

Certificate of Merit Statute

S u m m a r y

Architects and engineers face a substantial degree of liability exposure for breach of contract, property damage, personal injury, and wrongful death resulting from alleged negligence or malpractice in the course of their duties. Architects and engineers, whom most presume to have malpractice insurance, are also likely targets of suits from injured parties who seek relief from anyone that may be even remotely involved in the alleged death, injury, or damage. Many malpractice and negligence claims brought against architects and engineers may have no material basis or justification in fact or in law. Nevertheless, these groundless suits are a source of considerable cost to architects and engineers in terms of direct expenses, increased insurance premiums, lost productive time, and tarnished professional reputation. In addition, such meritless suits waste valuable public resources and log up the nation's civil justice system.

Several states are successfully curbing the number of baseless claims brought against design professionals by placing the onus of responsibility for screening out groundless suits on the plaintiff. A few states have adopted "certificate of merit" laws, which require the plaintiff to consult with a third-party design professional to review the facts of the claim before moving it forward. The plaintiff must then file with the court a certificate from the third-party design professional declaring that, based upon their review of the allegations, the third-party design professional believes that there is a sufficient basis in contract or in law for commencement of the action.

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M o d e l

1. In any action for damages alleging professional negligence by a registered architect or professional engineer, the plaintiff shall be required to file with the complaint an affidavit of a third-party registered architect or professional engineer competent to testify and practicing in the same profession as defendant, which affidavit shall set forth specifically at least one negligent act, error, or omission claimed to exist and the factual basis for each such claim. The third-party professional engineer or registered architect shall be licensed in this state and actively engaged in the practice of architecture or engineering.
2. The contemporaneous filing requirement of Section 1 shall not apply to any case in which the period of limitation will expire within 10 days of the date of filing and, because of such time constraints, the plaintiff has alleged that an affidavit of a third-party registered architect or professional engineer could not be prepared. In such cases, the plaintiff shall have 30 days after the filing of the complaint to supplement the pleadings with the affidavit. The trial court may, on motion, after hearing and for good cause, extend such time as it shall determine justice requires.
3. The defendant shall not be required to file an answer to the complaint and affidavit until 30 days after the filing of such affidavit.
4. The plaintiff's failure to file the affidavit in accordance with Sections 1 and 2 may result in dismissal with prejudice of the complaint against the defendant.
5. This Statute shall not be construed to extend any applicable period of limitation repose.