

D R A F T

SUMMARY

Modifies requirement that attorney for person asserting claim against construction design professional certify that witness construction design professional is available and willing to testify in favor of claimant.

A BILL FOR AN ACT

Relating to pleading requirements for actions against 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[,]:

(a) “Construction design professional” means an architect, registered landscape architect, professional engineer or professional land surveyor.

(b) “Witness construction design professional” means a construction design professional who:

(A) Is licensed in this state to practice the same profession as the construction design professional against whom a claim is asserted;

(B) Is actively practicing the same profession as the construction design professional against whom a claim is asserted; and

(C) 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 against whom a claim is asserted.

(2) A complaint, cross-claim, counterclaim or third-party complaint asserting a claim against a construction design professional that arises out of

1 the provision of services within the course and scope of the activities for
2 which the person is licensed may not be filed unless the claimant's attorney
3 certifies that the attorney has consulted a [*licensed*] **witness** construction
4 design professional [*who is qualified, available and willing to testify to ad-*
5 *missible facts and opinions sufficient to create a question of fact as to the li-*
6 *ability of the construction design professional*]. The certification required by
7 this section must be filed with or be made part of the original complaint,
8 cross-claim, counterclaim or third-party complaint. The certification must
9 contain a statement that a [*licensed*] **witness** construction design profes-
10 sional [*who is qualified to testify as to the standard of care applicable to the*
11 *alleged facts,*] is available and willing to testify that:

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

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

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

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

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

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

31 (4) Upon motion of the construction design professional, the court shall

1 enter judgment dismissing any complaint, cross-claim, counterclaim or
2 third-party complaint against any construction design professional that fails
3 to comply with the requirements of this section.

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

7 (a) Is a construction design professional, contractor, subcontractor or
8 other person providing labor, materials or services for the real property im-
9 provement that is the subject of the claim;

10 (b) Is the owner, lessor, lessee, renter or occupier of the real property
11 improvement that is the subject of the claim;

12 (c) Is involved in the operation or management of the real property im-
13 provement that is the subject of the claim;

14 (d) Has contracted with or otherwise employed the construction design
15 professional; or

16 (e) Is a person for whose benefit the construction design professional
17 performed services.

18 **SECTION 2. The amendments to ORS 31.300 by section 1 of this 2013**
19 **Act apply only to complaints, cross-claims, counterclaims and third-**
20 **party complaints filed on or after the effective date of this 2013 Act.**

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