

By Senator Wise

6-480-02

See HB

1 A bill to be entitled
2 An act relating to claims against engineers,
3 architects, and licensed professional surveyors
4 and mappers; creating s. 45.08, F.S.; providing
5 definitions; requiring claimants to serve
6 engineers, architects, and licensed
7 professional surveyors and mappers with a
8 preliminary expert opinion when it is deemed
9 that expert opinion testimony will be necessary
10 to prove the standard of care required of the
11 engineer, architect, or licensed professional
12 surveyor and mapper in support of the claim;
13 providing an effective date.

15 Be It Enacted by the Legislature of the State of Florida:

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17 Section 1. Section 45.08, Florida Statutes, is created
18 to read:

19 45.08 Claims against engineers, architects, and
20 licensed professional surveyors and mappers.--

21 (1) Definitions.--As used in this section, unless the
22 context otherwise requires:

23 (a) "Claim" means a legal cause of action or an
24 affirmative defense to which all of the following apply:

25 1. The claim must be asserted against a licensed
26 professional in a complaint, answer, cross claim,
27 counterclaim, or third-party complaint.

28 2. The claim must be based on the alleged breach of
29 contract, negligence, misconduct, errors, or omissions of the
30 licensed professional in rendering professional services.

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1 3. Expert testimony must be necessary to prove the
2 licensed professional's standard of care or liability for the
3 claim.

4 (b) "Claimant" means any person who has a claim
5 against a licensed professional.

6 (c) "Expert" means a person who is qualified by
7 knowledge, skill, experience, training, or education to
8 express an opinion regarding a licensed professional's
9 standard of care or liability for the claim.

10 (d) "Licensed professional" means a person,
11 corporation, professional corporation, partnership, limited
12 liability company, limited liability partnership, or other
13 entity that is licensed by this state to practice in the
14 profession of engineering, architecture, or surveyor and
15 mapper pursuant to chapter 471, chapter 481, or chapter 472,
16 respectively.

17 (2) Preliminary expert opinion testimony;
18 certification.--

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

25 (b) If the claimant or the claimant's attorney
26 certifies pursuant to paragraph (a) that expert opinion
27 testimony is necessary, the claimant shall serve a preliminary
28 expert opinion affidavit within 60 days after filing the
29 initial pleading. The claimant may provide affidavits from as
30 many experts as the claimant deems necessary. The preliminary
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1 expert opinion affidavit shall contain at least the following
2 information:

3 1. The expert's qualifications to express an opinion
4 on the licensed professional's standard of care or liability
5 for the claim.

6 2. The factual basis for each claim against the
7 licensed professional.

8 3. The licensed professional's acts, errors, or
9 omissions that the expert considers to be a violation of the
10 applicable standard of care resulting in liability.

11 4. The manner in which the licensed professional's
12 acts, errors, or omissions caused or contributed to the
13 damages or other relief sought by the claimant.

14 (c) The court may extend the time for compliance with
15 this section on application and good cause shown or by
16 stipulation of the parties to the claim. If the court extends
17 the time for compliance, the court may also adjust the timing
18 and sequence of disclosures that are required from the
19 licensed professional against whom the claim is asserted.

20 (d) If the claimant or the claimant's attorney
21 certifies that expert testimony is not required for its claim
22 and the licensed professional who is defending the claim
23 disputes that certification of good faith, the licensed
24 professional may apply by motion to the court for an order
25 requiring the claimant to obtain and serve a preliminary
26 expert opinion affidavit under this section. In its motion,
27 the licensed professional shall identify the following:

28 1. The claim for which it believes expert testimony is
29 needed.

30 2. The prima facie elements of the claim.
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1 3. The legal or factual basis for its contention that
2 expert opinion testimony is required to establish the standard
3 of care or liability for the claim.

4 (e) After considering the motion and any response, the
5 court shall determine whether the claimant shall comply with
6 this section and, if the court deems that compliance is
7 necessary, shall set a date and terms for compliance. The
8 court shall stay all other proceedings and applicable time
9 periods concerning the claim pending the court's ruling on the
10 motion to compel compliance with this section.

11 (f) The court, on its own motion or the motion of the
12 licensed professional, shall dismiss the claim against the
13 licensed professional without prejudice if the claimant fails
14 to file and serve a preliminary expert opinion affidavit after
15 the claimant or the claimant's attorney has certified that an
16 affidavit is necessary or the court has ordered the claimant
17 to file and serve an affidavit.

18 (g) A claimant may supplement a claim or preliminary
19 expert opinion affidavit with additional claims, evidence, or
20 expert opinions that are timely disclosed under the Florida
21 Rules of Civil Procedure or pursuant to court order. An action
22 under this section does not preclude a party from using a
23 preliminary expert opinion affidavit for any purpose,
24 including impeachment.

25 Section 2. This act shall take effect October 1, 2002.
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HOUSE SUMMARY

Provides requirements with respect to civil actions against engineers, architects, and licensed professional surveyors and mappers. Requires claimants to serve engineers, architects, and licensed professional surveyors and mappers with a preliminary expert opinion when it is deemed that expert opinion testimony will be necessary to prove the standard of care required of the engineer, architect, or licensed professional surveyor and mapper in support of the claim. See bill for details.