

Senate Bill 543

Sponsored by Senator GEORGE (Presession filed.)

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**.

Imposes pleading requirements for professional liability claims. Requires that claim be accompanied by certification by claimant's attorney stating that attorney has consulted person who holds same license, registration or certificate as defendant and who is qualified, available and willing to testify to admissible facts and opinions sufficient to create question of fact as to professional liability. Specifies exceptions.

Mandates settlement conference in action in which professional liability claim is made.

Allows defendant in professional liability claim to request impaneling of commonsense jury if claim is for more than \$50,000. Requires award of reasonable attorney fees to defendant if commonsense jury determines that claim is meritless and plaintiff does not receive money award at trial.

A BILL FOR AN ACT

1
2 Relating to civil actions against licensed professionals.

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

4 **SECTION 1. (1) As used in this section:**

5 (a) **"Licensed professional" means an attorney admitted to practice law in this state or**
6 **any person who is required by law to be licensed, registered or certified as a condition of**
7 **pursuing any commercial activity, trade, occupation or profession.**

8 (b) **"Professional liability claim" means a claim for damages against a person who is a**
9 **licensed professional that:**

10 (A) **Arises out of the provision of services within the course and scope of the activities**
11 **for which the person is licensed, registered or certified; and**

12 (B) **Is based on an assertion that the person failed to meet the standard of professional**
13 **care applicable to the activities for which the person is licensed, registered or certified.**

14 (2) **Except as provided in subsections (4) and (6) of this section, a complaint, cross-claim,**
15 **counterclaim or third-party complaint asserting a professional liability claim may not be filed**
16 **with the court unless the claimant's attorney certifies that the attorney has consulted a**
17 **person who:**

18 (a) **Holds the same license, registration or certificate as the licensed professional against**
19 **whom the claim is made; and**

20 (b) **Is qualified, available and willing to testify to admissible facts and opinions sufficient**
21 **to create a question of fact as to the liability of the licensed professional.**

22 (3) **The certification required by subsection (2) of this section must be filed with or be**
23 **made part of the original complaint, cross-claim, counterclaim or third-party complaint. The**
24 **certification must contain a statement that a person described in subsection (2) of this sec-**
25 **tion is available and willing to testify that:**

26 (a) **The alleged conduct of the licensed professional failed to meet the standard of pro-**
27 **fessional care applicable to the licensed professional in the circumstances alleged; and**

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

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

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

6 (b) The required certification will be filed within 30 days after filing the complaint,
7 cross-claim, counterclaim or third-party complaint or such longer time as the court may
8 allow for good cause shown; and

9 (c) The attorney has made such inquiry as is reasonable under the circumstances and
10 has made a good faith attempt to consult with at least one person who meets the require-
11 ments of subsection (2) of this section.

12 (5) Upon motion of the licensed professional, the court shall enter judgment dismissing
13 any complaint, cross-claim, counterclaim or third-party complaint against the licensed pro-
14 fessional that fails to comply with the requirements of this section.

15 (6) This section does not apply to a complaint, cross-claim, counterclaim or third-party
16 complaint against a construction design professional as defined by ORS 31.300.

17 **SECTION 2.** (1) In any action in which there is a professional liability claim as defined
18 in section 1 of this 2011 Act, all the parties to the action, the insurers of the parties and the
19 attorneys of the parties shall attend and participate in a settlement conference before a
20 circuit court judge other than the judge assigned to try the case. The judge shall attempt to
21 ascertain at the settlement conference whether the action can be settled by the parties be-
22 fore trial.

23 (2) The judge conducting a settlement conference under this section may waive the at-
24 tendance of any person for good cause shown. The judge shall decide what information the
25 parties may submit at the settlement conference.

26 (3) The judge conducting a settlement conference under this section shall notify the
27 parties of the time and place of the settlement conference.

28 (4) The court shall impose appropriate sanctions against any person who is required to
29 attend a settlement conference under this section and who fails to appear or to participate
30 in good faith.

31 **SECTION 3.** (1) If a professional liability claim, as defined in section 1 of this 2011 Act,
32 of more than \$50,000 is made in any civil action, the defendant in the action may request that
33 the court impanel a commonsense jury. A commonsense jury consists of six persons, selected
34 at random from the term jury list prepared under ORS 10.225. Upon making a request under
35 this subsection, a defendant shall pay a fee equal to the juror fees and other costs attribut-
36 able to impaneling the commonsense jury. The court administrator shall set a time and place
37 for hearing before the commonsense jury and give notice of the time and place to the parties.

38 (2) Each party to a proceeding before a commonsense jury under this section may pres-
39 ent evidence and arguments. Each party must complete presentation of the party's case in
40 not more than two hours. Proceedings before a commonsense jury shall be conducted in-
41 formally. Parties may be represented by attorneys in all proceedings before a commonsense
42 jury.

43 (3) A commonsense jury shall deliberate not more than two hours on each claim sub-
44 mitted to the jury. Each juror shall then vote on whether the juror finds that the claim has
45 merit.

1 (4) The decision of a commonsense jury is not binding on a party to a hearing before the
2 jury. However, if the plaintiff continues prosecution of the case to trial after the
3 commonsense jury determines that the claim is meritless, and the plaintiff does not receive
4 a money award at trial, the court shall award to the defendant reasonable attorney fees at-
5 tributable to defense of the case after the entry of the commonsense jury's decision.

6 SECTION 4. (1) Section 1 of this 2011 Act applies only to complaints, cross-claims,
7 counterclaims and third-party complaints filed on or after the effective date of this 2011 Act.

8 (2) Sections 2 and 3 of this 2011 Act apply only to actions commenced on or after the
9 effective date of this 2011 Act.

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