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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 meet the standard of care shall not be filed unless the
14	claimant or the claimant's attorney also files a certificate of
15	merit pursuant to this section. The certificate of merit shall
16	be filed with or made a part of the complaint, cross-claim,
17	counterclaim, or third party complaint.

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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 in the following
4	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 to
20	design professionals in the circumstances
21	alleged.

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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 any law to the contrary, the design				
7	professional against whom a claim is asserted shall not be				
8	required to answer the complaint, cross-claim, counterclaim, or				
9	third party complaint until thirty days after the filing of the				
10	certificate of merit by the claimant or claimant's attorney.				
11	(e) The court, on its own motion or the motion of the				
12	design professional against whom a claim is asserted, shall				
13	dismiss the claim against the design professional without				
14	prejudice if the claimant or claimant's attorney fails to comply				
15	with the requirements of this section.				
16	§ -3 Preliminary expert opinion affidavit. (a) Within				
17	ninety days of the filing of a certificate of merit, a claimant				
18	or claimant's attorney shall file and serve a preliminary expert				
19	opinion affidavit on all parties. The preliminary expert				
20	opinion affidavit shall contain the following:				

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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 the 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; and	
9	(4)	The manner in which the design professional's acts,	
10		errors, or omissions caused or contributed to the	
11		damages or other relief sought by the claimant.	
12	(b)	The court may extend the time for filing the	
13	preliminary expert opinion affidavit for a period, not to exceed		
14	ninety da	ys, upon a showing of good cause or by stipulation of	
15	the parties.		
16	(C)	Notwithstanding any law to the contrary, no discovery	
17	shall be	allowed prior to the filing of the preliminary expert	
18	opinion affidavit except for requests for production between the		
10			

19 parties.

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20 (d) A claimant may supplement a preliminary expert opinion
21 affidavit with additional claims, evidence, or expert opinions
22 pursuant to the Hawaii rules of civil procedure or court order.

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A preliminary expert opinion affidavit may be used to impeach a
 witness.

3 (e) The court, on its own motion or the motion of the
4 design professional against whom a claim is asserted, shall
5 dismiss the claim against the design professional with prejudice
6 if the claimant or claimant's attorney fails to comply with the
7 requirements of this section. The court may award reasonable
8 attorney's fees and costs to the prevailing party."

9 SECTION 2. This Act does not affect rights and duties that
10 matured, penalties that were incurred, and proceedings that were
11 begun, before its effective date.

12 SECTION 3. This Act shall take effect on January 1, 2112.



Report Title:

Design Professionals; Certificate of Merit

Description:

Requires a claimant or the claimant's attorney to file a certificate of merit before making a claim against a design professional for failure to meet the standard of care. Requires the filing of a preliminary expert opinion affidavit. (HB1518 HD1)

