert witness by motion under subsection (b) of this section
5 filed with the pleading; and

6 (2) The pleading asserting the claim is accompanied by a certificate of merit
7 signed by a licensed professional engineer or licensed architect who holds
8 the same type of professional license and practices in the same area of
9 practice as the design professional against whom the claim is being brought,
10 certifying that the engineer or architect has reviewed the services provided
11 by the defendant and all records provided by the claimant relating to those
12 services, has reviewed the pleading asserting the claim against the defendant,
13 and is willing to testify that the claim of malpractice against the defendant
14 has merit.

15 The claimant shall provide, at the request of the defendant, proof of compliance with this
16 subsection through up to 10 written interrogatories, the answers to which shall be verified by
17 the expert required under this section. These interrogatories do not count against the
18 interrogatory limit under G.S. 1A-1, Rule 33.

19 (b) Upon motion by either party, a resident judge of the superior court in the county or
20 judicial district in which the action or proceeding is pending may allow expert testimony on the
21 appropriate standard of care by a witness who does not meet the requirements of G.S. 8C-1,
22 Rule 702, or of subdivision (a)(2) of this section relating to type of license and area of practice,
23 but who is otherwise qualified as an expert witness, upon a showing by the movant of
24 extraordinary circumstances and a determination by the court that the motion should be allowed
25 to serve the ends of justice.

26 (c) Upon motion by the plaintiff prior to the expiration of the applicable statute of
27 limitations, a resident judge of the superior court for a judicial district in which venue for the
28 cause of action is appropriate under G.S. 1-82 or, if no resident judge for that judicial district is
29 physically present in that judicial district, otherwise available, or able or willing to consider the
30 motion, then any presiding judge of the superior court for that judicial district may allow a
31 motion to extend the statute of limitations for a period not to exceed 120 days to file a
32 complaint in an action alleging malpractice by a design professional in order to comply with
33 this section, upon a determination that good cause exists for the granting of the motion and that
34 the ends of justice would be served by an extension.

35 (d) This section shall not apply to a claim for breach of contract or breach of warranty."

36 **SECTION 2.** G.S. 1A-1, Rule 9, is amended by adding a new subsection to read:

37 "(j1) Design Professional Malpractice. – Any pleading alleging malpractice by a design
38 professional, as defined by G.S. 1-123.1(3), shall be filed in accordance with Article 12A of
39 Chapter 1 of the General Statutes."

40 **SECTION 3.** This act becomes effective October 1, 2011, and applies to actions
41 and proceedings commenced on or after that date.