

1 INTERIM STUDY PROPOSAL 2013-078

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

As Engrossed: H4/5/13
A Bill

HOUSE BILL 2231

5
6 By: Representative Davis

7 Filed with: Interim House Committee on Judiciary
8 pursuant to A.C.A. §10-3-217.

9 **For An Act To Be Entitled**

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

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17 **Subtitle**

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

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

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

29 16-63-222. Claim against licensed engineer – Preliminary expert
30 opinion testimony – Certification.

31 (a) As used in this section:

32 (1) "Claim" means:

33 (A) A legal cause of action; or

34 (B) An affirmative defense to which all of the
35 following apply:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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8 /s/Davis

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11 Referred by the Arkansas House of Representatives
12 Prepared by: BPG/VJF

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