

# Senate Bill 383

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Judiciary for Oregon State Bar Construction Law Section)

## 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**.

Allows initial or secondary notice of defect in residence to be sent by certified mail. Exempts small claims and certain counterclaims or responses from notice of defect procedure.

## A BILL FOR AN ACT

1  
2 Relating to residential defect claims; creating new provisions; and amending ORS 701.565, 701.570  
3 and 701.600.

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

5 **SECTION 1.** ORS 701.565 is amended to read:

6 701.565. (1) **Except as provided in ORS 701.600**, an owner may not compel arbitration or com-  
7 mence a court action against a contractor, subcontractor or supplier to assert a claim arising out  
8 of or related to any defect in the construction, alteration or repair of a residence or in any system,  
9 component or material incorporated into a residence located in this state unless the owner has sent  
10 that contractor, subcontractor or supplier a notice of defect as provided in this section and has  
11 complied with ORS 701.575.

12 (2) An owner must send a notice of defect by registered **or certified** mail, return receipt re-  
13 quested. If a notice of defect is sent to a contractor or subcontractor, the owner must send the no-  
14 tice to the last known address for the contractor or subcontractor as shown in the records of the  
15 Construction Contractors Board. If a notice of defect is sent to a supplier, the owner must send the  
16 notice to the Oregon business address of the supplier or, if none, to the registered agent of the  
17 supplier.

18 (3) A notice of defect sent by an owner must include:

19 (a) The name and mailing address of the owner or the owner's legal representative, if any;

20 (b) A statement that the owner may seek to compel arbitration or bring a court action against  
21 the contractor, subcontractor or supplier;

22 (c) The address and location of the affected residence;

23 (d) A description of:

24 (A) Each defect;

25 (B) The remediation the owner believes is necessary; and

26 (C) Any incidental damage not curable by remediation as described in subparagraph (B) of this  
27 paragraph; and

28 (e) Any report or other document evidencing the existence of the defects and any incidental  
29 damage.

30 **SECTION 2.** ORS 701.570 is amended to read:

**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           701.570. (1) A contractor, subcontractor or supplier that receives a notice of defect sent under  
2 ORS 701.565 shall, not later than 14 days after receiving the notice of defect, send a secondary no-  
3 tice to any other known contractor, subcontractor or supplier that may be responsible for some or  
4 all of the defects described in the notice of defect. The contractor, subcontractor or supplier must  
5 send the secondary notice by registered **or certified** mail, return receipt requested, to an address  
6 described in ORS 701.565 (2). The secondary notice must be accompanied by a statement describing  
7 the basis for contending that the other contractor, subcontractor or supplier may be responsible for  
8 some or all of the defects.

9           (2) A contractor, subcontractor or supplier that receives a notice of defect or secondary notice  
10 may send the owner a written request to conduct a visual examination of the residence. The written  
11 request must be sent not later than 14 days after the requesting contractor, subcontractor or sup-  
12 plier receives a notice of defect or secondary notice. The written request to conduct a visual ex-  
13 amination of the residence must state the estimated time required for the visual examination.

14           (3) A contractor, subcontractor or supplier that receives a notice of defect or secondary notice  
15 may send the owner a written request to inspect the residence. The written request must be sent  
16 not later than 14 days after the requesting contractor, subcontractor or supplier conducted a visual  
17 examination of the residence. The written request to inspect the residence must state the nature and  
18 scope of the inspection, whether any testing is to be performed and the estimated time required for  
19 the inspection. The recipient of a secondary notice that requests to inspect the residence shall send  
20 a copy of the request to the sender of the secondary notice.

21           (4) A contractor, subcontractor or supplier that sends a secondary notice and intends to hold  
22 the recipient of the secondary notice liable for a defect described in a notice of defect shall coord-  
23 inate the scheduling of any inspection with the owner and all recipients of a secondary notice from  
24 the contractor, subcontractor or supplier. The contractor, subcontractor or supplier shall deliver a  
25 copy of any written request to inspect the residence to each recipient of the secondary notice in  
26 time to provide the recipient with an opportunity to attend the requested inspection and to partic-  
27 ipate in any remediation. The sender of a secondary notice shall give reasonable advance notice to  
28 the owner or the owner's legal representative, if any, of the identity of any contractor, subcontrac-  
29 tor or supplier who will attend the inspection.

30           (5) Unless otherwise agreed to by the owner, a contractor, subcontractor or supplier that re-  
31 ceives a notice of defect or secondary notice shall send a written response to the owner not later  
32 than 90 days after the contractor, subcontractor or supplier receives a notice of defect or secondary  
33 notice. A contractor, subcontractor or supplier that receives a secondary notice also shall send a  
34 copy of the written response to the sender of the secondary notice. The written response must be  
35 sent by registered **or certified** mail, return receipt requested. The written response must include:

36           (a) One or more of the following for each defect described in the notice of defect or secondary  
37 notice or discovered during the course of any visual examination or inspection:

38           (A) An acknowledgment of the existence, nature and extent of the defect without regard to re-  
39 sponsibility for the defect.

40           (B) A statement describing the existence of a defect different in nature or extent from the defect  
41 described in the notice of defect or secondary notice, without regard to responsibility for the defect.

42           (C) A denial of the existence of the defect.

43           (b) A copy of the documents described in ORS 701.575 (4).

44           (c) One or more of the following:

45           (A) An offer to perform some or all of the remediation. The offer must specify the date by which

1 the offered remediation will be completed.

2 (B) An offer to pay a stated amount of monetary compensation to the owner for some or all of  
3 the acknowledged defects and any incidental damage. The offer must specify the date by which  
4 payment will be made.

5 (C) A denial of responsibility for some or all of the acknowledged defects or incidental damage.

6 **SECTION 3.** ORS 701.600 is amended to read:

7 701.600. ORS 701.560 to 701.595 and 701.605 do not apply:

8 (1) To personal injury or death claims.

9 (2) To claims or complaints filed pursuant to ORS 671.695 or 701.139.

10 (3) To claims against a person licensed under ORS 671.010 to 671.220.

11 (4) **To complaints filed in a small claims department established in a justice court or**  
12 **circuit court as described in ORS 55.011.**

13 (5) **To counterclaims or other responses to a contractor, subcontractor or supplier claim,**  
14 **arbitration demand or complaint that arises out of, or is related to, a contract for the con-**  
15 **struction, alteration or repair of a residence or a system, component or material incorpo-**  
16 **rated into a residence.**

17 **SECTION 4.** (1) **The amendments to ORS 701.565 and 701.570 by sections 1 and 2 of this**  
18 **2011 Act apply to notices and responses mailed on or after the effective date of this 2011 Act.**

19 (2) **The amendments to ORS 701.600 by section 3 of this 2011 Act apply to a counterclaim**  
20 **or other response made on or after the effective date of this 2011 Act regarding a claim,**  
21 **arbitration demand or complaint made by a contractor, subcontractor or supplier before, on**  
22 **or after the effective date of this 2011 Act.**

23