



## 101ST GENERAL ASSEMBLY

### State of Illinois

2019 and 2020

HB5512

by Rep. Margo McDermed

#### SYNOPSIS AS INTRODUCED:

735 ILCS 5/2-625 new

Amends the Code of Civil Procedure. Provides that a defendant in an action alleging malpractice or negligence against an architect, engineer, or surveyor may request an affidavit of merit within 56 days after the complaint or notice of the action is served on the defendant. Provides that within 56 days after a request for an affidavit of merit is made, the plaintiff in the action shall file an affidavit of merit signed by an individual who the plaintiff reasonably believes meets certain requirements. Provides that the court may grant one extension of time for filing an affidavit of merit. Provides for dismissal of an action, with or without prejudice. Provides that a defendant's objection to an affidavit of merit shall be raised in a motion filed within 90 days after the affidavit of merit is served. Provides that if the court determines that an affidavit of merit does not fully comply with the requirements, the court shall allow the plaintiff 56 days to file one or more affidavits of merit that correct the deficiencies identified by the court. Provides that a defendant shall participate in discovery in the action as required by court rules. Provides that an affidavit of merit is not required in an action for breach of contract against an architect, engineer, or surveyor that does not involve the standard of care.

LRB101 18619 LNS 68074 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Code of Civil Procedure is amended by adding  
5 Section 2-625 as follows:

6 (735 ILCS 5/2-625 new)

7 Sec. 2-625. Affidavit of merit in malpractice or negligence  
8 action against an architect, engineer, or surveyor.

9 (a) A defendant in an action alleging malpractice or  
10 negligence against an architect, engineer, or surveyor may  
11 request an affidavit of merit within 56 days after the  
12 complaint or notice of the action is served on the defendant. A  
13 defendant who does not request an affidavit of merit waives the  
14 right to do so.

15 (b) Within 56 days after a request is made under subsection  
16 (a), the plaintiff in the action shall file an affidavit of  
17 merit signed by an individual who the plaintiff, or the  
18 plaintiff's attorney, reasonably believes meets the  
19 requirements of subsection (c).

20 The affiant shall state in the affidavit of merit:

21 (1) that he or she has reviewed all records supplied by  
22 the plaintiff or the plaintiff's attorney concerning the  
23 conduct that is the subject of the action;

1           (2) that he or she has reviewed the applicable standard  
2           of care;

3           (3) that it is his or her opinion that the applicable  
4           standard of care was breached by the architect, engineer,  
5           or surveyor;

6           (4) the actions that should have been taken or omitted  
7           by the architect, engineer, or surveyor to comply with the  
8           applicable standard of care; and

9           (5) that the breach of the standard of care was a  
10           proximate cause of the alleged injury or damage to the  
11           plaintiff.

12           (c) An individual is qualified to sign an affidavit of  
13           merit under subsection (b) if the individual is:

14           (1) licensed in this State as:

15           (i) an architect under the Illinois Architecture  
16           Practice Act of 1989;

17           (ii) an engineer under the Professional  
18           Engineering Practice Act of 1989 or the Structural  
19           Engineering Practice Act of 1989; or

20           (iii) a surveyor under the Illinois Professional  
21           Land Surveyor Act of 1989; and

22           (2) engaged in the practice of the same discipline as  
23           the defendant.

24           (d) In an action alleging malpractice or negligence against  
25           an architect, engineer, or surveyor, the court, on motion and a  
26           showing of good cause, may grant one extension of time for

1 filing an affidavit of merit under subsection (b) for not more  
2 than 56 days. A motion to extend the time for filing an  
3 affidavit of merit under subsection (b) shall be filed before  
4 the expiration of the original 56 days provided under  
5 subsection (b).

6 (e) If a plaintiff fails to file an affidavit of merit  
7 under subsection (b), the court shall dismiss the action with  
8 prejudice. The plaintiff may voluntarily dismiss the action  
9 before the expiration of time for filing the affidavit of  
10 merit. A voluntary dismissal by the plaintiff under this  
11 subsection is without prejudice. Any action refiled after a  
12 voluntary dismissal by the plaintiff under this subsection  
13 shall be filed with an affidavit of merit that complies with  
14 subsection (b). The court shall dismiss with prejudice a  
15 refiled action that is not accompanied by an affidavit of merit  
16 that complies with subsection (b).

17 (f) A defendant's objection to an affidavit of merit filed  
18 under subsection (b) shall be raised in a motion filed within  
19 90 days after the affidavit of merit is served. An objection to  
20 an affidavit of merit filed under this subsection that is not  
21 included in a timely filed motion is waived.

22 (g) If the court determines that an affidavit of merit  
23 filed under subsection (b) does not fully comply with this  
24 Section, the court shall allow the plaintiff 56 days to file  
25 one or more affidavits of merit that correct the deficiencies  
26 identified by the court. The filing of an affidavit of merit

1 under this subsection relates back to the date of filing the  
2 original complaint or notice requesting arbitration. If one or  
3 more affidavits of merit are filed under this subsection, the  
4 defendant may renew its objections by filing a motion within 14  
5 days after service of the affidavits of merit.

6 (h) A defendant in an action alleging malpractice or  
7 negligence against an architect, engineer, or surveyor shall,  
8 in good faith, participate in discovery in the action as  
9 required by court rules.

10 (i) An affidavit of merit under subsection (b) is not  
11 required in an action for breach of contract against an  
12 architect, engineer, or surveyor that does not involve the  
13 standard of care.

14 (j) As used in this Section:

15 "Architect" means an individual who is licensed as an  
16 architect under the Illinois Architecture Practice Act of 1989  
17 and who is actively engaged in the practice of architecture in  
18 this State. "Architect" includes an organization in which an  
19 architect practices.

20 "Defendant" includes a cross defendant, counterdefendant,  
21 or third-party defendant.

22 "Engineer" means an individual who is licensed as an  
23 engineer under the Professional Engineering Practice Act of  
24 1989 or the Structural Engineering Practice Act of 1989 and who  
25 is actively engaged in the practice of engineering in this  
26 State. "Engineer" includes an organization in which an engineer

1 practices.

2 "Organization" means a corporation, partnership, limited  
3 liability company, joint venture, or other business entity.

4 "Plaintiff" includes a cross plaintiff, counterplaintiff,  
5 or third-party plaintiff.

6 "Surveyor" means an individual who is licensed as a  
7 surveyor under the Illinois Professional Land Surveyor Act of  
8 1989 and who is actively engaged in the practice of surveying  
9 in this State. "Surveyor" includes an organization in which a  
10 surveyor practices.