

House Bill 2711

Sponsored by COMMITTEE ON CONSUMER PROTECTION

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Modifies pleading requirements for claims against construction design professionals. Eliminates exemptions from pleading requirements.

A BILL FOR AN ACT

Relating to construction design professionals; creating new provisions; and amending ORS 31.300.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 31.300 is amended to read:

31.300. (1) As used in this section, "construction design professional" means an architect, registered landscape architect, professional engineer or professional land surveyor.

[(2) A complaint, cross-claim, counterclaim or third-party complaint asserting a claim against a construction design professional that arises out of the provision of services within the course and scope of the activities for which the person is licensed may not be filed unless the claimant's attorney certifies that the attorney has consulted a licensed construction design professional who is qualified, available and willing to testify to admissible facts and opinions sufficient to create a question of fact as to the liability of the construction design professional. The certification required by this section must be filed with or be made part of the original complaint, cross-claim, counterclaim or third-party complaint. The certification must contain a statement that a licensed construction design professional who is qualified to testify as to the standard of care applicable to the alleged facts, is available and willing to testify that:]

[(a) The alleged conduct of the construction design professional failed to meet the standard of professional care applicable to the construction design professional in the circumstances alleged; and]

[(b) The alleged conduct was a cause of the claimed damages, losses or other harm.]

[(3) In lieu of providing the certification described in subsection (2) of this section, the claimant's attorney may file with the court at the time of filing a complaint, cross-claim, counterclaim or third-party complaint an affidavit that states:]

[(a) The applicable statute of limitations is about to expire;]

[(b) The certification required under subsection (2) of this section will be filed within 30 days after filing the complaint, cross-claim, counterclaim or third-party complaint or such longer time as the court may allow for good cause shown; and]

[(c) The attorney has made such inquiry as is reasonable under the circumstances and has made a good faith attempt to consult with at least one licensed construction design professional who is qualified to testify as to the standard of care applicable to the alleged facts, as required by subsection (2) of this section.]

[(4) Upon motion of the construction design professional, the court shall enter judgment dismissing

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 any complaint, cross-claim, counterclaim or third-party complaint against any construction design pro-
 2 fessional that fails to comply with the requirements of this section.]

3 [(5) This section applies only to a complaint, cross-claim, counterclaim or third-party complaint
 4 against a construction design professional by any plaintiff who:]

5 [(a) Is a construction design professional, contractor, subcontractor or other person providing la-
 6 bor, materials or services for the real property improvement that is the subject of the claim;]

7 [(b) Is the owner, lessor, lessee, renter or occupier of the real property improvement that is the
 8 subject of the claim;]

9 [(c) Is involved in the operation or management of the real property improvement that is the subject
 10 of the claim;]

11 [(d) Has contracted with or otherwise employed the construction design professional; or]

12 [(e) Is a person for whose benefit the construction design professional performed services.]

13 **(2) A complaint, cross-claim, counterclaim or third-party complaint asserting a claim**
 14 **against a construction design professional that arises out of the provision of services within**
 15 **the course and scope of the activities for which the person is licensed may not be filed unless**
 16 **accompanied by an affidavit of the party's attorney stating that the attorney has retained**
 17 **an expert qualified, available and willing to testify to admissible facts and opinions sufficient**
 18 **to create a question of fact as to the professional liability of the construction design pro-**
 19 **fessional. The affidavit required by this section must be filed with the court along with the**
 20 **original complaint, cross-claim, counterclaim or third-party complaint and must contain the**
 21 **following:**

22 (a) A statement of the time, place and circumstances of each allegedly negligent act or
 23 omission upon which the claim is based;

24 (b) A statement of the alleged damages, losses or other harm attributable to the acts or
 25 omissions identified under paragraph (a) of this subsection; and

26 (c) A statement that an expert, qualified to testify to such matters, is available and
 27 willing to testify that the alleged conduct of the construction design professional failed to
 28 meet the standard of professional care applicable to the construction design professional in
 29 the circumstances, and that such conduct substantially caused the alleged damages, losses
 30 or other harm.

31 **(3) In lieu of providing the affidavit described in subsection (2) of this section, the at-**
 32 **torney for a party asserting a claim may file with the court, at the time of filing a complaint,**
 33 **cross-claim, counterclaim or third-party complaint, an affidavit stating that:**

34 (a) The applicable statute of limitations is about to expire and that the affidavit required
 35 under subsection (2) of this section will be filed within 15 days from filing the complaint,
 36 cross-claim, counterclaim or third-party complaint or such longer time as the court may
 37 allow for good cause shown; and

38 (b) The attorney has made such inquiry as is reasonable under the circumstances and
 39 has made a good faith attempt to consult with at least one expert qualified, available and
 40 willing to testify to admissible facts and opinions sufficient to create a question of fact as
 41 to the professional liability of the construction design professional.

42 (4) Upon motion of the construction design professional, the court shall enter judgment
 43 dismissing any complaint, cross-claim, counterclaim or third-party complaint against any
 44 construction design professional that fails to comply with the requirements of this section.

45 **SECTION 2. The amendments to ORS 31.300 by section 1 of this 2007 Act apply only to**

1 **complaints, cross-claims, counterclaims and third-party complaints filed on or after the ef-**
2 **fective date of this 2007 Act.**

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