

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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SENATE BILL 435

Short Title: Civil Pro./Require Certificate of Merit. (Public)

Sponsors: Senator Hartsell.

Referred to: Judiciary I.

March 29, 2011

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

23 **"§ 1-123.2. Certificate of merit for civil actions against design professionals.**

24 (a) In any civil action or arbitration proceeding for damages arising out of the provision  
25 of professional services performed by a design professional, the plaintiff shall be required to  
26 file with the complaint an affidavit of a third-party licensed professional engineer or licensed  
27 architect. The third-party licensed professional engineer or licensed architect shall (i) be  
28 competent to testify and hold the same professional license and practice in the same area of  
29 practice as the defendant design professional and (ii) offer testimony based upon knowledge,  
30 skill, experience, education, training, and practice. The affidavit shall specifically state for each  
31 theory of recovery for which damages are sought, the negligence, if any, or other action, error,  
32 or omission of the design professional in providing the professional service, including any error  
33 or omission in providing advice, judgment, opinion, or a similar professional skill claimed to  
34 exist and the factual basis for each such claim. The third-party licensed professional engineer or  
35 licensed architect shall be licensed in this State and actively engaged in the practice of  
36 engineering or architecture respectively.



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

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

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

13       **(e)** An order granting or denying a motion for dismissal is immediately appealable as an  
14 interlocutory order.

15       **(f)** This section shall not be construed to extend any applicable period of limitation or  
16 repose.

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

19       **SECTION 2.** G.S. 1A-1, Rule 9, is amended by adding a new subsection to read:

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

24       **SECTION 3.** G.S. 89C-10 is amended by adding a new subsection to read:

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

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

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

31       ...

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

35       **SECTION 5.** This act becomes effective October 1, 2011, and applies to  
36 complaints and affidavits filed on or after that date.