

By: Carona

S.B. No. 1201

Substitute the following for S.B. No. 1201:

By: Madden

C.S.S.B. No. 1201

A BILL TO BE ENTITLED

1 AN ACT
2 relating to an affidavit required to be filed in a cause of action
3 against certain licensed or registered professionals.

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

5 SECTION 1. The heading to Chapter 150, Civil Practice and
6 Remedies Code, as amended by Chapters 189 (H.B. 854) and 208 (H.B.
7 1573), Acts of the 79th Legislature, Regular Session, 2005, is
8 reenacted to read as follows:

9 CHAPTER 150. LICENSED OR REGISTERED PROFESSIONALS

10 SECTION 2. Sections 150.001 and 150.002, Civil Practice and
11 Remedies Code, as amended by Chapters 189 (H.B. 854) and 208 (H.B.
12 1573), Acts of the 79th Legislature, Regular Session, 2005, are
13 reenacted and amended to read as follows:

14 Sec. 150.001. DEFINITIONS. In this chapter:

15 (1) "Licensed or registered professional" means a
16 licensed architect, licensed professional engineer, registered
17 professional land surveyor, registered landscape architect, or any
18 firm in which such licensed or registered professional practices,
19 including but not limited to a corporation, professional
20 corporation, limited liability corporation, partnership, limited
21 liability partnership, sole proprietorship, joint venture, or any
22 other business entity.

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

1 (3) "Practice of engineering" has the meaning assigned
2 by Section 1001.003, Occupations Code.

3 Sec. 150.002. CERTIFICATE OF MERIT. (a) In any action or
4 arbitration proceeding for damages arising out of the provision of
5 professional services by a licensed or registered professional, the
6 plaintiff shall be required to file with the complaint an affidavit
7 of a third-party licensed architect, licensed professional
8 engineer, registered landscape architect, or registered
9 professional land surveyor who:

10 (1) is competent to testify;

11 (2) holds the same professional license or
12 registration as the defendant; and

13 (3) is knowledgeable in the area of practice of the
14 defendant and offers testimony based on the person's:

15 (A) knowledge;

16 (B) skill;

17 (C) experience;

18 (D) education;

19 (E) training; and

20 (F) practice.

21 (b) The affidavit shall set forth specifically for each
22 theory of recovery for which damages are sought, the negligence, if
23 any, or other action, error, or omission of the licensed or
24 registered professional in providing the professional service,
25 including any error or omission in providing advice, judgment,
26 opinion, or a similar professional skill [~~skill at least one~~
27 ~~negligent act, error, or omission~~] claimed to exist and the factual

1 basis for each such claim. The third-party licensed architect,
2 licensed professional engineer, registered landscape architect, or
3 registered professional land surveyor shall be licensed or
4 registered in this state and actively engaged in the practice of
5 architecture, engineering, or surveying.

6 (c) [~~(b)~~] The contemporaneous filing requirement of
7 Subsection (a) shall not apply to any case in which the period of
8 limitation will expire within 10 days of the date of filing and,
9 because of such time constraints, the plaintiff has alleged that an
10 affidavit of a third-party licensed architect, licensed
11 professional engineer, registered landscape architect, or
12 registered professional land surveyor could not be prepared. In
13 such cases, the plaintiff shall have 30 days after the filing of the
14 complaint to supplement the pleadings with the affidavit. The
15 trial court may, on motion, after hearing and for good cause, extend
16 such time as it shall determine justice requires.

17 (d) [~~(c)~~] The defendant shall not be required to file an
18 answer to the complaint and affidavit until 30 days after the filing
19 of such affidavit.

20 (e) [~~(d)~~] The plaintiff's failure to file the affidavit in
21 accordance with this section [~~Subsection (a) or (b)~~] shall result
22 in dismissal of the complaint against the defendant. This
23 dismissal may be with prejudice.

24 (f) [~~(e)~~] An order granting or denying a motion for
25 dismissal is immediately appealable as an interlocutory order.

26 (g) [~~(f)~~] This statute shall not be construed to extend any
27 applicable period of limitation or repose.

1 (h) [~~(g)~~] This statute does not apply to any suit or action
2 for the payment of fees arising out of the provision of professional
3 services.

4 SECTION 3. The change in law made by this Act applies only
5 to an action or arbitration filed or commenced on or after the
6 effective date of this Act. An action or arbitration filed or
7 commenced before the effective date of this Act is governed by the
8 law in effect immediately before the effective date of this Act, and
9 that law is continued in effect for that purpose.

10 SECTION 4. This Act takes effect September 1, 2009.