BILL ANALYSIS

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In a suit involving claims of professional negligence by a registered architect, registered professional land surveyor, or licensed professional engineer, Chapter 150 (Design Professionals), Texas Civil Practice and Remedies Code, requires that the plaintiff file with the plaintiff's complaint an affidavit of a third party licensed architect, professional land surveyor, or licensed engineer. The affidavit must demonstrate that the third party professional is "competent to testify, and practicing in the same area or practice as the defendant" and must identify at least one negligent act, error, or omission of the defendant.

A problem often encountered for the third party professional offering an affidavit in these cases is the requirement that the professional must practice "in the same area of practice" as the defendant. The wording of the statute is vague and imprecise and leads to the disqualification of affidavits of third party professionals based on tactics rather than on merit. Specifically, there can be difficulty identifying what is meant by the requirement that the professional practice in the "same area." Does it mean, for example, geographic area, focus of practice, size of practice, or something else? Moreover, often in these professions, each professional's experience is unique so that no one professional has exactly the same experience as another. Additionally, where a third party professional may have in the past practiced in the "same area," he or she may now offer services with a different focus. Under the language of the statute, an affidavit of the professional may nevertheless be challenged even though the professional may have the expert knowledge in the area at issue in the suit.

As proposed, S.B. 1201 requires the plaintiff, in any action or arbitration proceeding, to file with the complaint an affidavit of a third-party licensed architect, registered professional land surveyor, or licensed professional engineer. The bill authorizes an affidavit to be completed by a licensed architect, registered professional land surveyor, or licensed engineer who meets certain requirements.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

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

CHAPTER 150. LICENSED OR REGISTERED PROFESSIONALS

SECTION 2. Amends Section 150.002, Civil Practice and Remedies Code, as amended by Chapters 189 (H.B. 854) and 208 (H.B. 1573), Acts of the 79th Legislature, Regular Session, 2005, by reenacting and amending Subsection (a), and adding Subsection (a-1), as follows:

> (a) Requires the plaintiff, in any action or arbitration proceeding for damages alleging professional negligence by a licensed or registered professional, to file with the complaint an affidavit of a third-party licensed architect, registered professional land surveyor, or licensed professional engineer qualified as provided by Subsection (a-1), rather than a licensed professional engineer competent to testify, holding the same professional license

as, and practicing in the same area of practice as the defendant, which affidavit is required to set forth specifically at least one negligent act, error, or omission claimed to exist and the factual basis for each such claim.

(a-1) Authorizes an affidavit required by Subsection (a) to be completed by a licensed architect, registered professional land surveyor, or licensed engineer who is competent to testify and knowledgeable in the area of practice for which the person offers testimony based on the person's knowledge, skills, experience, education, training, and practice.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 2009.