

- SUBJECT:** Modifying certificate of merit requirements in certain lawsuits
- COMMITTEE:** Judiciary and Civil Jurisprudence — favorable, without amendment
- VOTE:** 9 ayes — Leach, Farrar, Y. Davis, Julie Johnson, Krause, Meyer, Neave, Smith, White
- 0 nays
- SENATE VOTE:** On final passage, April 26 — 30-0, on Local and Uncontested Calendar
- WITNESSES:** *On House companion bill, HB 2440:*
For — Peyton McKnight, American Council of Engineering Companies of Texas; (*Registered, but did not testify:* Michael Garcia, Texas Association of Manufacturers; Lee Parsley, Texans for Lawsuit Reform; David Lancaster, Texas Society of Architects; Jennifer McEwan, Texas Society of Professional Engineers)
- Against — None
- BACKGROUND:** Civil Practice and Remedies Code sec. 150.002 requires that in any action or arbitration proceeding for damages arising out of the provision of professional services by a licensed architect, licensed professional engineer, registered professional land surveyor, registered landscape architect, or any firm in which such licensed or registered professionals practice, the plaintiff must file an affidavit, called a certificate of merit, from a third-party licensed professional who:
- is competent to testify;
 - holds the same professional license or registration as the defendant; and
 - is knowledgeable in the area of practice of the defendant and offers testimony based on the person's knowledge, skill, experience, education, training, and practice.
- DIGEST:** SB 1928 would specify that the affidavit required under Civil Practice and

Remedies Code sec. 150.002 would have to be from a third party professional who practiced in the same area of practice as the defendant. This would replace the requirement that the third party professional was knowledgeable in the area of practice.

The bill also would replace the term "plaintiff" with the term "claimant" in that section. "Claimant" would be defined as a party, including a plaintiff or third-party plaintiff, that sought recovery for damages, contribution, or indemnification in the suit.

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, 2019, and would apply only to actions or arbitration proceedings commenced on or after that date.

**SUPPORTERS
SAY:**

SB 1928 would help prevent frivolous claims against certain licensed and registered professionals by amending statute that governs required certificates of merit. Under current law, plaintiffs must file these certificates of merit in certain lawsuits. However, Texas courts have ruled that this requirement applies only to the original plaintiffs in the suit, not to all claimants. Requiring cross-plaintiffs and defendants acting as counter-plaintiffs to file such certificates would help prevent frivolous claims and ensure that all claims were vetted by third-party professionals. The bill would accomplish this by requiring all claimants to file certificates of merit.

The bill also would ensure the factuality of claims made in these certificates and related proceedings by requiring that third-party professionals who swore to certificates of merit were experts who practiced in the same area as defendants, rather than simply individuals who claimed to have knowledge of the practice area.

**OPPONENTS
SAY:**

No concerns identified.