

House Bill 3212

Sponsored by Representative THATCHER, Senator ATKINSON; Representatives BERGER, BOQUIST, BUTLER, DALLUM, FLORES, KROPF, G SMITH, SUMNER, WHISNANT, Senator FERRIOLI

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Authorizes use of binding arbitration in lieu of civil action for injuries and damage suffered as result of receiving services from licensed professional.

Provides that claim is subject to binding arbitration if client and licensed professional enter into agreement to arbitrate. Provides that arbitration is exclusive remedy if claim is subject to binding arbitration.

Prescribes procedures for and contents of agreements to arbitrate. Establishes time limitations and processes for claims subject to binding arbitration.

A BILL FOR AN ACT

Relating to binding arbitration.

Be It Enacted by the People of the State of Oregon:

DEFINITIONS

SECTION 1. Definitions for sections 1 to 10 of this 2005 Act. For the purposes of sections 1 to 10 of this 2005 Act:

(1) "Agreement to arbitrate" means an agreement to arbitrate entered into under section 4 of this 2005 Act.

(2) "Claim subject to arbitration" means a claim for an injury or damage that must be arbitrated under sections 1 to 10 of this 2005 Act by reason of an agreement to arbitrate entered into between a licensed professional and a client.

(3) "Client" means a person who receives services from a licensed professional.

(4) "Licensed professional" means an attorney admitted to practice law in this state or any person who is required by law to be licensed, registered or certified as a condition of pursuing any commercial activity, trade, occupation or profession.

BINDING ARBITRATION

SECTION 2. Binding arbitration. (1) A licensed professional and a client must use binding arbitration under sections 1 to 10 of this 2005 Act to resolve a claim against the licensed professional that arises out of the provision of services to the client if the licensed professional and the client entered into an agreement to arbitrate under section 4 of this 2005 Act.

(2) Except as provided in sections 1 to 10 of this 2005 Act, ORS 36.600 to 36.740 govern binding arbitration under sections 1 to 10 of this 2005 Act.

SECTION 3. Exclusivity of remedy. (1) Agreements to arbitrate are valid, enforceable and irrevocable and do not constitute contracts of adhesion or unconscionable contracts. A court

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 may find an agreement to arbitrate executed in the manner required by sections 1 to 10 of
2 this 2005 Act invalid only if the agreement was the product of fraud or the client was inca-
3 pable when the client signed the agreement.

4 (2) Except as provided in subsection (1) of this section, the court shall dismiss any action
5 based on a claim subject to arbitration.

6 (3) An agreement to arbitrate is binding on the spouse of a client, a child of a client,
7 whether born or unborn at the time of the injury or damage, a personal representative of a
8 client, an heir of a client and any other person who could assert a claim against a licensed
9 professional based on injury or damage to the client during the course of receiving services.

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11 **AGREEMENTS TO ARBITRATE**

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13 **SECTION 4. Execution of agreement to arbitrate.** (1) An agreement to arbitrate entered
14 into between a licensed professional and a client must be in writing and must be signed by
15 the client.

16 (2) Execution of an agreement to arbitrate must be voluntary, and a licensed professional
17 may not condition the provision of services on the execution of the agreement. If a client is
18 incapable, a health care representative, as defined in ORS 127.505, may execute the agree-
19 ment on behalf of the incapable client.

20 (3) An agreement to arbitrate remains in effect for the purposes of all services provided
21 by the licensed professional on or after the date that the agreement is executed.

22 (4) An agreement to arbitrate executed by a client must be set forth in a separate doc-
23 ument from all other documents that the client is required to sign. A copy of the agreement
24 to arbitrate must be provided to the client.

25 **SECTION 5. Contents of agreement.** (1) An agreement to arbitrate must contain:

26 (a) A statement indicating that arbitration is the exclusive remedy under the agreement
27 and informing the client that by signing the agreement the client waives the right to bring
28 a civil action for claims based on services provided by the licensed professional;

29 (b) A statement informing the client that by signing the agreement the client waives the
30 right to a jury trial for claims based on services provided by the licensed professional;

31 (c) A description of the time limitations on making a claim established under section 6
32 of this 2005 Act and the manner in which a claim may be made; and

33 (d) A statement indicating that any costs of arbitration will be shared equally by the li-
34 censed professional and the client.

35 (2) The statements required by subsection (1)(a) and (b) of this section must appear in
36 the agreement to arbitrate in boldfaced capital letters.

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38 **CLAIMS PROCESS**

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40 **SECTION 6. Time limitations for claims; form of claim.** (1) A claim subject to arbitration
41 must be received by a licensed professional not later than six months after discovery of the
42 injury or damage. In no event may a claim be made more than one year after services are
43 provided by the licensed professional.

44 (2) A claim subject to arbitration must be submitted to the licensed professional in
45 writing and must indicate the nature of the injury or damage.

1 **SECTION 7. Processing of claim.** (1) A licensed professional must give written notice of
 2 acceptance or denial of a claim to the claimant not more than 60 days after the licensed
 3 professional receives a claim.

4 (2) If a licensed professional accepts a claim, the written notice required by this section
 5 must inform the claimant that the licensed professional finds that the claim is valid and in-
 6 form the claimant of the amount the licensed professional will pay in compensation for the
 7 injury or damage.

8 (3) If a licensed professional denies a claim, the written notice required by this section
 9 must inform the claimant of the grounds for the denial.

10 **SECTION 8. Request for arbitration.** (1) If a licensed professional denies a claim, or a
 11 claimant is dissatisfied with the amount offered by the licensed professional, the claimant
 12 may deliver a request for arbitration to the licensed professional. The request must be re-
 13 ceived by the licensed professional not more than 30 days after the claimant receives the
 14 written notice required by section 7 of this 2005 Act.

15 (2) A hearing in a binding arbitration under sections 1 to 10 of this 2005 Act must be held
 16 not more than 30 days after a request for arbitration is received by the licensed professional
 17 unless all parties to the proceeding agree to a delay of the hearing.

18 **SECTION 9. Conduct of arbitration.** (1) Except as provided in this section, a binding ar-
 19 bitration under sections 1 to 10 of this 2005 Act shall be conducted as provided in ORS 36.600
 20 to 36.740.

21 (2) The hearing and initial decision in a binding arbitration under sections 1 to 10 of this
 22 2005 Act shall be conducted by a single arbitrator. Upon conclusion of the hearing, the
 23 arbitrator shall issue a proposed decision in writing. Not more than 30 days after the pro-
 24 posed decision is issued, any party to the proceeding may seek review of the proposed deci-
 25 sion by serving the arbitrator with objections. If objections are not filed within 30 days after
 26 the issuance of the proposed decision, the proposed decision of the arbitrator becomes the
 27 arbitration award for the purposes of ORS 36.600 to 36.740.

28 (3) If objections to a proposed decision are filed under subsection (2) of this section, a
 29 three-member arbitration panel shall review the objections. Review by the panel is limited
 30 to the record made by the initial arbitrator. The panel may modify or correct the proposed
 31 decision only if the panel finds one or more of the following:

32 (a) The proposed decision is not supported by substantial evidence in the record. Sub-
 33 stantial evidence exists to support a finding of fact when the record, viewed as a whole,
 34 would permit a reasonable person to make that finding.

35 (b) There was an evident mathematical miscalculation or an evident mistake in the de-
 36 scription of a person, thing or property referred to in the proposed decision.

37 (c) The arbitrator has made an award on a claim not submitted to the arbitrator and the
 38 award may be corrected without affecting the merits of the decision upon the claim submit-
 39 ted.

40 (d) The proposed decision is imperfect in a matter of form not affecting the merits of the
 41 decision on the claim submitted.

42 (e) The arbitrator has not made a final and definite decision upon a claim submitted by
 43 the parties to the arbitration proceeding.

44 (4) Upon completing a review of a proposed decision under subsection (3) of this section,
 45 the three-member panel shall issue a final decision. The final decision is the arbitration

1 award for the purposes of ORS 30.600 to 30.740.

2 (5) ORS 36.690 and 36.695 do not apply to binding arbitration under sections 1 to 10 of this
3 2005 Act.

4 SECTION 10. Arbitrator fees. The fees of an arbitrator in a binding arbitration under
5 sections 1 to 10 of this 2005 Act must be paid by the licensed professional.

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CAPTIONS

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9 SECTION 11. The unit and section captions used in this 2005 Act are provided only for
10 the convenience of the reader and do not become part of the statutory law of this state or
11 express any legislative intent in the enactment of this 2005 Act.

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