

# HOUSE BILL 507

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2lr2074  
CF 2lr2375

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By: **Delegate Anderson**

Introduced and read first time: February 2, 2012

Assigned to: Judiciary

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## A BILL ENTITLED

1 AN ACT concerning

2 **Health Care Malpractice Claims – Expert Witnesses – Limitations**

3 FOR the purpose of prohibiting a party, in the trial of certain actions against a health  
4 care provider for an alleged medical injury, from presenting testimony from  
5 more than a certain number of experts, unless the court, for good cause shown,  
6 permits additional experts; providing for the application of this Act; and  
7 generally relating to certain health care malpractice actions.

8 BY repealing and reenacting, without amendments,  
9 Article – Courts and Judicial Proceedings  
10 Section 3–2A–05(d), 3–2A–06(a) and (b), 3–2A–06A(a) and (c), and 3–2A–06B(a)  
11 and (f)  
12 Annotated Code of Maryland  
13 (2006 Replacement Volume and 2011 Supplement)

14 BY repealing and reenacting, with amendments,  
15 Article – Courts and Judicial Proceedings  
16 Section 3–2A–06(d), 3–2A–06A(e), and 3–2A–06B(h)  
17 Annotated Code of Maryland  
18 (2006 Replacement Volume and 2011 Supplement)

19 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
20 MARYLAND, That the Laws of Maryland read as follows:

21 **Article – Courts and Judicial Proceedings**

22 3–2A–05.

23 (d) A party may not present testimony from more than 2 experts in a  
24 designated specialty before an arbitration panel unless the panel chairman, for good  
25 cause shown, permits additional experts.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 3-2A-06.

2 (a) A party may reject an award or the assessment of costs under an award  
3 for any reason. A notice of rejection must be filed with the Director and the arbitration  
4 panel and served on the other parties or their counsel within 30 days after the award  
5 is served upon the rejecting party, or, if a timely application for modification or  
6 correction has been filed within 10 days after a disposition of the application by the  
7 panel, whichever is greater.

8 (b) (1) At or before the time specified in subsection (a) of this section for  
9 filing and serving a notice of rejection, the party rejecting the award shall file an  
10 action in court to nullify the award or the assessment of costs under the award and  
11 shall file a copy of the action with the Director. Failure to file this action timely in  
12 court shall constitute a withdrawal of the notice of rejection. Subject to the provisions  
13 of subsection (c) of this section, the procedures applicable to the action including the  
14 form and necessary allegations in the initial pleading shall be governed by the  
15 Maryland Rules. The Director need not be named a party to any action under this  
16 section.

17 (2) If any party to the proceeding elects to have the case tried by a jury  
18 in accordance with the Maryland Rules, it shall be tried by a jury. Otherwise, the case  
19 shall be tried by a judge.

20 (3) The trial date for each rejection of a panel determination shall  
21 have precedence over all cases except criminal matters and workers' compensation  
22 appeals.

23 (4) The clerk of the court in which an action is filed under this subtitle  
24 shall forward a copy of the action to the State Board of Physicians.

25 (d) (1) Unless vacated by the court pursuant to subsection (c) of this  
26 section, the unmodified arbitration award is admissible as evidence in the judicial  
27 proceeding. The award shall be presumed to be correct, and the burden is on the party  
28 rejecting it to prove that it is not correct.

29 **(2) IN THE TRIAL OF AN ACTION UNDER THIS SECTION, A PARTY**  
30 **MAY NOT PRESENT TESTIMONY FROM MORE THAN TWO EXPERTS IN A**  
31 **DESIGNATED SPECIALTY, UNLESS THE COURT, FOR GOOD CAUSE SHOWN,**  
32 **PERMITS ADDITIONAL EXPERTS.**

33 3-2A-06A.

34 (a) At any time before the hearing of a claim with the Health Care  
35 Alternative Dispute Resolution Office, the parties may agree mutually to waive  
36 arbitration of the claim, and the provisions of this section then shall govern all further  
37 proceedings on the claim.

1           (c)   (1)   Within 60 days after filing the election to waive arbitration, the  
2 plaintiff shall file a complaint and a copy of the election to waive arbitration with the  
3 circuit court or United States District Court.

4           (2)   After filing the complaint, the plaintiff shall serve a summons and  
5 a copy of the complaint upon the attorney of record for all parties in the health claims  
6 arbitration proceeding.

7           (3)   Failure to file a complaint within 60 days of filing the election to  
8 waive arbitration may constitute grounds for dismissal of the complaint upon motion  
9 by an adverse party and upon a finding of prejudice to that party due to the delay in  
10 the filing of the complaint.

11           (e)   **(1)   IN THE TRIAL OF AN ACTION UNDER THIS SECTION, A PARTY**  
12 **MAY NOT PRESENT TESTIMONY FROM MORE THAN TWO EXPERTS IN A**  
13 **DESIGNATED SPECIALTY, UNLESS THE COURT, FOR GOOD CAUSE SHOWN,**  
14 **PERMITS ADDITIONAL EXPERTS.**

15           **(2)**   In any case subject to this section, the procedures of § 3-2A-06(f)  
16 of this subtitle shall apply.

17 3-2A-06B.

18           (a)   Arbitration of a claim with the Health Care Alternative Dispute  
19 Resolution Office may be waived by the claimant or any defendant in accordance with  
20 this section, and the provisions of this section shall govern all further proceedings on  
21 any claim for which arbitration has been waived under this section.

22           (f)   (1)   Within 60 days after the filing of an election to waive arbitration  
23 by any party, the plaintiff shall file a complaint and a copy of the election to waive  
24 arbitration in the appropriate circuit court or the United States District Court.

25           (2)   After filing the complaint, the plaintiff shall serve a summons and  
26 a copy of the complaint upon all defendants or the attorney of record for all parties in  
27 the health claims arbitration proceeding.

28           (3)   Failure to file a complaint within 60 days of filing the election to  
29 waive arbitration may constitute grounds for dismissal of the complaint upon:

30                   (i)   A motion by an adverse party; and

31                   (ii)   A finding of prejudice to the adverse party due to the delay  
32 in the filing of the complaint.

1           (h)   **(1)**   **IN THE TRIAL OF AN ACTION UNDER THIS SECTION, A PARTY**  
2 **MAY NOT PRESENT TESTIMONY FROM MORE THAN TWO EXPERTS IN A**  
3 **DESIGNATED SPECIALTY, UNLESS THE COURT, FOR GOOD CAUSE SHOWN,**  
4 **PERMITS ADDITIONAL EXPERTS.**

5                   **(2)**   In any case subject to this section, the procedures of § 3-2A-06(f)  
6 of this subtitle shall apply.

7           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply to  
8 any action filed under § 3-2A-06, § 3-2A-06A, or § 3-2A-06B of the Courts Article on  
9 or after the effective date of this Act.

10           SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
11 October 1, 2012.