

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
89th General Assembly
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As Engrossed: H4/5/13
A Bill

HOUSE BILL 2231

By: Representative Davis

For An Act To Be Entitled

AN ACT TO REQUIRE THE CONTEMPORANEOUS FILING OF A CERTIFICATE OF MERIT AS A CONDITION OF FILING ANY ACTION FOR DAMAGES ALLEGING PROFESSIONAL NEGLIGENCE BY A LICENSED OR REGISTERED ENGINEER; AND FOR OTHER PURPOSES.

Subtitle

TO REQUIRE THE CONTEMPORANEOUS FILING OF A CERTIFICATE OF MERIT AS A CONDITION OF FILING ANY ACTION FOR DAMAGES ALLEGING PROFESSIONAL NEGLIGENCE BY A LICENSED OR REGISTERED ENGINEER.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 16, Chapter 63, Subchapter 2, is amended to add a new section to read as follows:

16-63-222. Claim against licensed engineer – Preliminary expert opinion testimony – Certification.

(a) As used in this section:

(1) "Claim" means:

(A) A legal cause of action; or

(B) An affirmative defense to which all of the

following apply:

(i) The claim is asserted against a licensed engineer in a complaint, answer, cross-claim, counterclaim, or third-party complaint;



(ii) The claim is based on the licensed engineer's alleged breach of contract, negligence, misconduct, errors, or omissions in rendering professional engineering services; and

(iii) Expert testimony is necessary to prove the licensed engineer's standard of care or liability for the claim;

(2) "Expert" means a person who is qualified by knowledge, skill, experience, training, or education to express an opinion regarding a licensed engineer's standard of care or liability for the claim; and

(3) "Licensed engineer" means a person, corporation, professional corporation, partnership, limited liability company, limited liability partnership, or other entity that is licensed or registered by this state to practice engineering.

(b)(1) If a claim against a licensed engineer is asserted in a civil action, the claimant or the claimant's attorney shall certify in a written statement that is filed and served with the claim whether or not expert opinion testimony is necessary to prove the licensed engineer's standard of care or liability for the claim.

(2) If the claimant or the claimant's attorney certifies under this subsection that expert opinion testimony is necessary, the claimant shall serve a preliminary expert opinion affidavit with the initial disclosures that are required by the Arkansas Rules of Civil Procedure.

(3)(A) The claimant may provide affidavits from as many experts as the claimant considers necessary.

(B) The preliminary expert opinion affidavit shall contain at least the following information:

(i) The expert's qualifications to express an opinion on the licensed engineer's standard of care or liability for the claim;

(ii) The factual basis for each claim against a licensed engineer;

(iii) The licensed engineer's acts, errors, or omissions that the expert considers to be a violation of the applicable standard of care resulting in liability; and

(iv) The manner in which the licensed engineer's acts, errors, or omissions caused or contributed to the damages or other relief sought by the claimant.

(c)(1) The court may extend the time for compliance with this section on application and good cause shown or by stipulation of the parties to the claim.

(2) If the court extends the time for compliance, the court may also adjust the timing and sequence of disclosures that are required from the licensed engineer against whom the claim is asserted.

(d)(1) If the claimant or the claimant's attorney certifies that expert testimony is not required for its claim and the licensed engineer who is defending the claim disputes that certification in good faith, the licensed engineer may apply by motion to the court for an order requiring the claimant to obtain and serve a preliminary expert opinion affidavit under this section.

(2) In its motion under subdivision (d)(1) of this section, the licensed engineer shall identify the following:

(A) The claim for which the licensed engineer believes expert testimony is needed;

(B) The prima facie elements of the claim; and

(C) The legal or factual basis for its contention that expert opinion testimony is required to establish the standard of care or liability for the claim.

(e)(1) After considering the motion under subdivision (d)(1) of this section and any response, the court shall determine whether the claimant shall comply with this section and, if the court considers that compliance is necessary, shall set a date and terms for compliance.

(2) The court shall stay all other proceedings and applicable time periods concerning the claim pending the court's ruling on the motion.

(f) On its own motion or on the motion of the licensed engineer, the court shall dismiss the claim against the licensed engineer without prejudice if the claimant fails to file and serve a preliminary expert opinion affidavit after the claimant or the claimant's attorney has certified that a preliminary expert opinion affidavit is necessary or the court has ordered the claimant to file and serve a preliminary expert opinion affidavit.

(g) A claimant may supplement a claim or preliminary expert opinion affidavit with additional claims, evidence, or expert opinions that are timely disclosed under the Arkansas Rules of Civil Procedure or under court order.

(h) This section does not preclude a party from using a preliminary expert opinion affidavit for any purpose, including impeachment.

/s/Davis