
A BILL FOR AN ACT

RELATING TO DESIGN PROFESSIONALS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding a new chapter to be appropriately designated and to read
3 as follows:

4 "CHAPTER

5 **ACTIONS AGAINST DESIGN PROFESSIONALS**

6 § -1 **Design professional defined.** As used in this
7 chapter, "design professional" means a professional engineer,
8 architect, surveyor, or landscape architect licensed under
9 chapter 464.

10 § -2 **Certificate of merit.** (a) A complaint, cross-
11 claim, counterclaim, or third party complaint asserting a claim
12 against a design professional arising out of an alleged failure
13 to comply with the standard of care may not be filed unless the
14 claimant or the claimant's attorney also files a certificate of
15 merit conforming substantially to the wording in subsection (c).
16 The certificate shall be filed with or made a part of the
17 complaint, cross-claim, counterclaim, or third party complaint.



1 (b) A separate certificate of merit shall be filed for
2 each design professional against whom a claim is asserted.

3 (c) The certificate of merit shall be substantially in the
4 following form:

5 (Caption))
6) Certificate of Merit
7) as to Defendant _____
8)

9 I, _____, certify that:

10 (Attorney or Party)

11 I have consulted a design professional who holds a license,
12 certificate, or registration issued by the State of Hawaii or
13 another state in the same profession as the person against whom
14 the claim is filed and who practices in the same specialty or
15 subspecialty as Defendant _____. This design
16 professional is qualified, available, and willing to testify
17 that:

18 a. The alleged conduct of Defendant _____
19 failed to meet the standard of care applicable
20 to design professionals in the circumstances
21 alleged.



1 b. The alleged conduct was a cause of the claimed
2 damages, losses, or other harm.

3 Declared under penalty of perjury under the laws of the
4 State of Hawaii.

5 Date:_____ Signature:_____

6 (d) Notwithstanding the requirements of any civil
7 procedural rule to the contrary, the design professional against
8 whom a claim is asserted shall not be required to answer the
9 complaint, cross-claim, counterclaim, or third party complaint
10 until thirty days after the filing of the certificate of merit
11 by the claimant or claimant's attorney.

12 (e) The court, on its own motion or the motion of the
13 design professional, shall dismiss the claim against the design
14 professional without prejudice if the claimant or claimant's
15 attorney fails to comply with the requirements of this section.

16 § -3 **Preliminary expert opinion affidavit.** (a) Within
17 ninety days of filing of a certificate of merit, a claimant or
18 claimant's attorney shall file and serve a preliminary expert
19 opinion affidavit on all other parties to the action. The
20 preliminary expert opinion affidavit shall contain at least the
21 following information:

1 (1) The expert's qualifications to express an opinion on
2 the design professional's standard of care or
3 liability for the claim;

4 (2) The factual basis for each claim against a design
5 professional;

6 (3) The design professional's acts, errors, or omissions
7 that the expert considers to be a violation of the
8 applicable standard of care resulting in liability;
9 and

10 (4) The manner in which the design professional's acts,
11 errors, or omissions caused or contributed to the
12 damages or other relief sought by the claimant.

13 (b) The court may extend the time for filing the
14 preliminary expert opinion affidavit for a single additional
15 period, not to exceed ninety days, upon a showing of good cause
16 or by stipulation of the parties to the claim.

17 (c) Notwithstanding any civil procedural rule to the
18 contrary, the only discovery that shall be allowed prior to the
19 filing of the preliminary expert opinion affidavit shall be
20 requests for production between parties to the action.

21 (d) A claimant may supplement a claim or preliminary
22 expert opinion affidavit with additional claims, evidence, or

1 expert opinions that are timely under the Hawaii rules of civil
2 procedure or pursuant to court order. Any action under this
3 section does not preclude a party from using a preliminary
4 expert opinion affidavit for any purpose, including impeachment.

5 (e) The court, on its own motion or the motion of the
6 design professional, shall dismiss the claim against the design
7 professional with prejudice if the claimant or claimant's
8 attorney fails to comply with the requirements of this section.
9 In such circumstances, the court in its discretion may award
10 reasonable attorney's fees and costs to the prevailing design
11 professional."

12 SECTION 2. This Act shall not apply to any complaint filed
13 before its effective date.

14 SECTION 3. This Act shall take effect on July 1, 2006.



HB1417

HD1

Report Title:

Design Professional; Certificate of Merit

Description:

Requires the filing of a certificate of merit with any complaint filed against a design professional for failure to meet the standard of care. Also, requires the filing of a preliminary expert opinion affidavit (HB1417 HD1).

HB1417 HD1 HMS 2006-2233

