

SENATE AMENDMENTS TO SENATE BILL 659

By COMMITTEE ON JUDICIARY

May 9

1 On page 1 of the printed bill, delete lines 4 through 28 and delete pages 2 through 4 and insert:
2 “**SECTION 1. (1) As used in this section, ‘real estate licensee’ has the meaning given that**
3 **term in ORS 696.010.**

4 “**(2) A claim, counterclaim or cross-claim in a binding arbitration proceeding asserting a**
5 **claim of professional negligence against a real estate licensee for conduct occurring within**
6 **the course and scope of the activities for which the person is licensed may not be made un-**
7 **less the claimant or the claimant’s attorney certifies that the claimant or attorney has**
8 **consulted a real estate licensee who is qualified, available and willing to testify to admissible**
9 **facts and opinions sufficient to create a question of fact as to the liability of the real estate**
10 **licensee. The certification required by this section must be provided at the time an arbi-**
11 **tration proceeding is initiated as described in ORS 36.635 or at the time the claim is pre-**
12 **sented in the arbitration proceeding by counterclaim or cross-claim. The certification must**
13 **contain a statement that a real estate licensee who is qualified to testify as to the standard**
14 **of care applicable to the alleged facts is available and willing to testify in the proceeding that:**

15 “**(a) The alleged conduct of the real estate licensee failed to meet the standard of pro-**
16 **fessional care applicable to the real estate licensee in the circumstances alleged; and**

17 “**(b) The alleged conduct was a cause of the claimed damages, losses or other harm.**

18 “**(3) In lieu of providing the certification described in subsection (2) of this section, the**
19 **claimant or the claimant’s attorney may provide an affidavit at the time the arbitration**
20 **proceeding is initiated as described in ORS 36.635, or at the time the claim is presented in**
21 **the arbitration proceeding by counterclaim or cross-claim, that states:**

22 “**(a) The time allowed to make the claim is about to expire;**

23 “**(b) The certification required under subsection (2) of this section will be provided within**
24 **30 days after the proceeding is initiated or after the claim is presented in the proceeding, or**
25 **such longer time as the arbitrator may allow for good cause shown; and**

26 “**(c) The claimant or attorney has made such inquiry as is reasonable under the circum-**
27 **stances and has made a good faith attempt to consult with at least one real estate licensee**
28 **who is qualified to testify as to the standard of care applicable to the alleged facts, as re-**
29 **quired by subsection (2) of this section.**

30 “**(4) Upon motion of the real estate licensee, an arbitrator may dismiss a claim,**
31 **counterclaim or cross-claim if a claimant or claimant’s attorney fails to comply with the**
32 **requirements of this section within such time as the arbitrator may determine.**

33 “**(5) This section applies only to a claim in a binding arbitration proceeding by a claimant**
34 **who:**

35 “**(a) Has contracted with or otherwise employed the real estate licensee; or**

