

1 STATE OF OKLAHOMA

2 2nd Session of the 56th Legislature (2018)

3 SENATE JOINT
4 RESOLUTION 68

By: Sykes

5
6 AS INTRODUCED

7 A Joint Resolution directing the Secretary of State
8 to refer to the people for their approval or
9 rejection a proposed amendment to the Oklahoma
10 Constitution by adding a new Section 13 to Article
11 XXIII; requiring filing of certain affidavit with
12 petition in negligence actions; specifying required
13 contents of certain affidavit; providing for time
14 extensions for filing certain affidavit; requiring
15 plaintiff to provide certain information; providing
16 for dismissal under certain circumstances;
17 establishing certain exemption; authorizing plaintiff
18 to request indigency exemption from certain filing
19 requirement; establishing procedures for certain
20 request; requiring promulgation of rules governing
21 determination of indigency for certain purposes;
22 providing ballot title; and directing filing.

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BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE
2ND SESSION OF THE 56TH OKLAHOMA LEGISLATURE:

SECTION 1. The Secretary of State shall refer to the people for
their approval or rejection, as and in the manner provided by law,
the following proposed amendments to the Oklahoma Constitution by
adding a new Section 13 to Article XXIII to read as follows:

Section 13. A. 1. In any civil action for negligence wherein
the plaintiff shall be required to present the testimony of an

1 expert witness to establish breach of the relevant standard of care
2 and that such breach of duty resulted in harm to the plaintiff,
3 except as provided in subsection B of this section, the plaintiff
4 shall attach to the petition an affidavit attesting that:

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

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

- 20 a. without an affidavit being attached to the petition,
21 as required in paragraph 1 of this subsection, and
- 22 b. no extension of time is subsequently granted by the
23 court, pursuant to subsection B of this section,
24

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

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

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

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

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

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

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

14 2. If the plaintiff fails to comply with paragraph 1 of this
15 subsection, the court shall, upon motion of the defendant, unless
16 good cause is shown for such failure, dismiss the action without
17 prejudice to its refiling.

18 D. A plaintiff in a civil action for negligence may claim an
19 exemption to the provisions of this section based on indigency
20 pursuant to the qualification rules established as set forth in
21 subsection F of this section.

22 E. When a plaintiff requests an indigency exemption from
23 providing an affidavit of merit in a civil action for negligence
24 pursuant to subsection D of this title, such person shall submit an

1 appropriate application to the court clerk, on a form created by the
2 Administrative Director of the Courts, which shall state that the
3 application is signed under oath and under the penalty of perjury
4 and that a false statement may be prosecuted as such.

5 F. 1. The Supreme Court shall promulgate rules governing the
6 determination of indigency for a plaintiff claiming an exemption
7 from providing an affidavit of merit in a civil action for
8 negligence. The initial determination of indigency shall be made by
9 the Chief Judge of the Judicial District or a designee thereof,
10 based on the plaintiff's application and the rules provided herein.

11 2. Upon promulgation of the rules required by law, the
12 determination of indigency shall be subject to review by the
13 Presiding Judge of the Judicial Administrative District.

14 SECTION 2. The Ballot Title for the proposed Constitutional
15 amendment as set forth in SECTION 1 of this resolution shall be in
16 the following form:

17 BALLOT TITLE

18 Legislative Referendum No. _____ State Question No. _____

19 THE GIST OF THE PROPOSITION IS AS FOLLOWS:

20 This measure would amend the Oklahoma Constitution by adding a
21 new Section 13 to Article 23. It requires a plaintiff in a
22 negligence action to file an affidavit if using expert
23 testimony. The measure creates requirements and procedures for
24 the affidavit. It provides an indigency exception for the

1 requirement to file the affidavit. The measure requires the
2 Supreme Court to promulgate rules to determine indigency.

3 SHALL THE PROPOSAL BE APPROVED?

4 FOR THE PROPOSAL — YES _____

5 AGAINST THE PROPOSAL — NO _____

6 SECTION 3. The President Pro Tempore of the Senate shall,
7 immediately after the passage of this resolution, prepare and file
8 one copy thereof, including the Ballot Title set forth in SECTION 2
9 hereof, with the Secretary of State and one copy with the Attorney
10 General.

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