

By: Riddle

H.B. No. 1150

A BILL TO BE ENTITLED

AN ACT

relating to an affidavit required to be filed in a cause of action against a licensed attorney.

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

SECTION 1. Title 6, Civil Practice and Remedies Code, is amended by adding Chapter 150A to read as follows:

CHAPTER 150A. SUITS AGAINST ATTORNEYS

Sec. 150A.001. DEFINITION. In this chapter, "legal services" means the preparation of a pleading or other document incident to an action or special proceeding or the management of the action or proceeding on behalf of a client before a judge in court as well as services rendered out of court, including giving advice or rendering services requiring the use of legal skill or knowledge, such as preparing a will, contract, or other instrument, the legal effect of which under the facts and conclusions involved must be carefully determined.

Sec. 150A.002. CERTIFICATE OF MERIT. (a) In an action or arbitration proceeding for damages arising out of the provision of legal services by a licensed attorney, the plaintiff must file with the complaint an affidavit of a third-party attorney who:

(1) is:

(A) licensed to practice law in this state;

(B) actively engaged in the practice of law;

(C) competent to testify; and

1 (D) knowledgeable in the defendant's area of
2 practice; and

3 (2) offers testimony based on the person's:

4 (A) knowledge;

5 (B) skill;

6 (C) experience;

7 (D) education;

8 (E) training; and

9 (F) practice.

10 (b) The affidavit must state that a reasonable probability
11 exists that the care, skill, or knowledge exercised or exhibited in
12 the provision of the legal services that are the subject of the
13 complaint fell outside the acceptable standards of professional
14 conduct.

15 (c) The time prescribed by Subsection (a) for the filing of
16 an affidavit does not apply to a case in which the limitations
17 period applicable to a cause of action asserted expires on or before
18 the 10th day after the date the complaint is filed and the plaintiff
19 alleges that, because of time constraints, the required affidavit
20 could not be timely prepared. In a case described by this
21 subsection, the plaintiff must, not later than the 30th day after
22 the date the complaint was filed, supplement the pleadings with an
23 affidavit that satisfies the requirements of Subsections (a) and
24 (b). The trial court may, on motion, after hearing and for good
25 cause, extend the time for the filing of the affidavit for the fair
26 administration of justice.

27 (d) The defendant may not be required to file an answer to

1 the complaint and affidavit before the 30th day after the date the
2 required affidavit is filed.

3 (e) If the plaintiff fails to file the affidavit required by
4 this section, the trial court must, on the court's own motion or on
5 the defendant's motion, dismiss the complaint against the
6 defendant. Dismissal under this subsection may be with prejudice.

7 (f) An order granting or denying a motion for dismissal may
8 be appealed as an interlocutory order.

9 (g) This section may not be construed to extend any
10 applicable statute of limitation or repose.

11 (h) This section does not apply to an action or arbitration
12 proceeding for the payment of fees arising out of the provision of
13 legal services.

14 SECTION 2. The change in law made by this Act applies only
15 to an action or arbitration filed or commenced on or after the
16 effective date of this Act. An action or arbitration filed or
17 commenced before the effective date of this Act is governed by the
18 law in effect immediately before the effective date of this Act, and
19 that law is continued in effect for that purpose.

20 SECTION 3. This Act takes effect September 1, 2011.