

SENATE BILL 30

D3
SB 1037/17 – JPR

(PRE-FILED)

8lr0822
CF HB 1581

By: **Senator Ramirez**

Requested: October 10, 2017

Introduced and read first time: January 10, 2018

Assigned to: Judicial Proceedings

Committee Report: Favorable

Senate action: Adopted

Read second time: March 7, 2018

CHAPTER _____

1 AN ACT concerning

2 **Health Care Malpractice Qualified Expert – Limitation on Testimony in**
3 **Personal Injury Claims – Repeal**

4 FOR the purpose of repealing the requirement that a health care provider who attests in a
5 certificate of a qualified expert or who testifies in relation to a proceeding before an
6 arbitration panel or a court concerning compliance with or departure from standards
7 of care devote no more than a certain percentage of the provider's professional
8 activities to activities that directly involve testimony in personal injury claims; and
9 generally relating to qualified experts in health care malpractice claims.

10 BY repealing and reenacting, with amendments,
11 Article – Courts and Judicial Proceedings
12 Section 3–2A–04(b)
13 Annotated Code of Maryland
14 (2013 Replacement Volume and 2017 Supplement)

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

17 **Article – Courts and Judicial Proceedings**

18 3–2A–04.

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 (1) (i) 1. Except as provided in item (ii) of this paragraph, a claim
2 or action filed after July 1, 1986, shall be dismissed, without prejudice, if the claimant or
3 plaintiff fails to file a certificate of a qualified expert with the Director attesting to
4 departure from standards of care, and that the departure from standards of care is the
5 proximate cause of the alleged injury, within 90 days from the date of the complaint; and

6 2. The claimant or plaintiff shall serve a copy of the
7 certificate on all other parties to the claim or action or their attorneys of record in
8 accordance with the Maryland Rules; and

9 (ii) In lieu of dismissing the claim or action, the panel chairman or
10 the court shall grant an extension of no more than 90 days for filing the certificate required
11 by this paragraph, if:

12 1. The limitations period applicable to the claim or action has
13 expired; and

14 2. The failure to file the certificate was neither willful nor the
15 result of gross negligence.

16 (2) (i) A claim or action filed after July 1, 1986, may be adjudicated in
17 favor of the claimant or plaintiff on the issue of liability, if the defendant disputes liability
18 and fails to file a certificate of a qualified expert attesting to compliance with standards of
19 care, or that the departure from standards of care is not the proximate cause of the alleged
20 injury, within 120 days from the date the claimant or plaintiff served the certificate of a
21 qualified expert set forth in paragraph (1) of this subsection on the defendant.

22 (ii) If the defendant does not dispute liability, a certificate of a
23 qualified expert is not required under this subsection.

24 (iii) The defendant shall serve a copy of the certificate on all other
25 parties to the claim or action or their attorneys of record in accordance with the Maryland
26 Rules.

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

29 (ii) Discovery is available as to the basis of the certificate.

30 (4) [A health care provider who attests in a certificate of a qualified expert
31 or who testifies in relation to a proceeding before an arbitration panel or a court concerning
32 compliance with or departure from standards of care may not devote annually more than
33 20 percent of the expert's professional activities to activities that directly involve testimony
34 in personal injury claims.

35 (5)] An extension of the time allowed for filing a certificate of a qualified

1 expert under this subsection shall be granted for good cause shown.

2 **[(6)] (5)** In the case of a claim or action against a physician, the Director
3 shall forward copies of the certificates filed under paragraphs (1) and (2) of this subsection
4 to the State Board of Physicians.

5 **[(7)] (6)** For purposes of the certification requirements of this subsection
6 for any claim or action filed on or after July 1, 1989:

7 (i) A party may not serve as a party's expert; and

8 (ii) The certificate may not be signed by:

9 1. A party;

10 2. An employee or partner of a party; or

11 3. An employee or stockholder of any professional
12 corporation of which the party is a stockholder.

13 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
14 October 1, 2018.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.