

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 54th Legislature (2013)

4 (1ST EXTRAORDINARY SESSION)

5 ENGROSSED SENATE

6 BILL NO. 1X

By: Bingman, Sykes, Jolley and
Shortey of the Senate

and

Shannon of the House

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10 An Act relating to affidavits of merit; repealing 12
11 O.S. 2011, Section 19, which relates to affidavits of
12 consultation with qualified expert; requiring filing
13 of certain affidavit with petition in negligence
14 actions; specifying required contents of certain
15 affidavit; providing for time extensions for filing
16 certain affidavit; requiring plaintiff to provide
17 certain information; providing for dismissal under
18 certain circumstances; establishing certain
19 exemption; repealing 12 O.S. 2011, Section 192, which
20 relates to indigency exemption; authorizing plaintiff
21 to request indigency exemption from certain filing
22 requirement; establishing procedures for certain
23 request; requiring promulgation of rules governing
24 determination of indigency for certain purposes;
 repealing 20 O.S. 2011, Section 56, which relates to
 qualification rules for determination of indigency in
 professional negligence cases; repealing Section 5,
 Chapter 390, O.S.L. 2003 (63 O.S. Supp. 2008, Section
 1-1708.1E), which relates to affidavit attesting
 consultation with qualified expert in medical
 liability actions; providing for codification; and
 declaring an emergency.

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

1 SECTION 1. REPEALER 12 O.S. 2011, Section 19, is hereby
2 repealed.

3 SECTION 2. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 19.1 of Title 12, unless there
5 is created a duplication in numbering, reads as follows:

6 A. 1. In any civil action for negligence wherein the plaintiff
7 shall be required to present the testimony of an expert witness to
8 establish breach of the relevant standard of care and that such
9 breach of duty resulted in harm to the plaintiff, except as provided
10 in subsection B of this section, the plaintiff shall attach to the
11 petition an affidavit attesting that:

- 12 a. the plaintiff has consulted and reviewed the facts of
13 the claim with a qualified expert,
- 14 b. the plaintiff has obtained a written opinion from a
15 qualified expert that clearly identifies the plaintiff
16 and includes the determination of the expert that,
17 based upon a review of the available material
18 including, but not limited to, applicable records,
19 facts or other relevant material, a reasonable
20 interpretation of the facts supports a finding that
21 the acts or omissions of the defendant against whom
22 the action is brought constituted negligence, and

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1 c. on the basis of the review and consultation of the
2 qualified expert, the plaintiff has concluded that the
3 claim is meritorious and based on good cause.

4 2. If the civil action for negligence is filed:

5 a. without an affidavit being attached to the petition,
6 as required in paragraph 1 of this subsection, and

7 b. no extension of time is subsequently granted by the
8 court, pursuant to subsection B of this section,

9 the court shall, upon motion of the defendant, dismiss the action
10 without prejudice to its refiling.

11 3. The written opinion from the qualified expert shall state
12 the acts or omissions of the defendant or defendants that the expert
13 then believes constituted negligence and shall include reasons
14 explaining why the acts or omissions constituted negligence. The
15 written opinion from the qualified expert shall not be admissible at
16 trial for any purpose nor shall any inquiry be permitted with regard
17 to the written opinion for any purpose either in discovery or at
18 trial.

19 B. 1. The court may, upon application of the plaintiff for
20 good cause shown, grant the plaintiff an extension of time, not
21 exceeding ninety (90) days after the date the petition is filed,
22 except for good cause shown, to file in the action an affidavit
23 attesting that the plaintiff has obtained a written opinion from a
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1 qualified expert as described in paragraph 1 of subsection A of this
2 section.

3 2. If on the expiration of an extension period described in
4 paragraph 1 of this subsection, the plaintiff has failed to file in
5 the action an affidavit as described above, the court shall, upon
6 motion of the defendant, unless good cause is shown for such
7 failure, dismiss the action without prejudice to its refiling. If
8 good cause is shown, the resulting extension shall in no event
9 exceed sixty (60) days.

10 C. 1. Upon written request of any defendant in a civil action
11 for negligence, the plaintiff shall, within ten (10) business days
12 after receipt of such request, provide the defendant with:

- 13 a. a copy of the written opinion of a qualified expert
14 mentioned in an affidavit filed pursuant to subsection
15 A or B of this section, and
- 16 b. an authorization from the plaintiff in a form that
17 complies with applicable state and federal laws,
18 including the Health Insurance Portability and
19 Accountability Act of 1996, for the release of any and
20 all relevant records related to the plaintiff for a
21 period commencing five (5) years prior to the incident
22 that is at issue in the civil action for negligence.

23 2. If the plaintiff fails to comply with paragraph 1 of this
24 subsection, the court shall, upon motion of the defendant, unless

1 good cause is shown for such failure, dismiss the action without
2 prejudice to its refiling.

3 D. A plaintiff in a civil action for negligence may claim an
4 exemption to the provisions of this section based on indigency
5 pursuant to the qualification rules established as set forth in
6 Section 4 of this act.

7 SECTION 3. REPEALER 12 O.S. 2011, Section 192, is hereby
8 repealed.

9 SECTION 4. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 192.1 of Title 12, unless there
11 is created a duplication in numbering, reads as follows:

12 A. When a plaintiff requests an indigency exemption from
13 providing an affidavit of merit in a civil action for negligence
14 pursuant to Section 2 of this act, such person shall submit an
15 appropriate application to the court clerk, on a form created by the
16 Administrative Director of the Courts, which shall state that the
17 application is signed under oath and under the penalty of perjury
18 and that a false statement may be prosecuted as such.

19 B. 1. The Supreme Court shall promulgate rules governing the
20 determination of indigency for a plaintiff claiming an exemption
21 from providing an affidavit of merit in a civil action for
22 negligence pursuant to Section 2 of this act. The initial
23 determination of indigency shall be made by the Chief Judge of the
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1 Judicial District or a designee thereof, based on the plaintiff's
2 application and the rules provided herein.

3 2. Upon promulgation of the rules required by law, the
4 determination of indigency shall be subject to review by the
5 Presiding Judge of the Judicial Administrative District.

6 SECTION 5. REPEALER 20 O.S. 2011, Section 56, is hereby
7 repealed.

8 SECTION 6. REPEALER Section 5, Chapter 390, O.S.L. 2003
9 (63 O.S. Supp. 2008, Section 1-1708.1E), is hereby repealed.

10 SECTION 7. It being immediately necessary for the preservation
11 of the public peace, health and safety, an emergency is hereby
12 declared to exist, by reason whereof this act shall take effect and
13 be in full force from and after its passage and approval.

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15 DIRECT TO CALENDAR.

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