

State of Arizona
House of Representatives
Forty-fourth Legislature
First Regular Session
1999

HOUSE BILL 2362

AN ACT

REPEALING SECTIONS 12-2601 AND 12-2602, ARIZONA REVISED STATUTES; CHANGING THE DESIGNATION OF TITLE 12, CHAPTER 17, ARIZONA REVISED STATUTES, TO "CLAIMS AGAINST LICENSED PROFESSIONALS"; AMENDING TITLE 12, CHAPTER 17, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING NEW SECTIONS 12-2601 AND 12-2602; RELATING TO CLAIMS AGAINST LICENSED PROFESSIONALS.

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

Section 1. Repeal

Sections 12-2601 and 12-2602, Arizona Revised Statutes, are repealed.

Sec. 2. Heading change

The chapter heading of title 12, chapter 17, Arizona Revised Statutes, is changed from "CLAIMS AGAINST REGISTERED PROFESSIONALS" to "CLAIMS AGAINST LICENSED PROFESSIONALS".

Sec. 3. Title 12, chapter 17, article 1, Arizona Revised Statutes, is amended by adding new sections 12-2601 and 12-2602, to read:

12-2601. Definitions

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "CLAIM" MEANS A LEGAL CAUSE OF ACTION EXCEPT FOR ACTIONS RELATING TO HEALTH CARE UNDER SECTIONS 12-561 THROUGH 12-563 OF THIS TITLE OR UNDER TITLE 46, CHAPTER 4 OR AN AFFIRMATIVE DEFENSE TO WHICH ALL OF THE FOLLOWING APPLY:

(a) THE CLAIM IS ASSERTED AGAINST A LICENSED PROFESSIONAL IN A COMPLAINT, ANSWER, CROSS-CLAIM, COUNTERCLAIM OR THIRD PARTY COMPLAINT.

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

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

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

4 3. "LICENSED PROFESSIONAL" MEANS A PERSON, CORPORATION, PROFESSIONAL
5 CORPORATION, PARTNERSHIP, LIMITED LIABILITY COMPANY, LIMITED LIABILITY
6 PARTNERSHIP OR OTHER ENTITY THAT IS LICENSED BY THIS STATE TO PRACTICE A
7 PROFESSION OR OCCUPATION UNDER TITLE 20 OR 32 OR THAT IS ADMITTED TO THE
8 STATE BAR.

9 12-2602. Preliminary expert opinion testimony; certification

10 A. IF A CLAIM AGAINST A LICENSED PROFESSIONAL IS ASSERTED IN A CIVIL
11 ACTION, THE CLAIMANT OR THE CLAIMANT'S ATTORNEY SHALL CERTIFY IN A WRITTEN
12 STATEMENT THAT IS FILED AND SERVED WITH THE CLAIM WHETHER OR NOT EXPERT
13 OPINION TESTIMONY IS NECESSARY TO PROVE THE LICENSED PROFESSIONAL'S STANDARD
14 OF CARE OR LIABILITY FOR THE CLAIM.

15 B. IF THE CLAIMANT OR THE CLAIMANT'S ATTORNEY CERTIFIES PURSUANT TO
16 SUBSECTION A THAT EXPERT OPINION TESTIMONY IS NECESSARY, THE CLAIMANT SHALL
17 SERVE A PRELIMINARY EXPERT OPINION AFFIDAVIT WITH THE INITIAL DISCLOSURES
18 THAT ARE REQUIRED BY RULE 26.1, ARIZONA RULES OF CIVIL PROCEDURE. THE
19 CLAIMANT MAY PROVIDE AFFIDAVITS FROM AS MANY EXPERTS AS THE CLAIMANT DEEMS
20 NECESSARY. THE PRELIMINARY EXPERT OPINION AFFIDAVIT SHALL CONTAIN AT LEAST
21 THE FOLLOWING INFORMATION:

22 1. THE EXPERT'S QUALIFICATIONS TO EXPRESS AN OPINION ON THE LICENSED
23 PROFESSIONAL'S STANDARD OF CARE OR LIABILITY FOR THE CLAIM.

24 2. THE FACTUAL BASIS FOR EACH CLAIM AGAINST A LICENSED PROFESSIONAL.

25 3. THE LICENSED PROFESSIONAL'S ACTS, ERRORS OR OMISSIONS THAT THE
26 EXPERT CONSIDERS TO BE A VIOLATION OF THE APPLICABLE STANDARD OF CARE
27 RESULTING IN LIABILITY.

28 4. THE MANNER IN WHICH THE LICENSED PROFESSIONAL'S ACTS, ERRORS OR
29 OMISSIONS CAUSED OR CONTRIBUTED TO THE DAMAGES OR OTHER RELIEF SOUGHT BY THE
30 CLAIMANT.

31 C. THE COURT MAY EXTEND THE TIME FOR COMPLIANCE WITH THIS SECTION ON
32 APPLICATION AND GOOD CAUSE SHOWN OR BY STIPULATION OF THE PARTIES TO THE
33 CLAIM. IF THE COURT EXTENDS THE TIME FOR COMPLIANCE, THE COURT MAY ALSO
34 ADJUST THE TIMING AND SEQUENCE OF DISCLOSURES THAT ARE REQUIRED FROM THE
35 LICENSED PROFESSIONAL AGAINST WHOM THE CLAIM IS ASSERTED.

36 D. IF THE CLAIMANT OR THE CLAIMANT'S ATTORNEY CERTIFIES THAT EXPERT
37 TESTIMONY IS NOT REQUIRED FOR ITS CLAIM AND THE LICENSED PROFESSIONAL WHO IS
38 DEFENDING THE CLAIM DISPUTES THAT CERTIFICATION IN GOOD FAITH, THE LICENSED
39 PROFESSIONAL MAY APPLY BY MOTION TO THE COURT FOR AN ORDER REQUIRING THE
40 CLAIMANT TO OBTAIN AND SERVE A PRELIMINARY EXPERT OPINION AFFIDAVIT UNDER
41 THIS SECTION. IN ITS MOTION, THE LICENSED PROFESSIONAL SHALL IDENTIFY THE
42 FOLLOWING:

43 1. THE CLAIM FOR WHICH IT BELIEVES EXPERT TESTIMONY IS NEEDED.

44 2. THE PRIMA FACIE ELEMENTS OF THE CLAIM.

1 3. THE LEGAL OR FACTUAL BASIS FOR ITS CONTENTION THAT EXPERT OPINION
2 TESTIMONY IS REQUIRED TO ESTABLISH THE STANDARD OF CARE OR LIABILITY FOR THE
3 CLAIM.

4 E. AFTER CONSIDERING THE MOTION AND ANY RESPONSE, THE COURT SHALL
5 DETERMINE WHETHER THE CLAIMANT SHALL COMPLY WITH THIS SECTION AND, IF THE
6 COURT DEEMS THAT COMPLIANCE IS NECESSARY, SHALL SET A DATE AND TERMS FOR
7 COMPLIANCE. THE COURT SHALL STAY ALL OTHER PROCEEDINGS AND APPLICABLE TIME
8 PERIODS CONCERNING THE CLAIM PENDING THE COURT'S RULING ON THE MOTION TO
9 COMPEL COMPLIANCE WITH THIS SECTION.

10 F. THE COURT, ON ITS OWN MOTION OR THE MOTION OF THE LICENSED
11 PROFESSIONAL, SHALL DISMISS THE CLAIM AGAINST THE LICENSED PROFESSIONAL
12 WITHOUT PREJUDICE IF THE CLAIMANT FAILS TO FILE AND SERVE A PRELIMINARY
13 EXPERT OPINION AFFIDAVIT AFTER THE CLAIMANT OR THE CLAIMANT'S ATTORNEY HAS
14 CERTIFIED THAT AN AFFIDAVIT IS NECESSARY OR THE COURT HAS ORDERED THE
15 CLAIMANT TO FILE AND SERVE AN AFFIDAVIT.

16 G. A CLAIMANT MAY SUPPLEMENT A CLAIM OR PRELIMINARY EXPERT OPINION
17 AFFIDAVIT WITH ADDITIONAL CLAIMS, EVIDENCE OR EXPERT OPINIONS THAT ARE TIMELY
18 DISCLOSED UNDER THE ARIZONA RULES OF CIVIL PROCEDURE OR PURSUANT TO COURT
19 ORDER. AN ACTION UNDER THIS CHAPTER DOES NOT PRECLUDE A PARTY FROM USING A
20 PRELIMINARY EXPERT OPINION AFFIDAVIT FOR ANY PURPOSE, INCLUDING IMPEACHMENT.