

1 ENGROSSED HOUSE
2 BILL NO. 2305

By: Kannady of the House

3 and

4 Holt of the Senate

5
6 An Act relating to civil procedure; amending Section
7 2, Chapter 12, 1st Extraordinary Session, O.S.L. 2013
8 (12 O.S. Supp. 2015, Section 19.1), which relates to
9 affidavits of merit; requiring affidavits of merit in
10 negligence counterclaims and cross-claims; describing
11 contents of affidavit; authorizing time extension to
12 file affidavit; directing claimant to provide
13 opposing party with specified information; providing
14 exemption for indigent claimant; updating citation;
15 and providing an effective date.

16 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

17 SECTION 1. AMENDATORY Section 2, Chapter 12, 1st
18 Extraordinary Session, O.S.L. 2013 (12 O.S. Supp. 2015, Section
19 19.1), is amended to read as follows:

20 Section 19.1 A. 1. In any civil action for negligence,
21 including a counterclaim or cross-claim, wherein the ~~plaintiff~~
22 claimant shall be required to present the testimony of an expert
23 witness to establish breach of the relevant standard of care and
24 that such breach of duty resulted in harm to the ~~plaintiff~~ claimant,
except as provided in subsection B of this section, the ~~plaintiff~~
claimant shall attach to the petition an affidavit attesting that:

- 1 a. the ~~plaintiff~~ claimant has consulted and reviewed the
2 facts of the claim with a qualified expert,
- 3 b. the ~~plaintiff~~ claimant has obtained a written opinion
4 from a qualified expert that clearly identifies the
5 ~~plaintiff~~ claimant and includes the determination of
6 the expert that, based upon a review of the available
7 material including, but not limited to, applicable
8 records, facts or other relevant material, a
9 reasonable interpretation of the facts supports a
10 finding that the acts or omissions of the ~~defendant~~
11 opposing party against whom the action is brought
12 constituted negligence, and
- 13 c. on the basis of the review and consultation of the
14 qualified expert, the ~~plaintiff~~ claimant has concluded
15 that the claim is meritorious and based on good cause.

16 2. If the civil action, counterclaim or cross-claim for
17 negligence is filed:

- 18 a. without an affidavit being attached to the petition,
19 as required in paragraph 1 of this subsection, and
- 20 b. no extension of time is subsequently granted by the
21 court, pursuant to subsection B of this section,
22 the court shall, upon motion of the ~~defendant~~ opposing party,
23 dismiss the action, counterclaim or cross-claim without prejudice to
24 its refiling.

1 3. The written opinion from the qualified expert shall state
2 the acts or omissions of the ~~defendant or defendants~~ opposing party
3 or opposing parties that the expert then believes constituted
4 negligence and shall include reasons explaining why the acts or
5 omissions constituted negligence. The written opinion from the
6 qualified expert shall not be admissible at trial for any purpose
7 nor shall any inquiry be permitted with regard to the written
8 opinion for any purpose either in discovery or at trial.

9 B. 1. The court may, upon application of the ~~plaintiff~~
10 claimant for good cause shown, grant the ~~plaintiff~~ claimant an
11 extension of time, not exceeding ninety (90) days after the date the
12 petition, counterclaim or cross-claim is filed, except for good
13 cause shown, to file in the action an affidavit attesting that the
14 ~~plaintiff~~ claimant has obtained a written opinion from a qualified
15 expert as described in paragraph 1 of subsection A of this section.

16 2. If on the expiration of an extension period described in
17 paragraph 1 of this subsection, the ~~plaintiff~~ claimant has failed to
18 file in the action an affidavit as described above, the court shall,
19 upon motion of the ~~defendant~~ opposing party, unless good cause is
20 shown for such failure, dismiss the action, counterclaim or cross-
21 claim without prejudice to its refiling. If good cause is shown,
22 the resulting extension shall in no event exceed sixty (60) days.

23 C. 1. Upon written request of any ~~defendant~~ opposing party in
24 a civil action, counterclaim or cross-claim for negligence, the

1 ~~plaintiff~~ claimant shall, within ten (10) business days after
2 receipt of such request, provide the ~~defendant~~ opposing party with:

3 a. a copy of the written opinion of a qualified expert
4 mentioned in an affidavit filed pursuant to subsection
5 A or B of this section, and

6 b. an authorization from the ~~plaintiff~~ claimant in a form
7 that complies with applicable state and federal laws,
8 including the Health Insurance Portability and
9 Accountability Act of 1996, for the release of any and
10 all relevant records related to the ~~plaintiff~~ claimant
11 for a period commencing five (5) years prior to the
12 incident that is at issue in the civil action, and
13 counterclaim or cross-claim for negligence.

14 2. If the ~~plaintiff~~ claimant fails to comply with paragraph 1
15 of this subsection, the court shall, upon motion of the ~~defendant~~
16 opposing party, unless good cause is shown for such failure, dismiss
17 the action, counterclaim or cross-claim without prejudice to its
18 refiling.

19 D. A ~~plaintiff~~ claimant in a civil action, counterclaim or
20 cross-claim for negligence may claim an exemption to the provisions
21 of this section based on indigency pursuant to the qualification
22 rules established as set forth in Section 4 192.1 of this ~~act~~ title.

23 SECTION 2. This act shall become effective November 1, 2016.
24

1 Passed the House of Representatives the 1st day of March, 2016.

2
3 _____
4 Presiding Officer of the House
of Representatives

5 Passed the Senate the ____ day of _____, 2016.

6
7
8 _____
9 Presiding Officer of the Senate