

Senate Bill 480

Sponsored by COMMITTEE ON JUDICIARY

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 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

1
2 Relating to pleading requirements for actions against construction design professionals; creating
3 new provisions; and amending ORS 31.300.

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

5 **SECTION 1.** ORS 31.300 is amended to read:

6 31.300. (1) As used in this section[,]:

7 (a) "Construction design professional" means an architect, registered landscape architect, pro-
8 fessional engineer or professional land surveyor.

9 (b) "**Witness construction design professional**" means a construction design professional
10 **who:**

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

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

15 (C) **Is qualified, available and willing to testify to admissible facts and opinions sufficient**
16 **to create a question of fact as to the liability of the construction design professional against**
17 **whom a claim is asserted.**

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

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

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

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

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

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

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

12 (4) Upon motion of the construction design professional, the court shall enter judgment dis-
13 missing any complaint, cross-claim, counterclaim or third-party complaint against any construction
14 design professional that fails to comply with the requirements of this section.

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

17 (a) Is a construction design professional, contractor, subcontractor or other person providing
18 labor, materials or services for the real property improvement that is the subject of the claim;

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

21 (c) Is involved in the operation or management of the real property improvement that is the
22 subject of the claim;

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

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

25 **SECTION 2. The amendments to ORS 31.300 by section 1 of this 2013 Act apply only to**
26 **complaints, cross-claims, counterclaims and third-party complaints filed on or after the ef-**
27 **fective date of this 2013 Act.**

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