



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

SB1815

Introduced 2/26/2021, by Sen. Donald P. DeWitte

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.

LRB102 12816 LNS 18157 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
5 adding Section 2-625 as follows:

6 (735 ILCS 5/2-625 new)

7 Sec. 2-625. Affidavit of merit in malpractice or
8 negligence 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
14 the right to do so.

15 (b) Within 56 days after a request is made under
16 subsection (a), the plaintiff in the action shall file an
17 affidavit of merit signed by an individual who the plaintiff,
18 or the 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
22 by the plaintiff or the plaintiff's attorney concerning
23 the conduct that is the subject of the action;

1 (2) that he or she has reviewed the applicable
2 standard 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
25 against an architect, engineer, or surveyor, the court, on
26 motion and a showing of good cause, may grant one extension of

1 time for filing an affidavit of merit under subsection (b) for
2 not more than 56 days. A motion to extend the time for filing
3 an affidavit of merit under subsection (b) shall be filed
4 before 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
16 merit 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
5 14 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 participate in discovery in the action in good faith 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
25 who is actively engaged in the practice of engineering in this
26 State. "Engineer" includes an organization in which an

1 engineer practices.

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

4 "Plaintiff" includes a cross plaintiff, counterclaimant,
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.

11 (k) This Section shall not be construed to extend any
12 applicable period of limitation or repose.