

Senate Engrossed

State of Arizona
Senate
Forty-sixth Legislature
Second Regular Session
2004

CHAPTER 4

SENATE BILL 1113

AN ACT

AMENDING TITLE 12, CHAPTER 17, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 12-2602.01; RELATING TO CLAIMS AGAINST LICENSED PROFESSIONALS.

(TEXT OF BILL BEGINS ON NEXT PAGE)



1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 12, chapter 17, article 1, Arizona Revised Statutes,
3 is amended by adding section 12-2602.01, to read:

4 12-2602.01. Preliminary expert opinion testimony against health
5 care professionals; certification; definitions

6 A. IF A CLAIM AGAINST A HEALTH CARE PROFESSIONAL IS ASSERTED IN A
7 CIVIL ACTION, THE CLAIMANT OR THE PARTY DESIGNATING A NONPARTY AT FAULT OR
8 ITS ATTORNEY SHALL CERTIFY IN A WRITTEN STATEMENT THAT IS FILED AND SERVED
9 WITH THE CLAIM OR THE DESIGNATION OF NONPARTY AT FAULT WHETHER OR NOT EXPERT
10 OPINION TESTIMONY IS NECESSARY TO PROVE THE HEALTH CARE PROFESSIONAL'S
11 STANDARD OF CARE OR LIABILITY FOR THE CLAIM.

12 B. IF THE CLAIMANT OR THE PARTY DESIGNATING A NONPARTY AT FAULT OR ITS
13 ATTORNEY CERTIFIES PURSUANT TO SUBSECTION H OF THIS SECTION THAT EXPERT
14 OPINION TESTIMONY IS NECESSARY, THE CLAIMANT SHALL SERVE A PRELIMINARY EXPERT
15 OPINION AFFIDAVIT WITH THE INITIAL DISCLOSURES THAT ARE REQUIRED BY RULE
16 26.1, ARIZONA RULES OF CIVIL PROCEDURE. IF A PARTY DESIGNATES A NONPARTY AT
17 FAULT AND CERTIFIES PURSUANT TO SUBSECTION H OF THIS SECTION THAT EXPERT
18 OPINION TESTIMONY IS NECESSARY, THAT PARTY SHALL SERVE A PRELIMINARY EXPERT
19 OPINION AFFIDAVIT WITHIN SIXTY DAYS AFTER FILING THE DESIGNATION. THE
20 CLAIMANT OR THE PARTY DESIGNATING A NONPARTY AT FAULT MAY PROVIDE AFFIDAVITS
21 FROM AS MANY EXPERTS AS THE CLAIMANT OR THE PARTY DESIGNATING A NONPARTY AT
22 FAULT DEEMS NECESSARY. THE PRELIMINARY EXPERT OPINION AFFIDAVIT SHALL
23 CONTAIN AT LEAST THE FOLLOWING INFORMATION:

24 1. THE EXPERT'S QUALIFICATIONS TO EXPRESS AN OPINION ON THE HEALTH
25 CARE PROFESSIONAL'S STANDARD OF CARE OR LIABILITY FOR THE CLAIM.

26 2. THE FACTUAL BASIS FOR EACH CLAIM AGAINST A HEALTH CARE
27 PROFESSIONAL.

28 3. THE HEALTH CARE PROFESSIONAL'S ACTS, ERRORS OR OMISSIONS THAT THE
29 EXPERT CONSIDERS TO BE A VIOLATION OF THE APPLICABLE STANDARD OF CARE
30 RESULTING IN LIABILITY.

31 4. THE MANNER IN WHICH THE HEALTH CARE PROFESSIONAL'S ACTS, ERRORS OR
32 OMISSIONS CAUSED OR CONTRIBUTED TO THE DAMAGES OR OTHER RELIEF SOUGHT BY THE
33 CLAIMANT.

34 C. THE COURT MAY EXTEND THE TIME FOR COMPLIANCE WITH THIS SECTION ON
35 APPLICATION AND GOOD CAUSE SHOWN OR BY STIPULATION OF THE PARTIES TO THE
36 CLAIM. IF THE COURT EXTENDS THE TIME FOR COMPLIANCE, THE COURT MAY ALSO
37 ADJUST THE TIMING AND SEQUENCE OF DISCLOSURES THAT ARE REQUIRED FROM THE
38 HEALTH CARE PROFESSIONAL AGAINST WHOM THE CLAIM IS ASSERTED OR THE DESIGNATED
39 NONPARTY AT FAULT.

40 D. IF THE CLAIMANT OR THE PARTY DESIGNATING THE NONPARTY AT FAULT OR
41 ITS ATTORNEY CERTIFIES THAT EXPERT TESTIMONY IS NOT REQUIRED FOR THE CLAIM
42 OR DESIGNATION AND THE CLAIMANT, THE HEALTH CARE PROFESSIONAL OR DESIGNATED
43 NONPARTY AT FAULT DISPUTES THAT CERTIFICATION IN GOOD FAITH, THE CLAIMANT,
44 THE HEALTH CARE PROFESSIONAL OR THE DESIGNATED NONPARTY AT FAULT MAY APPLY
45 BY MOTION TO THE COURT FOR AN ORDER REQUIRING THE CLAIMANT OR THE PARTY

1 DESIGNATING THE NONPARTY AT FAULT TO OBTAIN AND SERVE A PRELIMINARY EXPERT
2 OPINION AFFIDAVIT UNDER THIS SECTION. IN THE MOTION, THE CLAIMANT, THE
3 HEALTH CARE PROFESSIONAL OR THE DESIGNATED NONPARTY AT FAULT SHALL IDENTIFY
4 THE FOLLOWING:

- 5 1. THE CLAIM FOR WHICH IT BELIEVES EXPERT TESTIMONY IS NEEDED.
- 6 2. THE PRIMA FACIE ELEMENTS OF THE CLAIM.
- 7 3. THE LEGAL OR FACTUAL BASIS FOR ITS CONTENTION THAT EXPERT OPINION
8 TESTIMONY IS REQUIRED TO ESTABLISH THE STANDARD OF CARE OR LIABILITY FOR THE
9 CLAIM.

10 E. AFTER CONSIDERING THE MOTION AND ANY RESPONSE, THE COURT SHALL
11 DETERMINE WHETHER THE CLAIMANT OR PARTY DESIGNATING THE NONPARTY AT FAULT
12 SHALL COMPLY WITH THIS SECTION AND, IF THE COURT DEEMS THAT COMPLIANCE IS
13 NECESSARY, SHALL SET A DATE AND TERMS FOR COMPLIANCE. THE COURT SHALL STAY
14 ALL OTHER PROCEEDINGS AND APPLICABLE TIME PERIODS CONCERNING THE CLAIM
15 PENDING THE COURT'S RULING ON THE MOTION TO COMPEL COMPLIANCE WITH THIS
16 SECTION.

17 F. THE COURT, ON ITS OWN MOTION OR THE MOTION OF THE HEALTH CARE
18 PROFESSIONAL OR DESIGNATED NONPARTY AT FAULT, SHALL DISMISS THE CLAIM AGAINST
19 THE HEALTH CARE PROFESSIONAL OR DESIGNATED NONPARTY AT FAULT WITHOUT
20 PREJUDICE IF THE CLAIMANT OR THE PARTY DESIGNATING THE NONPARTY AT FAULT
21 FAILS TO FILE AND SERVE A PRELIMINARY EXPERT OPINION AFFIDAVIT AFTER THE
22 CLAIMANT OR DESIGNATED NONPARTY AT FAULT OR ITS ATTORNEY HAS CERTIFIED THAT
23 AN AFFIDAVIT IS NECESSARY OR THE COURT HAS ORDERED THE CLAIMANT OR THE PARTY
24 DESIGNATING A NONPARTY AT FAULT TO FILE AND SERVE AN AFFIDAVIT. UPON ANY
25 ALLEGATION OF INSUFFICIENCY OF THE AFFIDAVIT, THE COURT SHALL ALLOW ANY PARTY
26 A REASONABLE TIME TO CURE ANY AFFIDAVIT, IF NECESSARY.

27 G. A CLAIMANT OR A PARTY DESIGNATING A NONPARTY AT FAULT MAY
28 SUPPLEMENT A CLAIM OR PRELIMINARY EXPERT OPINION AFFIDAVIT WITH ADDITIONAL
29 CLAIMS, EVIDENCE OR EXPERT OPINIONS THAT ARE TIMELY DISCLOSED UNDER THE
30 ARIZONA RULES OF CIVIL PROCEDURE OR PURSUANT TO COURT ORDER. A PRELIMINARY
31 EXPERT OPINION AFFIDAVIT MAY BE USED FOR IMPEACHMENT ONLY UPON A FINDING OF
32 THE COURT THAT THE FACTS UPON WHICH THE AFFIDAVIT WERE BASED HAVE NOT
33 SUBSTANTIALLY CHANGED AND THAT THE FACTS WERE KNOWN TO THE EXPERT AT THE TIME
34 THE AFFIDAVIT WAS PREPARED.

35 H. FOR THE PURPOSES OF THIS SECTION:

36 1. "CLAIM" MEANS A LEGAL CAUSE OF ACTION AGAINST A HEALTH CARE
37 PROFESSIONAL UNDER SECTIONS 12-561 THROUGH 12-563 OR UNDER TITLE 46, CHAPTER
38 4 OR AN AFFIRMATIVE DEFENSE OR DESIGNATION OF A NONPARTY AT FAULT TO WHICH
39 ALL OF THE FOLLOWING APPLY:

40 (a) THE CLAIM IS ASSERTED AGAINST A HEALTH CARE PROFESSIONAL IN A
41 COMPLAINT, ANSWER, CROSS-CLAIM, COUNTERCLAIM, THIRD PARTY COMPLAINT OR
42 DESIGNATION OF A NONPARTY AT FAULT.

43 (b) THE CLAIM IS BASED ON THE HEALTH CARE PROFESSIONAL'S ALLEGED BREACH
44 OF CONTRACT, NEGLIGENCE, MISCONDUCT, ERRORS OR OMISSIONS IN RENDERING
45 PROFESSIONAL SERVICES.

1 (c) EXPERT TESTIMONY IS NECESSARY TO PROVE THE HEALTH CARE
2 PROFESSIONAL'S STANDARD OF CARE OR LIABILITY FOR THE CLAIM.

3 2. "EXPERT" MEANS A PERSON WHO IS QUALIFIED BY KNOWLEDGE, SKILL,
4 EXPERIENCE, TRAINING OR EDUCATION TO EXPRESS AN OPINION REGARDING A LICENSED
5 HEALTH CARE PROFESSIONAL'S STANDARD OF CARE OR LIABILITY FOR THE CLAIM.

6 Sec. 2. Purpose

7 The legislature declares that the purpose of section 12-2602.01,
8 Arizona Revised Statutes, is to curtail the filing of frivolous lawsuits
9 against health care professionals and the filing of frivolous nonparty at
10 fault designations by health care professionals.

APPROVED BY THE GOVERNOR MARCH 17, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 17, 2004.

Passed the House March 10, 20 04

by the following vote: 43 Ayes,

17 Nays, 0 Not Voting

Jake Flake
Speaker of the House

Norman L. Moore
Chief Clerk of the House

Passed the Senate March 8, 20 04

by the following vote: 26 Ayes,

4 Nays, 0 Not Voting

Klu Bennett
President of the Senate

Charmine Billington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this
12th day of March, 2004

at 8:16 o'clock a. M.

Jennifer Upbarra
Secretary to the Governor

Approved this 17 day of

March, 20 04,

at 10³⁵ o'clock A. M.

Jed Neel
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State
this 17 day of March, 2004

at 11:15 o'clock A. M.

Janice K. Brown
Secretary of State

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