

1 State of Arkansas
2 89th General Assembly
3 Regular Session, 2013
4

As Engrossed: H4/5/13

A Bill

HOUSE BILL 2231

5 By: Representative Davis
6

For An Act To Be Entitled

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

15 TO REQUIRE THE CONTEMPORANEOUS FILING OF
16 A CERTIFICATE OF MERIT AS A CONDITION OF
17 FILING ANY ACTION FOR DAMAGES ALLEGING
18 PROFESSIONAL NEGLIGENCE BY A LICENSED OR
19 REGISTERED ENGINEER.
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23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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25 *SECTION 1. Arkansas Code Title 16, Chapter 63, Subchapter 2, is*
26 *amended to add a new section to read as follows:*

27 16-63-222. Claim against licensed engineer – Preliminary expert
28 opinion testimony – Certification.

29 (a) As used in this section:

30 (1) "Claim" means:

31 (A) A legal cause of action; or

32 (B) An affirmative defense to which all of the

33 following apply:

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

