

# SENATE BILL 768

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0lr2887  
CF 0lr2651

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By: **Senator Gladden**

Introduced and read first time: February 10, 2010

Assigned to: Judicial Proceedings

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## A BILL ENTITLED

1 AN ACT concerning

2 **Civil Actions – Health Care Malpractice Claims – Attesting Expert Report**

3 FOR the purpose of establishing that discovery in a health care malpractice claim is  
4 available on the basis of a report of an attesting expert; specifying requirements  
5 for the contents of the report of an attesting expert under certain circumstances;  
6 providing that certain certificates and reports are not admissible into evidence  
7 in a hearing or trial for a health care malpractice claim; allowing the assertion  
8 of certain claims and defenses; requiring an extension of time for filing a certain  
9 certificate or report to be granted under certain circumstances; and generally  
10 relating to attesting expert reports in health care malpractice claims.

11 BY repealing and reenacting, without amendments,  
12 Article – Courts and Judicial Proceedings  
13 Section 3–2A–02(c)(2)  
14 Annotated Code of Maryland  
15 (2006 Replacement Volume and 2009 Supplement)

16 BY repealing and reenacting, with amendments,  
17 Article – Courts and Judicial Proceedings  
18 Section 3–2A–04(b)  
19 Annotated Code of Maryland  
20 (2006 Replacement Volume and 2009 Supplement)

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

23 **Article – Courts and Judicial Proceedings**

24 3–2A–02.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

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

12 B. Except as provided in item 2 of this subparagraph, if  
13 the defendant is board certified in a specialty, shall be board certified in the same or a  
14 related specialty as the defendant.

15 2. Item (ii)1B of this subparagraph does not apply if:

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

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

20 3-2A-04.

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

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

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

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

34 1. The limitations period applicable to the claim or  
35 action has expired; and

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

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

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

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

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

18                               (ii)    Discovery is available as to the basis of the certificate **AND**  
19 **REPORT.**

20                               **(III) THE REPORT OF THE ATTESTING EXPERT SHALL**  
21 **CONTAIN:**

22                                       1.     **A BRIEF STATEMENT THAT THE EXPERT**  
23 **SATISFIES THE REQUIREMENTS OF § 3-2A-02(C)(2)(II) OF THIS SUBTITLE AND**  
24 **PARAGRAPH(4) OF THIS SUBSECTION;**

25                                       2.     **A LISTING OF MEDICAL RECORDS AND OTHER**  
26 **MATERIAL THAT THE EXPERT HAS REVIEWED TO FORM THE BASIS OF THE**  
27 **OPINIONS EXPRESSED IN THE CERTIFICATE AND REPORT;**

28                                       3.     **FOR A REPORT ATTACHED TO THE CERTIFICATE**  
29 **OF A CLAIMANT OR PLAINTIFF, A BRIEF STATEMENT IDENTIFYING A DEPARTURE**  
30 **FROM STANDARDS OF CARE; AND**

31                                       4.     **FOR A REPORT ATTACHED TO THE CERTIFICATE**  
32 **OF A HEALTH CARE PROVIDER, A BRIEF STATEMENT IN RESPONSE TO THE**  
33 **ALLEGED DEPARTURE FROM STANDARDS OF CARE IDENTIFIED IN THE REPORT**  
34 **ATTACHED TO THE CERTIFICATE OF THE CLAIMANT OR PLAINTIFF.**

1                   **(IV) THE CERTIFICATE AND REPORT OF AN ATTESTING**  
2 **EXPERT ARE NOT ADMISSIBLE INTO EVIDENCE AT A HEARING OR TRIAL UNDER**  
3 **THIS SUBTITLE.**

4                   **(V) THE CLAIMANT OR PLAINTIFF AND THE HEALTH CARE**  
5 **PROVIDER MAY ASSERT CLAIMS OR DEFENSES AT A HEARING OR TRIAL**  
6 **DIFFERENT FROM, OR IN ADDITION TO, THE CLAIMS OR DEFENSES IDENTIFIED**  
7 **IN THEIR RESPECTIVE CERTIFICATES OR REPORTS.**

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

13                   (5) An extension of the time allowed for filing a certificate **OR REPORT**  
14 of a qualified expert under this subsection shall be granted for good cause shown **AT**  
15 **ANY TIME BEFORE THE ENTRY OF A FINAL JUDGMENT AND THE CONCLUSION OF**  
16 **ALL APPEALS.**

17                   (6) In the case of a claim or action against a physician, the Director  
18 shall forward copies of the certificates filed under paragraphs (1) and (2) of this  
19 subsection to the State Board of Physicians.

20                   (7) For purposes of the certification requirements of this subsection for  
21 any claim or action filed on or after July 1, 1989:

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

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

24                                 1. A party;

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

26                                 3. An employee or stockholder of any professional  
27 corporation of which the party is a stockholder.

28                   SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
29 June 1, 2010.