

# SENATE, No. 3172

## STATE OF NEW JERSEY

### 219th LEGISLATURE

INTRODUCED NOVEMBER 12, 2020

**Sponsored by:**  
**Senator VIN GOPAL**  
**District 11 (Monmouth)**

**SYNOPSIS**

Expands parties who must receive affidavit of merit in malpractice or negligence cases.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning affidavit of merit and amending P.L.1995,  
2 c.139.

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4 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
5 *of New Jersey:*

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7 1. Section 2 of P.L.1995, c.139 (C2A:53A-27) is amended to  
8 read as follows:

9 2. In any action for damages for personal injuries, wrongful  
10 death or property damage resulting from an alleged act of  
11 malpractice or negligence by a licensed person in his profession or  
12 occupation, the plaintiff shall, within 60 days following the date of  
13 filing of **the answer to the complaint by the defendant** any  
14 pleading in which such malpractice or negligence is asserted,  
15 provide each **defendant** party with an affidavit of an appropriate  
16 licensed person that there exists a reasonable probability that the  
17 care, skill or knowledge exercised or exhibited in the treatment,  
18 practice or work that is the subject of the **complaint** pleading, fell  
19 outside acceptable professional or occupational standards or  
20 treatment practices. The court may grant no more than one  
21 additional period, not to exceed 60 days, to file the affidavit  
22 pursuant to this section, upon a finding of good cause.

23 In the case of an action for medical malpractice, such affidavit is  
24 required without exception and the person executing the affidavit  
25 shall meet the requirements of a person who provides expert  
26 testimony or executes an affidavit as set forth in section 7 of  
27 P.L.2004, c.17 (C.2A:53A-41). In all other cases, the person  
28 executing the affidavit shall be licensed in this or any other state;  
29 have particular expertise in the general area or specialty involved in  
30 the action, as evidenced by board certification or by devotion of the  
31 person's practice substantially to the general area or specialty  
32 involved in the action for a period of at least five years. The person  
33 shall have no financial interest in the outcome of the case under  
34 review, but this prohibition shall not exclude the person from being  
35 an expert witness in the case.

36 Failure to comply with the requirements of this section will  
37 result in an automatic dismissal of the pleading alleging malpractice  
38 or negligence without the need for filing a motion on the issue.  
39 (cf: P.L.2004, c.17, s.8)

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41 2. This act shall take effect immediately.

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44 STATEMENT

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46 Presently, in any action for damages for personal injuries,

EXPLANATION – Matter enclosed in bold-faced brackets **thus** in the above bill is  
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 wrongful death or property damage resulting from an alleged act of  
2 malpractice or negligence by a licensed person in his profession or  
3 occupation, the plaintiff is required to provide the defendant with an  
4 affidavit of a qualified person that there exists a reasonable  
5 probability that the care, skill or knowledge provided fell below  
6 acceptable professional or occupational standards or treatment  
7 practices. This bill expands the requirement to provide that within  
8 60 days of the filing of any pleading, including, but not limited to a  
9 responsive pleading, the plaintiff must provide each party with an  
10 affidavit of an appropriate licensed person that there exists a  
11 reasonable probability that the care, skill or knowledge exercised or  
12 exhibited in the treatment, practice or work that is the subject of the  
13 pleading, fell outside acceptable professional or occupational  
14 standards or treatment practices. In some instances, this might  
15 include third parties brought into a lawsuit by a defendant.

16 Under the bill, failure to comply with the requirements of this  
17 law will result in an automatic dismissal of the pleading alleging  
18 malpractice or negligence without the need for filing a motion on  
19 the issue.