

By: Geren

H.B. No. 1573

A BILL TO BE ENTITLED

AN ACT

relating to the definition of the practice of architecture and to certificates of merit for design professionals.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 1051.001(7), Occupations Code, is amended to read as follows:

(7) "Practice of architecture" means a service or creative work applying [~~that involves the application of~~] the art and science of developing design concepts, planning for functional relationships and intended uses, and establishing the form, appearance, aesthetics, and construction details for the construction, enlargement, or alteration of a building or environs intended for human use or occupancy, the proper application of which requires education, training, and experience in those matters. The term includes:

(A) establishing and documenting the form, aesthetics, materials, and construction technology for a building, group of buildings, or environs intended to be constructed or altered;

(B) preparing, or supervising and controlling the preparation of, the architectural plans and specifications that include all integrated building systems and construction details, unless otherwise permitted under Section 1051.606(a)(4);

(C) observing the construction, modification, or

1 alteration of work to evaluate conformance with architectural plans
2 and specifications described in Paragraph (B) for any building,
3 group of buildings, or environs requiring an architect;

4 (D) programming for construction projects,
5 including identification of economic, legal, and natural
6 constraints and determination of the scope and spatial relationship
7 of functional elements;

8 (E) the discretionary recommendation and
9 oversight of appropriate construction project delivery systems;

10 (F) consulting, investigating, and analyzing the
11 design, form, aesthetics, materials, and construction technology
12 used for the construction, enlargement, or alteration of a building
13 or environs and providing expert opinion and testimony as
14 necessary;

15 (G) research to expand the knowledge base of the
16 profession of architecture, including publishing or presenting
17 findings in professional forums; and

18 (H) teaching, administering, and developing
19 pedagogical theory in academic settings offering architectural
20 education.

21 SECTION 2. Chapter 150, Civil Practice and Remedies Code,
22 is amended to read as follows:

23 CHAPTER 150. DESIGN PROFESSIONALS

24 Sec. 150.001. DEFINITION. In this chapter:

25 (1) "Design[~~,"~~ "design] professional" means a licensed
26 [~~registered~~] architect, [~~or~~] licensed professional engineer, or
27 any firm in which such licensed professional practices, including

1 but not limited to a corporation, professional corporation, limited
2 liability corporation, partnership, limited liability partnership,
3 sole proprietorship, joint venture, or any other business entity.

4 (2) "Practice of architecture" has the meaning
5 assigned by Section 1051.001, Occupations Code.

6 Sec. 150.002. CERTIFICATE OF MERIT. (a) In any action or
7 arbitration proceeding for damages arising out of the provision of
8 professional services [~~alleging professional negligence~~] by a
9 design professional, the plaintiff shall be required to file with
10 the complaint an affidavit of a third-party licensed [~~registered~~]
11 architect or licensed professional engineer competent to testify,
12 holding the same professional license as, and practicing in the
13 same area of practice as the defendant, which affidavit shall set
14 forth specifically at least one negligent act, error, or omission
15 claimed to exist and the factual basis for each such claim. The
16 third-party professional engineer or licensed [~~registered~~]
17 architect shall be licensed in this state and actively engaged in
18 the practice of architecture or engineering.

19 (b) The contemporaneous filing requirement of Subsection
20 (a) shall not apply to any case in which the period of limitation
21 will expire within 10 days of the date of filing and, because of
22 such time constraints, the plaintiff has alleged that an affidavit
23 of a third-party licensed [~~registered~~] architect or professional
24 engineer could not be prepared. In such cases, the plaintiff shall
25 have 30 days after the filing of the complaint to supplement the
26 pleadings with the affidavit. The trial court may, on motion, after
27 hearing and for good cause, extend such time as it shall determine

1 justice requires.

2 (c) The defendant shall not be required to file an answer to
3 the complaint and affidavit until 30 days after the filing of such
4 affidavit.

5 (d) The plaintiff's failure to file the affidavit in
6 accordance with Subsection (a) or (b) shall ~~[may]~~ result in
7 dismissal ~~[with prejudice]~~ of the complaint against the defendant.
8 This dismissal may be with prejudice.

9 (e) An order granting or denying a motion for dismissal is
10 immediately appealable as an interlocutory order.

11 (f) This statute shall not be construed to extend any
12 applicable period of limitation or repose.

13 (g) This statute does not apply to any suit or action for the
14 payment of fees arising out of the provision of professional
15 services.

16 SECTION 3. Section 1051.701(a), Occupations Code, is
17 amended to read as follows:

18 (a) A person may not engage in the practice of architecture,
19 or offer or attempt to engage in the practice of architecture, as
20 defined in Section 1051.001(7)(A), (B), or (C) unless the person is
21 registered as an architect under this chapter.

22 SECTION 4. Section 2 of this Act applies only to a cause of
23 action that accrues on or after the effective date of this Act. An
24 action that accrued before the effective date of this Act is
25 governed by the law applicable to the action immediately before the
26 effective date of this Act, and that law is continued in effect for
27 that purpose.

1 SECTION 5. This Act takes effect September 1, 2005.