

BILL ANALYSIS

C.S.H.B. 2422
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Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that third-party affiants in certain professional liability cases should include in or along with their affidavit facts that establish that the affiant is qualified to render an opinion in the case. C.S.H.B. 2422 seeks to address this issue by requiring such an affiant to so include and to attach the affiant's curriculum vitae or a similar document to the affidavit.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2422 amends the Civil Practice and Remedies Code to require the third-party affidavit required to be filed with the complaint in any action or arbitration proceeding for damages arising out of the provision of professional services by a licensed architect, a licensed professional engineer, a registered professional land surveyor, a registered landscape architect, or any firm in which such licensed or registered professional practices to set forth specifically facts sufficient to establish the affiant's familiarity or experience with the relevant practice area such that the affiant's qualifications to render an opinion on the matters set forth in the affidavit for purposes of the negligence or other action, error, or omission of the licensed or registered professional in providing the professional service are established. The bill requires the affiant to attach to the affidavit as an exhibit the affiant's curriculum vitae or a similar document sufficient to establish that the affiant meets certain affiant eligibility requirements.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2422 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 150.002, Civil Practice & Remedies Code, is amended to read as follows:

(a) In any action or arbitration proceeding for damages arising out of the provision of professional services by a licensed or registered professional, the plaintiff shall be required to file with the complaint an affidavit of a third-party licensed architect, licensed professional engineer, registered landscape architect, or registered land surveyor who:

- (1) Is competent to testify;
- (2) Holds the same professional license or registration as the defendant; and
- (3) Is knowledgeable in the area of practice of the defendant and offers testimony based on the person's:
 - (A) Knowledge;
 - (B) Skill;
 - (C) Experience
 - (D) Education
 - (E) Training; and
 - (F) Practice.

(b) The affidavit shall set forth specifically for each theory of recovery for which damages are sought, the negligence, if any, or other action, error, or omission of the licensed or registered professional in providing the professional service, including any error, or omission in providing advice, judgment, opinion, or a similar professional skill claimed to exist and the factual basis for each such claim. The third-party licensed architect, licensed professional engineer, registered landscape architect, or registered professional land surveyor shall be licensed or registered in this state and actively engaged in the practice of architecture, engineering, or surveying.

(b-1) The affidavit shall set forth specifically facts sufficient to establish the affiant's familiarity or experience with the practice area at issue such that they establish the affiant's qualifications to render an opinion on the matters in the affidavit pertaining to subsection (b). The affiant shall attach to the affidavit as an exhibit the affiant's curriculum vitae or similar document sufficient to establish that the affiant meets the requirements of subsection (a).

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 150.002, Civil Practice and Remedies Code, is amended by adding Subsection (b-1) to read as follows:

(b-1) The affidavit shall set forth specifically facts sufficient to establish the affiant's familiarity or experience with the relevant practice area such that the affiant's qualifications to render an opinion on the matters set forth in the affidavit for purposes of Subsection (b) are established. The affiant must attach to the affidavit as an exhibit the affiant's curriculum vitae or a similar document sufficient to establish that the affiant meets the requirements of Subsection (a).

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

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2017.

SECTION 2. The change in law made by this Act applies only to an action commenced on or after the effective date of this Act. An action commenced before the effective date of this Act is governed by the law **as it existed** immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 3. Same as introduced version.