

- SUBJECT:** Third-party affidavit for negligence suits against land surveyors
- COMMITTEE:** Civil Practices — favorable, without amendment
- VOTE:** 5 ayes — Nixon, Rose, King, Madden, Raymond
0 nays
4 absent — Martinez Fischer, Strama, Talton, Woolley
- WITNESSES:** For — George L. Sanders, Texas Society of Professional Land Surveyors
Against — None
- BACKGROUND:** Civil Practice and Remedies Code, ch. 150 defines a “design professional” as a registered architect or a licensed professional engineer. Sec. 150.002 requires that when a lawsuit is filed against a design professional alleging professional negligence, the plaintiff must file along with the complaint an affidavit of a third-party architect or engineer that sets forth at least one negligent act, error, or omission claimed to exist and the factual basis for each claim. The third-party architect or engineer must be competent to testify, must be in active practice in the same area as the defendant, and must be licensed in Texas.
- The plaintiff is not required to file the third-party affidavit if the statute of limitations on the plaintiff’s claim will expire within 10 days of the date of filing. In that case, the plaintiff has 30 days after filing the initial complaint to file the third-party affidavit.
- DIGEST:** HB 854 would extend the requirement under sec. 150.002 for a third-party affidavit in professional negligence suits to include registered professional land surveyors. It also would change the title of ch. 150 from “Design Professionals” to “Licensed or Registered Professionals.”
- The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2005.

**SUPPORTERS
SAY:**

HB 854 would increase the legal protection of surveyors in professional negligence actions so that they have equal status with architects and engineers. Surveyors often are involved in the same sorts of projects that utilize architects and engineers and, as a result, often are included in lawsuits against architects and engineers. In such suits, however, architects and engineers enjoy extra protection under sec. 150.002, which requires that plaintiffs file third-party affidavits in relation to both the architect and the engineer, but not for the surveyor. As the suit generally involves the same project, it is unfair to provide enhanced protection for architects and engineers but not for surveyors.

**OPPONENTS
SAY:**

While surveyors frequently do work in connection with architects and engineers, and thus might be included in a lawsuit against these professionals, surveyors also can be sued for claims not involving architects or engineers, such as incorrectly marking a boundary survey. In cases when surveyors are not sued in conjunction with work done with architects and engineers, there is no basis for providing them with heightened protection.