Senate Engrossed

FILED
JANICE K. BREWER
SECRETARY OF STATE

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)

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

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

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

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

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

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

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

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

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

C. 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. IF THE COURT EXTENDS THE TIME FOR COMPLIANCE, THE COURT MAY ALSO ADJUST THE TIMING AND SEQUENCE OF DISCLOSURES THAT ARE REQUIRED FROM THE HEALTH CARE PROFESSIONAL AGAINST WHOM THE CLAIM IS ASSERTED OR THE DESIGNATED NONPARTY AT FAULT.

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

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

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

2. THE PRIMA FACIE ELEMENTS OF THE CLAIM.

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

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

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

H. FOR THE PURPOSES OF THIS SECTION:

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

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

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

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

Sec. 2. Purpose

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