

1 HB446
2 128165-1
3 By Representative Wood
4 RFD: Judiciary
5 First Read: 05-APR-11

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8 SYNOPSIS: This bill would require a plaintiff in an
9 action against a licensed professional engineer,
10 licensed professional land surveyor, or a
11 registered architect to file a certificate of merit
12 affidavit of a third-party engineer, land surveyor,
13 or architect setting out at least one negligent
14 act, error, or omission of the defendant.

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16 A BILL
17 TO BE ENTITLED
18 AN ACT
19

20 Relating to a civil action alleging negligence
21 against a licensed professional engineer, licensed
22 professional land surveyor, or a registered architect; to
23 require a plaintiff in such an action to provide a certificate
24 of merit affidavit of a third-party licensed professional
25 engineer, licensed professional land surveyor, or a registered
26 architect that sets out at least one alleged negligent act,
27 error, or omission by the defendant.

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

2 Section 1. (a) In any civil action for damages
3 alleging professional negligence by a registered architect or
4 a licensed professional engineer or licensed professional land
5 surveyor of this state, the plaintiff shall be required to
6 file with the complaint a certificate of merit affidavit of a
7 third-party registered architect or a licensed professional
8 engineer or a licensed professional land surveyor registered
9 or licensed in this state who is competent to testify and
10 practicing in the same area of practice as the defendant. The
11 affidavit shall set forth specifically at least one negligent
12 act, error, or omission claimed to exist and the factual basis
13 for each such claim. In addition to being registered or
14 licensed in this state, a third-party registered architect or
15 licensed professional engineer or licensed professional land
16 surveyor must be actively engaged in the practice of
17 architecture or engineering.

18 (b) The contemporaneous filing requirement of
19 subsection (a) shall not apply to any case in which the period
20 of limitation will expire within 10 days of the date of filing
21 and, because of such time constraints, the plaintiff has
22 alleged that a certificate of merit affidavit of a third-party
23 registered architect or a licensed professional engineer or
24 licensed professional land surveyor could not be prepared. In
25 such cases, the plaintiff shall have 30 days after the filing
26 of the complaint to supplement the pleadings with the
27 affidavit. The trial court may, on motion, after hearing and

1 for good cause, extend such time as it shall determine justice
2 requires.

3 (c) The defendant shall not be required to file an
4 answer to the complaint and affidavit until 30 days after the
5 filing of such affidavit.

6 (d) The plaintiff's failure to file the affidavit in
7 accordance with subsection (a) or (b) shall result in
8 dismissal with prejudice of the complaint against the
9 defendant. A plaintiff who fails to file the affidavit in
10 accordance with subsection (a) shall be liable to each
11 defendant for reasonable attorney's fees and expenses incurred
12 by it, its insurer or insurers, or any other person or entity
13 on defendant's behalf in responding to the complaint.

14 (e) This section shall not be construed to extend
15 any applicable period of limitation or repose.

16 Section 2. This act shall become effective on the
17 first day of the third month following its passage and
18 approval by the Governor, or its otherwise becoming law.