

1-1 By: Carona S.B. No. 1201  
1-2 (In the Senate - Filed February 27, 2009; March 13, 2009, read  
1-3 first time and referred to Committee on State Affairs;  
1-4 April 15, 2009, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 6, Nays 0; April 15, 2009,  
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1201 By: Carona

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

1-10 relating to an affidavit required to be filed in a cause of action  
1-11 against certain licensed or registered professionals.

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

1-13 SECTION 1. The heading to Chapter 150, Civil Practice and  
1-14 Remedies Code, as amended by Chapters 189 (H.B. 854) and 208 (H.B.  
1-15 1573), Acts of the 79th Legislature, Regular Session, 2005, is  
1-16 reenacted to read as follows:

1-17 CHAPTER 150. LICENSED OR REGISTERED PROFESSIONALS

1-18 SECTION 2. Sections 150.001 and 150.002, Civil Practice and  
1-19 Remedies Code, as amended by Chapters 189 (H.B. 854) and 208 (H.B.  
1-20 1573), Acts of the 79th Legislature, Regular Session, 2005, are  
1-21 reenacted and amended to read as follows:

1-22 Sec. 150.001. DEFINITIONS. In this chapter:

1-23 (1) "Licensed or registered professional" means a  
1-24 licensed architect, licensed professional engineer, registered  
1-25 professional land surveyor, registered landscape architect, or any  
1-26 firm in which such licensed or registered professional practices,  
1-27 including but not limited to a corporation, professional  
1-28 corporation, limited liability corporation, partnership, limited  
1-29 liability partnership, sole proprietorship, joint venture, or any  
1-30 other business entity.

1-31 (2) "Practice of architecture" has the meaning  
1-32 assigned by Section 1051.001, Occupations Code.

1-33 (3) "Practice of engineering" has the meaning assigned  
1-34 by Section 1001.003, Occupations Code.

1-35 Sec. 150.002. CERTIFICATE OF MERIT. (a) In any action or  
1-36 arbitration proceeding for damages arising out of the provision of  
1-37 professional services by a licensed or registered professional, the  
1-38 plaintiff shall be required to file with the complaint an affidavit  
1-39 of a third-party licensed architect, licensed professional  
1-40 engineer, registered landscape architect, or registered  
1-41 professional land surveyor who:

1-42 (1) is competent to testify;

1-43 (2) holds the same professional license or  
1-44 registration as the defendant; and

1-45 (3) is knowledgeable in the area of practice of the  
1-46 defendant and offers testimony based on the person's:

1-47 (A) knowledge;

1-48 (B) skill;

1-49 (C) experience;

1-50 (D) education;

1-51 (E) training; and

1-52 (F) practice.

1-53 (b) The affidavit shall set forth specifically at least one  
1-54 negligent act, error, or omission claimed to exist and the factual  
1-55 basis for each such claim. The third-party licensed architect,  
1-56 licensed professional engineer, registered landscape architect, or  
1-57 registered professional land surveyor shall be licensed or  
1-58 registered in this state and actively engaged in the practice of  
1-59 architecture, engineering, or surveying.

1-60 (c) [~~b~~] The contemporaneous filing requirement of  
1-61 Subsection (a) shall not apply to any case in which the period of  
1-62 limitation will expire within 10 days of the date of filing and,  
1-63 because of such time constraints, the plaintiff has alleged that an

2-1 affidavit of a third-party licensed architect, licensed  
2-2 professional engineer, registered landscape architect, or  
2-3 registered professional land surveyor could not be prepared. In  
2-4 such cases, the plaintiff shall have 30 days after the filing of the  
2-5 complaint to supplement the pleadings with the affidavit. The  
2-6 trial court may, on motion, after hearing and for good cause, extend  
2-7 such time as it shall determine justice requires.

2-8 (d) [~~(c)~~] The defendant shall not be required to file an  
2-9 answer to the complaint and affidavit until 30 days after the filing  
2-10 of such affidavit.

2-11 (e) [~~(d)~~] The plaintiff's failure to file the affidavit in  
2-12 accordance with this section [~~Subsection (a) or (b)~~] shall result  
2-13 in dismissal of the complaint against the defendant. This  
2-14 dismissal may be with prejudice.

2-15 (f) [~~(e)~~] An order granting or denying a motion for  
2-16 dismissal is immediately appealable as an interlocutory order.

2-17 (g) [~~(f)~~] This statute shall not be construed to extend any  
2-18 applicable period of limitation or repose.

2-19 (h) [~~(g)~~] This statute does not apply to any suit or action  
2-20 for the payment of fees arising out of the provision of professional  
2-21 services.

2-22 SECTION 3. The change in law made by this Act applies only  
2-23 to an action or arbitration filed or commenced on or after the  
2-24 effective date of this Act. An action or arbitration filed or  
2-25 commenced before the effective date of this Act is governed by the  
2-26 law in effect immediately before the effective date of this Act, and  
2-27 that law is continued in effect for that purpose.

2-28 SECTION 4. This Act takes effect September 1, 2009.

2-29

\* \* \* \* \*