

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE DRH10248-LU-117 (04/13)

Short Title: Cert. of Merit/Civil Act./Engineer/Architect. (Public)

Sponsors: Representative McComas.

Referred to:

A BILL TO BE ENTITLED

AN ACT REQUIRING A CERTIFICATE OF MERIT ON CIVIL ACTIONS FILED
AGAINST A PERSON OR FIRM PROVIDING ARCHITECTURE OR
ENGINEERING SERVICES IN THIS STATE.

The General Assembly of North Carolina enacts:

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

"Article 12A.

"Certificate of Merit for Civil Actions Against Design Professionals.

"§ 1-123.1. Definitions.

The following definitions shall apply in this Article:

- (1) Certificate of merit. – A certification from a third-party licensed professional engineer or licensed architect that a civil action filed against a design professional has merit.
- (2) Design professional. – A professional engineer licensed pursuant to Chapter 89C of the General Statutes, an architect licensed pursuant to Chapter 83A of the General Statutes, or any firm in which the licensed engineer or architect practices, including a corporation, professional corporation, limited liability corporation, partnership, limited liability partnership, sole proprietorship, joint venture, or any other business entity.
- (3) Practice of architecture. – The same as defined by G.S. 83A-1(7).
- (4) Practice of engineering. – The same as defined by G.S. 89C-3(6).

"§ 1-123.2. Certificate of merit for civil actions against design professionals.

(a) In any civil action or arbitration proceeding for damages arising out of the provision of professional services performed by a design professional, the plaintiff shall be required to file with the complaint an affidavit of a third-party licensed professional

1 engineer or licensed architect. The third-party licensed professional engineer or
2 licensed architect shall be competent to testify and hold the same professional license
3 and practice in the same area of practice as the defendant design professional. The
4 affidavit shall specifically state at least one negligent act, error, or omission claimed to
5 exist and the factual basis for that claim. The third-party licensed professional engineer
6 or licensed architect shall be licensed in this State and actively engaged in the practice
7 of engineering or architecture respectively.

8 (b) The contemporaneous filing requirement of subsection (a) of this section shall
9 not apply to any case in which the period of limitation will expire within 10 days of the
10 date of filing the action, and because of these time constraints, the plaintiff has alleged
11 that an affidavit of a third-party licensed professional engineer or licensed architect
12 could not be prepared. In these instances, the plaintiff shall have 30 days after the filing
13 of the complaint to supplement the pleadings with the affidavit. The court may, on
14 motion, after hearing and for good cause, extend the time within which the affidavit is
15 to be filed, as justice requires.

16 (c) The defendant shall not be required to file an answer to the complaint and
17 affidavit until 30 days after the filing of the affidavit.

18 (d) The plaintiff's failure to file the affidavit in accordance with subsection (a) or
19 (b) of this section shall result in a dismissal of the complaint against the defendant. In
20 the court's discretion, the dismissal may be with prejudice.

21 (e) An order granting or denying a motion for dismissal is immediately
22 appealable as an interlocutory order.

23 (f) This section shall not be construed to extend any applicable period of
24 limitation or repose.

25 (g) This section does not apply to any suit or action for the payment of fees
26 arising out of the provision of professional services performed by a design
27 professional."

28 **SECTION 2.** G.S. 1A-1, Rule 9, is amended by adding the following new
29 subsection to read:

30 "(j1) Civil Actions Against Design Professionals. – Any complaint alleging
31 damages arising out of the provision of professional services performed by a design
32 professional, as defined by G.S. 1-123.1(2), shall be filed in accordance with Article
33 12A of Chapter 1 of the General Statutes."

34 **SECTION 3.** G.S. 89C-10 is amended by adding the following new
35 subsection to read:

36 "(j) The Board shall have the power to adopt rules to discipline professional
37 engineers licensed under this Chapter who certify a civil action that is without merit in
38 violation of Article 12A of Chapter 1 of the General Statutes."

39 **SECTION 4.** G.S. 83A-6(a) is amended by adding the following new
40 subdivision to read:

41 "(a) The Board shall have the power to adopt bylaws, rules, and standards of
42 professional conduct to carry out the purposes of this Chapter, including, but not limited
43 to:

44 ...

1 (6) The disciplining of architects licensed under this Chapter who certify a
2 civil action that is without merit in violation of Article 12A of Chapter
3 1 of the General Statutes."

4 **SECTION 5.** This act is effective when it becomes law.