
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.



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.



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:



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 days, 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
19 parties.

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.



1 A preliminary expert opinion affidavit may be used to impeach a
2 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 July 1, 2050.



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 the failure to meet the standard of care; and requires the filing of a preliminary expert opinion affidavit. (SD1)

