

1-1 By: Geren (Senate Sponsor - Harris) H.B. No. 1573
1-2 (In the Senate - Received from the House March 30, 2005;
1-3 April 5, 2005, read first time and referred to Committee on
1-4 Business and Commerce; May 9, 2005, reported adversely, with
1-5 favorable Committee Substitute by the following vote: Yeas 8,
1-6 Nays 0; May 9, 2005, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 1573 By: Armbrister

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the definition of the practice of architecture and to
1-11 certificates of merit for design professionals.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Section 1051.001(7), Occupations Code, is
1-14 amended to read as follows:

1-15 (7) "Practice of architecture" means a service or
1-16 creative work applying [~~that involves the application of~~] the art
1-17 and science of developing design concepts, planning for functional
1-18 relationships and intended uses, and establishing the form,
1-19 appearance, aesthetics, and construction details for the
1-20 construction, enlargement, or alteration of a building or environs
1-21 intended for human use or occupancy, the proper application of
1-22 which requires education, training, and experience in those
1-23 matters. The term includes:

1-24 (A) establishing and documenting the form,
1-25 aesthetics, materials, and construction technology for a building,
1-26 group of buildings, or environs intended to be constructed or
1-27 altered;

1-28 (B) preparing, or supervising and controlling
1-29 the preparation of, the architectural plans and specifications that
1-30 include all integrated building systems and construction details,
1-31 unless otherwise permitted under Section 1051.606(a)(4);

1-32 (C) observing the construction, modification, or
1-33 alteration of work to evaluate conformance with architectural plans
1-34 and specifications described in Paragraph (B) for any building,
1-35 group of buildings, or environs requiring an architect;

1-36 (D) programming for construction projects,
1-37 including identification of economic, legal, and natural
1-38 constraints and determination of the scope and spatial relationship
1-39 of functional elements;

1-40 (E) recommending and overseeing appropriate
1-41 construction project delivery systems;

1-42 (F) consulting, investigating, and analyzing the
1-43 design, form, aesthetics, materials, and construction technology
1-44 used for the construction, enlargement, or alteration of a building
1-45 or environs and providing expert opinion and testimony as
1-46 necessary;

1-47 (G) research to expand the knowledge base of the
1-48 profession of architecture, including publishing or presenting
1-49 findings in professional forums; and

1-50 (H) teaching, administering, and developing
1-51 pedagogical theory in academic settings offering architectural
1-52 education.

1-53 SECTION 2. Chapter 150, Civil Practice and Remedies Code,
1-54 is amended to read as follows:

1-55 CHAPTER 150. DESIGN PROFESSIONALS

1-56 Sec. 150.001. DEFINITIONS [~~DEFINITION~~]. In this chapter:

1-57 (1) "Design [~~, "design~~] professional" means a licensed
1-58 [registered] architect, [or] licensed professional engineer, or
1-59 any firm in which such licensed professional practices, including
1-60 but not limited to a corporation, professional corporation, limited
1-61 liability corporation, partnership, limited liability partnership,
1-62 sole proprietorship, joint venture, or any other business entity.

1-63 (2) "Practice of architecture" has the meaning

2-1 assigned by Section 1051.001, Occupations Code.

2-2 Sec. 150.002. CERTIFICATE OF MERIT. (a) In any action or
2-3 arbitration proceeding for damages arising out of the provision of
2-4 professional services [~~alleging professional negligence~~] by a
2-5 design professional, the plaintiff shall be required to file with
2-6 the complaint an affidavit of a third-party licensed [~~registered~~]
2-7 architect or licensed professional engineer competent to testify,
2-8 holding the same professional license as, and practicing in the
2-9 same area of practice as the defendant, which affidavit shall set
2-10 forth specifically at least one negligent act, error, or omission
2-11 claimed to exist and the factual basis for each such claim. The
2-12 third-party professional engineer or licensed [~~registered~~]
2-13 architect shall be licensed in this state and actively engaged in
2-14 the practice of architecture or engineering.

2-15 (b) The contemporaneous filing requirement of Subsection
2-16 (a) shall not apply to any case in which the period of limitation
2-17 will expire within 10 days of the date of filing and, because of
2-18 such time constraints, the plaintiff has alleged that an affidavit
2-19 of a third-party licensed [~~registered~~] architect or professional
2-20 engineer could not be prepared. In such cases, the plaintiff shall
2-21 have 30 days after the filing of the complaint to supplement the
2-22 pleadings with the affidavit. The trial court may, on motion, after
2-23 hearing and for good cause, extend such time as it shall determine
2-24 justice requires.

2-25 (c) The defendant shall not be required to file an answer to
2-26 the complaint and affidavit until 30 days after the filing of such
2-27 affidavit.

2-28 (d) The plaintiff's failure to file the affidavit in
2-29 accordance with Subsection (a) or (b) shall [~~may~~] result in
2-30 dismissal [~~with prejudice~~] of the complaint against the defendant.
2-31 This dismissal may be with prejudice.

2-32 (e) An order granting or denying a motion for dismissal is
2-33 immediately appealable as an interlocutory order.

2-34 (f) This statute shall not be construed to extend any
2-35 applicable period of limitation or repose.

2-36 (g) This statute does not apply to any suit or action for the
2-37 payment of fees arising out of the provision of professional
2-38 services.

2-39 SECTION 3. Section 1051.701(a), Occupations Code, is
2-40 amended to read as follows:

2-41 (a) A person may not engage in the practice of architecture,
2-42 or offer or attempt to engage in the practice of architecture, as
2-43 defined in Section 1051.001(7)(A), (B), or (C) unless the person is
2-44 registered as an architect under this chapter.

2-45 SECTION 4. Section 2 of this Act applies only to a cause of
2-46 action that accrues on or after the effective date of this Act. An
2-47 action that accrued before the effective date of this Act is
2-48 governed by the law applicable to the action immediately before the
2-49 effective date of this Act, and that law is continued in effect for
2-50 that purpose.

2-51 SECTION 5. This Act takes effect September 1, 2005.

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