

CHAPTER 99

COURTS

SENATE BILL 10-063

BY SENATOR(S) White, Boyd, Heath, Newell, Schultheis;
also REPRESENTATIVE(S) Waller, Court, Pommer, Stephens.

AN ACT

CONCERNING LIMITING CIVIL LIABILITY FOR ATTORNEYS WHO CONTRACT TO PROVIDE CERTAIN SERVICES FOR THE OFFICE OF ALTERNATE DEFENSE COUNSEL.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Article 2 of title 21, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

21-2-107. Complaints against contracted attorneys - procedure. (1) IF A PERSON FILES A CLAIM FOR DAMAGES ARISING FROM PROFESSIONAL NEGLIGENCE AS A RESULT OF AN ACT OR OMISSION COMMITTED BY AN ATTORNEY DURING THE PERFORMANCE OF THE ATTORNEY'S DUTIES PURSUANT TO A CONTRACT WITH THE OFFICE OF ALTERNATE DEFENSE COUNSEL PURSUANT TO SECTION 21-2-105:

(a) THE COMPLAINANT SHALL FILE WITH THE COURT A CERTIFICATE OF REVIEW IN ACCORDANCE WITH THE PROVISIONS OF PART 6 OF ARTICLE 20 OF TITLE 13, C.R.S.;

(b) THE ATTORNEY SHALL NOT BE REQUIRED TO FILE AN ANSWER TO THE COMPLAINT UNTIL TWENTY DAYS AFTER THE COMPLAINANT FILES THE ACCOMPANYING CERTIFICATE OF REVIEW; AND

(c) THE OFFICE OF THE ATTORNEY GENERAL SHALL REPRESENT THE ATTORNEY FROM THE TIME OF SERVICE OF THE COMPLAINT UNTIL THE CERTIFICATE OF REVIEW IS FILED; EXCEPT THAT, IF THE OFFICE OF ALTERNATE DEFENSE COUNSEL DETERMINES THAT THE ACT OR OMISSION THAT IS THE BASIS OF THE CLAIM DID NOT OCCUR DURING THE PERFORMANCE OF THE ATTORNEY'S DUTIES PURSUANT TO A CONTRACT WITH THE OFFICE OF ALTERNATE DEFENSE COUNSEL PURSUANT TO SECTION 21-2-105:

(I) THE OFFICE OF ALTERNATE DEFENSE COUNSEL SHALL NOTIFY THE ATTORNEY

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

AND THE OFFICE OF THE ATTORNEY GENERAL OF SAID DETERMINATION; AND

(II) THE OFFICE OF THE ATTORNEY GENERAL SHALL NOT REPRESENT THE ATTORNEY.

(2) UPON THE TIMELY FILING OF A CERTIFICATE OF REVIEW AS REQUIRED IN SUBSECTION (1) OF THIS SECTION, THE COURT SHALL:

(a) ALLOW THE OFFICE OF THE ATTORNEY GENERAL TO WITHDRAW FROM REPRESENTATION OF THE ATTORNEY; AND

(b) IF REQUESTED, ALLOW THE ATTORNEY TO SUBSTITUTE NEW COUNSEL TO REPRESENT HIM OR HER.

(3) IF THE OFFICE OF THE ATTORNEY GENERAL REPRESENTS AN ATTORNEY PURSUANT TO PARAGRAPH (c) OF SUBSECTION (1) OF THIS SECTION AND THE COURT DETERMINES THAT THE ACT OR OMISSION THAT IS THE BASIS OF THE CLAIM DID NOT OCCUR DURING THE PERFORMANCE OF THE ATTORNEY'S DUTIES PURSUANT TO A CONTRACT WITH THE OFFICE OF ALTERNATE DEFENSE COUNSEL PURSUANT TO SECTION 21-2-105, THE OFFICE OF THE ATTORNEY GENERAL MAY REQUEST, AND IN RESPONSE TO SUCH A REQUEST THE COURT SHALL ORDER, THE ATTORNEY TO REIMBURSE THE OFFICE OF THE ATTORNEY GENERAL FOR REASONABLE COSTS AND REASONABLE ATTORNEY FEES INCURRED BY THE OFFICE OF THE ATTORNEY GENERAL DURING THE COURSE OF THE REPRESENTATION.

(4) IF A PERSON FILES A CLAIM FOR DAMAGES THAT ARISE FROM PROFESSIONAL NEGLIGENCE AS A RESULT OF AN ACT OR OMISSION COMMITTED BY AN ATTORNEY DURING THE PERFORMANCE OF THE ATTORNEY'S DUTIES PURSUANT TO A CONTRACT WITH THE OFFICE OF ALTERNATE DEFENSE COUNSEL PURSUANT TO SECTION 21-2-105 AND THE ATTORNEY'S CONTRACT FOR INSURANCE WITH HIS OR HER MALPRACTICE INSURANCE CARRIER REQUIRES THE ATTORNEY TO NOTIFY THE INSURANCE CARRIER UPON THE FILING OF A CLAIM AGAINST THE ATTORNEY, THE INSURANCE CARRIER MAY NOT CONSIDER THE CLAIM IN DETERMINING THE AMOUNT OF THE ATTORNEY'S FUTURE MALPRACTICE INSURANCE PREMIUMS UNLESS A CERTIFICATE OF REVIEW IS TIMELY FILED PURSUANT TO PARAGRAPH (a) OF SUBSECTION (1) OF THIS SECTION.

SECTION 2. Act subject to petition - effective date - applicability. (1) This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 11, 2010, if adjournment sine die is on May 12, 2010); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part shall not take effect unless approved by the people at the general election to be held in November 2010 and shall take effect on the date of the official declaration of the vote thereon by the governor.

(2) The provisions of this act shall apply to claims filed on or after the applicable effective date of this act.

Approved: April 15, 2010