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SENATE BILL NO. 1255

Offered January 9, 2013

A BILL to amend and reenact §§ 8.01-20.1, 8.01-50.1, and 16.1-83.1 of the Code of Virginia, relating to medical malpractice; expert witness certification; court review.

Patrons—Northam and Alexander

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-20.1, 8.01-50.1, and 16.1-83.1 of the Code of Virginia are amended and reenacted as follows:

§ 8.01-20.1. Certification of expert witness opinion at time of service of process.

Every motion for judgment, counter claim, or third party claim in a medical malpractice action, at the time the plaintiff requests service of process upon a defendant, or requests a defendant to accept service of process, shall be deemed a certification that the plaintiff has obtained from an expert witness whom the plaintiff reasonably believes would qualify as an expert witness pursuant to subsection A of § 8.01-581.20 a written opinion signed by the expert witness that, based upon a reasonable understanding of the facts, the defendant for whom service of process has been requested deviated from the applicable standard of care and the deviation was a proximate cause of the injuries claimed. This certification is not necessary if the plaintiff, in good faith, alleges a medical malpractice action that asserts a theory of liability where expert testimony is unnecessary because the alleged act of negligence clearly lies within the range of the jury's common knowledge and experience.

The certifying expert shall not be required to be an expert witness expected to testify at trial nor shall any defendant be entitled to discover the identity or qualifications of the certifying expert or the nature of the certifying expert's opinions. Should the certifying expert be identified as an expert expected to testify at trial, the opinions and bases therefor shall be discoverable pursuant to Rule 4:1 of the Rules of Supreme Court of Virginia with the exception of the expert's status as a certifying expert.

Upon written request of any defendant, the plaintiff shall, within 10 business days after receipt of such request, provide the defendant with a certification form that affirms that the plaintiff had obtained the necessary certifying expert opinion at the time service was requested or affirms that the plaintiff did not need to obtain a certifying expert witness opinion. *The court, upon good cause shown, may conduct an in camera review of the certifying expert opinion obtained by the plaintiff as the court may deem appropriate.* If the plaintiff did not obtain a necessary certifying expert opinion at the time the plaintiff requested service of process on a defendant as required under this section, the court shall impose sanctions according to the provisions of § 8.01-271.1 and may dismiss the case with prejudice.

§ 8.01-50.1. Certification of expert witness opinion at time of service of process.

Every motion for judgment, counter claim, or third party claim in any action pursuant to § 8.01-50 for wrongful death against a health care provider, at the time the plaintiff requests service of process upon a defendant, or requests a defendant to accept service of process, shall be deemed a certification that the plaintiff has obtained from an expert witness whom the plaintiff reasonably believes would qualify as an expert witness pursuant to subsection A of § 8.01-581.20 a written opinion signed by the expert witness that, based upon a reasonable understanding of the facts, the defendant for whom service of process has been requested deviated from the applicable standard of care and the deviation was a proximate cause of the injuries claimed. This certification is not necessary if the plaintiff, in good faith, alleges in his wrongful death action a medical malpractice theory of liability where expert testimony is unnecessary because the alleged act of negligence clearly lies within the range of the jury's common knowledge and experience.

The certifying expert shall not be required to be an expert expected to testify at trial nor shall any defendant be entitled to discover the identity or qualifications of the certifying expert or the nature of the certifying expert's opinions. Should the certifying expert be identified as an expert expected to testify at trial, the opinions and bases therefor shall be discoverable pursuant to Rule 4:1 of the Rules of Supreme Court of Virginia with the exception of the expert's status as a certifying expert.

Upon written request of any defendant, the plaintiff shall, within 10 business days after receipt of such request, provide the defendant with a certification form which affirms that the plaintiff had obtained the necessary certifying expert opinion at the time service was requested or affirms that the plaintiff did not need to obtain a certifying expert opinion. *The court, upon good cause shown, may conduct an in camera review of the certifying expert opinion obtained by the plaintiff as the court may deem appropriate.* If the plaintiff did not obtain a necessary certifying expert opinion at the time the

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59 plaintiff requested service of process on a defendant, the court shall impose sanctions according to the
60 provisions of § 8.01-271.1 and may dismiss the case with prejudice.

61 **§ 16.1-83.1. Certification of expert witness opinion at time of service of process.**

62 Every warrant in debt, counter claim, or third party claim in a medical malpractice action, at the time
63 the plaintiff requests service of process upon a defendant, or requests a defendant to accept service of
64 process, shall be deemed a certification that the plaintiff has obtained from an expert whom the plaintiff
65 reasonably believes would qualify as an expert witness pursuant to subsection A of § 8.01-581.20 a
66 written opinion signed by the expert witness that, based upon a reasonable understanding of the facts,
67 the defendant for whom service of process has been requested deviated from the applicable standard of
68 care and the deviation was a proximate cause of the injuries claimed. This certification is not necessary
69 if the plaintiff, in good faith, alleges a medical malpractice action that asserts a theory of liability where
70 expert testimony is unnecessary because the alleged act of negligence clearly lies within the range of the
71 jury's common knowledge and experience.

72 The certifying expert shall not be required to be an expert witness expected to testify at trial nor
73 shall any defendant be entitled to discover the identity or qualifications of the certifying expert or the
74 nature of the certifying expert opinions. Should the certifying expert be identified as an expert expected
75 to testify at trial, the opinions and bases therefor shall be discoverable pursuant to Rule 4:1 of the Rules
76 of Supreme Court of Virginia with the exception of the expert's status as a certifying expert.

77 Upon written request of any defendant, the plaintiff shall, within 10 business days after receipt of
78 such request, provide the defendant with a certification form which affirms that the plaintiff had
79 obtained the necessary certifying expert opinion at the time service was requested or affirms that the
80 plaintiff did not need to obtain a certifying expert opinion. *The court, upon good cause shown, may*
81 *conduct an in camera review of the certifying expert opinion obtained by the plaintiff as the court may*
82 *deem appropriate.* If the plaintiff did not obtain a necessary certifying expert opinion at the time the
83 plaintiff requested service of process on a defendant, the court shall impose sanctions according to the
84 provisions of § 8.01-271.1 and may dismiss the case with prejudice.