

BILL ANALYSIS

Senate Research Center

S.B. 1928
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State Affairs
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Current law requires a plaintiff who wishes to file a malpractice suit against a licensed architect, professional engineer, registered professional land surveyor, or registered landscape architect to file a "certificate of merit," which is an affidavit by a person who has the same license as the defendant (engineer, architect, etc.) stating that the defendant's actions constitute malpractice.

Current law requires a "plaintiff" to file the certificate of merit when making a claim, thus leaving unclear whether a cross-plaintiff or defendant acting as counter-plaintiff is required to file a certificate of merit if they respond to the suit by filing a malpractice claim against a professional. (For example, if an architect sues over an unpaid bill and the defendant responds with a counterclaim for malpractice.)

S.B. 1928 changes "plaintiff" to "claimant" to clarify that any party seeking to sue the licensed professionals for malpractice is required to file a certificate of merit.

Also, under current law, the affiant must have knowledge in the area in which the defendant practices. S.B. 1928 would require the affiant to actually practice in the same area as the defendant, which would mean the affiant has experience in the area rather than just claiming "knowledge" of it. This is similar to the requirement in medical malpractice suits. (Original Author's/Sponsor's Statement of Intent)

S.B. 1928 amends current law relating to a certificate of merit in certain actions against certain licensed or registered professionals.

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. Amends Section 150.001, Civil Practice and Remedies Code, by amending Subdivisions (1-a) and (1-b) and adding Subdivisions (1-c) and (1-d), as follows:

(1-a) Defines "claimant."

(1-b) Defines "complaint."

(1-c) Creates this subdivision from existing text and makes no further changes to this subdivision.

(1-d) Redesignates existing Subdivision (1-b) as this subdivision and makes no further changes to this subdivision.

SECTION 2. Amends Sections 150.002(a), (c), and (e), Civil Practice and Remedies Code, as follows:

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

(1) and (2) makes no changes to these subdivisions; and

(3) practices, rather than is knowledgeable, in the area of practice of the defendant and offers testimony based on the person's certain qualifications.

(c) Prohibits the contemporaneous filing requirement of Subsection (a) from applying to any case in which the period of limitation will expire within 10 days of the date of filing and, because of such time constraints, a claimant, rather than the plaintiff, has alleged that an affidavit of a third-party licensed architect, licensed professional engineer, registered landscape architect, or registered professional land surveyor could not be prepared. Makes a conforming change to this subsection.

(e) Makes a conforming change to this subsection.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: upon passage or September 1, 2019.