

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 1490

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

Sponsors: Senator Hartsell.

Referred to: Judiciary I (Civil).

March 27, 2007

1 A BILL TO BE ENTITLED
2 AN ACT REQUIRING A CERTIFICATE OF MERIT ON CIVIL ACTIONS FILED
3 AGAINST A PERSON OR FIRM PROVIDING ARCHITECTURE OR
4 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
7 by adding the following new Article to read:

8 "Article 12A.

9 "Certificate of Merit for Civil Actions Against Design Professionals.

10 **"§ 1-123.1. Definitions.**

11 The following definitions shall apply in this Article:

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

24 **"§ 1-123.2. Certificate of merit for civil actions against design professionals.**

25 (a) In any civil action or arbitration proceeding for damages arising out of the
26 provision of professional services performed by a design professional, the plaintiff shall
27 be required to file with the complaint an affidavit of a third-party licensed professional
28 engineer or licensed architect. The third-party licensed professional engineer or licensed
29 architect shall be competent to testify and hold the same professional license and

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

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

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

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

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

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

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

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

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

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

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

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

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

42 ...

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.** G.S. 89C-14(c) reads as rewritten:

5 "(c) The certification fee for a corporation is the amount set by the Board but shall
6 not exceed one hundred dollars (\$100.00). The fee shall accompany the application. The
7 certification fee for a business firm is the same as the fee for a corporation. The fee for
8 renewal of a certificate of licensure of a corporation is the amount set by the Board but
9 shall not exceed ~~seventy five dollars (\$75.00)~~ ninety-five dollars (\$95.00). The fee for
10 renewal of a certificate of licensure for a business firm is the same as the renewal fee for
11 a corporation."

12 **SECTION 6.** G.S. 89C-17 reads as rewritten:

13 "**§ 89C-17. Expirations and renewals of certificates.**

14 Certificates for licensure of corporations and business firms that engage in the
15 practice of engineering or land surveying shall expire on the last day of the month of
16 June following their issuance or renewal and shall become invalid on that date unless
17 renewed. All other certificates for licensure shall expire on the last day of the month of
18 December next following their issuance or renewal, and shall become invalid on that
19 date unless renewed. When necessary to protect the public health, safety, or welfare, the
20 Board shall require any evidence necessary to establish the continuing competency of
21 engineers and land surveyors as a condition of renewal of licenses. When the Board is
22 satisfied as to the continuing competency of an applicant, it shall issue a renewal of the
23 certificate upon payment by the applicant of a fee fixed by the Board but not to exceed
24 ~~seventy five dollars (\$75.00)~~ ninety-five dollars (\$95.00). The secretary of the Board
25 shall notify by mail every person licensed under this Chapter of the date of expiration of
26 the certificate, the amount of the fee required for its renewal for one year, and any
27 requirement as to evidence of continued competency. The notice shall be mailed at least
28 one month in advance of the expiration date of the certificate. Renewal shall be effected
29 at any time during the month immediately following the month of expiration, by
30 payment to the secretary of the Board of a renewal fee, as determined by the Board,
31 which shall not exceed ~~seventy five dollars (\$75.00)~~ ninety-five dollars (\$95.00).
32 Failure on the part of any licensee to renew the certificate annually in the month
33 immediately following the month of expiration, as required above, shall deprive the
34 licensee of the right to practice until reinstatement of the license. The license may be
35 reinstated at anytime during the first 12 months immediately following the date the
36 license became invalid by payment of a reinstatement fee of one hundred dollars
37 (\$100.00) in addition to the established renewal fee. Failure of a licensee to reinstate the
38 license during the first 12 months immediately following the date the license became
39 invalid shall require the individual, prior to resuming practice in North Carolina, to
40 submit an application on the prescribed form, and to meet all other requirements for
41 licensure as set forth in Chapter 89C. The secretary of the Board is instructed to remove
42 from the official roster of engineers and land surveyors the names of all licensees who
43 have not effected their renewal by the first day of the month immediately following the
44 renewal period. The Board may adopt rules to provide for renewals in distress or

1 hardship cases due to military service, prolonged illness, or prolonged absence from the
2 State, where the applicant for renewal demonstrates to the Board that the applicant has
3 maintained active knowledge and professional status as an engineer or land surveyor, as
4 the case may be. It shall be the responsibility of each licensee to inform the Board
5 promptly concerning change in address. A licensee may request and be granted inactive
6 status. No inactive licensee may practice in this State unless otherwise exempted in this
7 Chapter. A licensee granted inactive status shall pay annual renewal fees but shall not
8 be subject to annual continuing professional competency requirements. A licensee
9 granted inactive status may return to active status by meeting all requirements of the
10 Board, including demonstration of continuing professional competency as a condition of
11 reinstatement."

12 **SECTION 7.** Sections 1 through 4 of this act apply with respect to
13 complaints or affidavits filed on or after October 1, 2007. The remainder of this act is
14 effective when it becomes law.