

# An Act

(1ST EXTRAORDINARY SESSION)  
ENROLLED SENATE  
BILL NO. 1X

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

and

Shannon, Wright and Ritze  
of the House

An Act relating to affidavits of merit; repealing 12 O.S. 2011, Section 19, which relates to affidavits of consultation with qualified expert; requiring filing of certain affidavit with petition in negligence actions; specifying required contents of certain affidavit; providing for time extensions for filing certain affidavit; requiring plaintiff to provide certain information; providing for dismissal under certain circumstances; establishing certain exemption; repealing 12 O.S. 2011, Section 192, which relates to indigency exemption; authorizing plaintiff to request indigency exemption from certain filing requirement; establishing procedures for certain request; requiring promulgation of rules governing 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; and providing for codification.

SUBJECT: Affidavits of merit

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

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 REPEALER 12 O.S. 2011, Section 19, is hereby repealed.

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

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

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

2. If the civil action for negligence is filed:

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

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

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

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

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

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

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

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

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

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

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

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

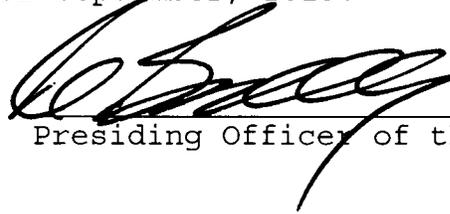
B. 1. The Supreme Court shall promulgate rules governing the determination of indigency for a plaintiff claiming an exemption from providing an affidavit of merit in a civil action for negligence pursuant to Section 2 of this act. The initial determination of indigency shall be made by the Chief Judge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

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

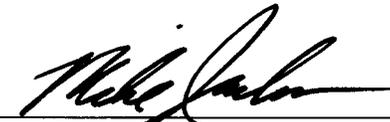
SECTION 5. REPEALER 20 O.S. 2011, Section 56, is hereby repealed.

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

Passed the Senate the 5th day of September, 2013.

  
Presiding Officer of the Senate

Passed the House of Representatives the 9th day of September, 2013.

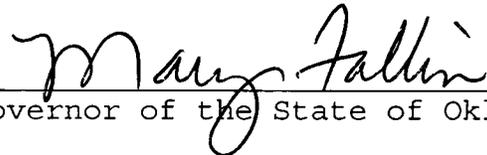
  
Presiding Officer of the House  
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 9<sup>th</sup>  
day of September, 20 13, at 6:53 o'clock P M.

By: Audrey Rockwell

Approved by the Governor of the State of Oklahoma this 10<sup>th</sup>  
day of September, 20 13, at 4:27 o'clock P M.

  
Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 10<sup>th</sup>  
day of September, 20 13, at 4:47 o'clock P M.

By: Chris Morrison