

REFERENCE TITLE: **claims; licensed professionals; expert witness**

State of Arizona
Senate
Fifty-second Legislature
Second Regular Session
2016

SB 1294

Introduced by
Senator Driggs

AN ACT

**AMENDING SECTIONS 12-2601 AND 12-2602, ARIZONA REVISED STATUTES; 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. Section 12-2601, Arizona Revised Statutes, is amended to
3 read:

4 12-2601. Definitions

5 In this article, unless the context otherwise requires:

6 1. "Claim" means a legal cause of action OR ARBITRATION except for
7 actions OR ARBITRATIONS relating to health care under sections 12-561,
8 ~~through 12-562 AND 12-563 of this title~~ or under title 46, chapter 4 or an
9 affirmative defense to which all of the following apply:

10 (a) The claim is asserted against a licensed professional in a
11 complaint, answer, cross-claim, counterclaim or third party complaint OR IN A
12 CLAIM, ANSWERING STATEMENT OR COUNTER-CLAIM IN AN ARBITRATION DEMAND OR
13 SUBMISSION.

14 (b) The claim is based on the licensed professional's alleged breach
15 of contract, negligence, misconduct, errors or omissions in rendering
16 professional services.

17 (c) Expert testimony is necessary to prove the licensed professional's
18 standard of care or liability for the claim.

19 2. "Expert" means a person who MEETS THE CRITERIA PRESCRIBED IN
20 SECTION 12-2602, SUBSECTION H AND WHO is qualified by knowledge, skill,
21 experience, training or education to express an opinion regarding a licensed
22 professional's standard of care or liability for the claim.

23 3. "Licensed professional" means a person, corporation, professional
24 corporation, partnership, limited liability company, limited liability
25 partnership or other entity that is licensed by this state to practice a
26 profession or occupation under title 20 or 32 or that is admitted to the
27 state bar.

28 Sec. 2. Section 12-2602, Arizona Revised Statutes, is amended to read:

29 12-2602. Preliminary expert opinion testimony; certification;
30 qualification criteria

31 A. If a claim against a licensed professional is asserted in a civil
32 action OR ARBITRATION, the claimant or the claimant's attorney shall certify
33 in a written statement that is filed and served with the claim whether or not
34 expert opinion testimony is necessary to prove the licensed professional's
35 standard of care or liability for the claim.

36 B. If the claimant or the claimant's attorney certifies pursuant to
37 subsection A OF THIS SECTION that expert opinion testimony is necessary, the
38 claimant shall serve a preliminary expert opinion affidavit with the initial
39 disclosures that are required by rule 26.1, Arizona rules of civil procedure,
40 OR AS AN INTERIM MEASURE OR PRE-HEARING EXCHANGE AND PRODUCTION OF
41 INFORMATION THAT IS REQUIRED BY THE ARBITRATION TRIBUNAL BEFORE THE
42 ARBITRATION HEARING. The claimant may provide affidavits from as many
43 experts as the claimant deems necessary. The preliminary expert opinion
44 affidavit shall contain at least the following information:

1 1. The expert's qualifications to express an opinion on the licensed
2 professional's standard of care or liability for the claim.

3 2. The factual basis for each claim against a licensed professional.

4 3. The licensed professional's acts, errors or omissions that the
5 expert considers to be a violation of the applicable standard of care
6 resulting in liability.

7 4. The manner in which the licensed professional's acts, errors or
8 omissions caused or contributed to the damages or other relief sought by the
9 claimant.

10 C. The court OR ARBITRATOR may extend the time for compliance with
11 this section on application and good cause shown or by stipulation of the
12 parties to the claim. If the court OR ARBITRATOR extends the time for
13 compliance, the court OR ARBITRATOR may also adjust the timing and sequence
14 of disclosures that are required from the licensed professional against whom
15 the claim is asserted.

16 D. If the claimant or the claimant's attorney certifies that expert
17 testimony is not required for its claim and the licensed professional who is
18 defending the claim disputes that certification in good faith, the licensed
19 professional may apply by motion to the court OR ARBITRATOR for an order
20 requiring the claimant to obtain and serve a preliminary expert opinion
21 affidavit under this section. In its motion, the licensed professional shall
22 identify the following:

23 1. The claim for which it believes expert testimony is needed.

24 2. The prima facie elements of the claim.

25 3. The legal or factual basis for its contention that expert opinion
26 testimony is required to establish the standard of care or liability for the
27 claim.

28 E. After considering the motion and any response, the court OR
29 ARBITRATOR shall determine whether the claimant shall comply with this
30 section and, if the court OR ARBITRATOR deems that compliance is necessary,
31 shall set a date and terms for compliance. The court OR ARBITRATOR shall
32 stay all other proceedings and applicable time periods concerning the claim
33 pending the court's OR ARBITRATOR'S ruling on the motion to compel compliance
34 with this section.

35 F. The court OR ARBITRATOR, on its own motion or the motion of the
36 licensed professional, shall dismiss the claim against the licensed
37 professional without prejudice if the claimant fails to file and serve a
38 preliminary expert opinion affidavit after the claimant or the claimant's
39 attorney has certified that an affidavit is necessary or the court OR
40 ARBITRATOR has ordered the claimant to file and serve an affidavit.

41 G. A claimant may supplement a claim or preliminary expert opinion
42 affidavit with additional claims, evidence or expert opinions that are timely
43 disclosed under the Arizona rules of civil procedure, ARBITRATION TRIBUNAL
44 RULES or pursuant to A court OR ARBITRATION TRIBUNAL order. An action under

1 this chapter does not preclude a party from using a preliminary expert
2 opinion affidavit for any purpose, including impeachment.

3 H. AN EXPERT WITNESS'S OPINION OR TESTIMONY ON THE APPROPRIATE
4 STANDARD OF PRACTICE OR CARE OF A LICENSED PROFESSIONAL DOES NOT SATISFY THE
5 REQUIREMENTS OF THIS SECTION UNLESS THE EXPERT WITNESS WHO PROVIDES THE
6 OPINION OR TESTIMONY IS LICENSED OR REGISTERED IN THIS STATE OR ANOTHER STATE
7 AND THE EXPERT WITNESS MEETS THE FOLLOWING CRITERIA:

8 1. IF THE LICENSED PROFESSIONAL AGAINST WHOM THE EXPERT OPINION OR
9 TESTIMONY IS OFFERED IS, OR CLAIMS TO BE, REGISTERED OR LICENSED IN A
10 PARTICULAR PROFESSION OR OCCUPATION OR IN A DESIGNATED BRANCH, LICENSE
11 CATEGORY OR PROFICIENCY OF A PROFESSION OR OCCUPATION, THE EXPERT WITNESS
12 MUST BE REGISTERED OR LICENSED IN THE SAME PROFESSION OR OCCUPATION OR
13 DESIGNATED BRANCH, LICENSE CATEGORY OR PROFICIENCY.

14 2. DURING THE YEAR IMMEDIATELY PRECEDING THE OCCURRENCE GIVING RISE TO
15 THE CLAIM, THE EXPERT MUST HAVE DEVOTED A MAJORITY OF THE EXPERT'S
16 PROFESSIONAL WORK OR PRACTICE TO EITHER OR BOTH OF THE FOLLOWING:

17 (a) THE ACTIVE PRACTICE OF THE SAME PROFESSION OR OCCUPATION OR
18 DESIGNATED BRANCH, LICENSE CATEGORY OR PROFICIENCY OF THE PROFESSION OR
19 OCCUPATION AS THE LICENSED PROFESSIONAL AGAINST WHOM THE EXPERT OPINION OR
20 TESTIMONY IS OFFERED.

21 (b) THE INSTRUCTION OF STUDENTS IN AN ACCREDITED EDUCATIONAL
22 INSTITUTION FOR THE SAME PROFESSION OR OCCUPATION OR DESIGNATED BRANCH,
23 LICENSE CATEGORY OR PROFICIENCY OF THE PROFESSION OR OCCUPATION AS THE
24 LICENSED PROFESSIONAL AGAINST WHOM THE EXPERT OPINION OR TESTIMONY IS
25 OFFERED.

26 I. IF THE LICENSED PROFESSIONAL IS A FIRM THAT EMPLOYS A LICENSED
27 PROFESSIONAL AGAINST WHOM THE EXPERT OPINION OR TESTIMONY IS OFFERED,
28 SUBSECTION H OF THIS SECTION APPLIES AS IF THE LICENSED PROFESSIONAL WERE THE
29 PARTY AGAINST WHOM THE EXPERT OPINION OR TESTIMONY IS OFFERED.

30 J. THIS SECTION DOES NOT LIMIT THE POWER OF THE TRIAL COURT OR
31 ARBITRATOR TO DISQUALIFY AN EXPERT WITNESS ON GROUNDS OTHER THAN THE
32 QUALIFICATIONS REQUIRED BY THIS SECTION.

33 K. AN EXPERT WITNESS IN A CLAIM MAY NOT TESTIFY IF THE FEE OF THE
34 WITNESS IS IN ANY WAY CONTINGENT ON THE OUTCOME OF THE CLAIM.