

Seventy-Eighth Oregon Legislative Assembly - 2015 Regular Session
STAFF MEASURE SUMMARY
Senate Committee On Judiciary

MEASURE: SB 383 A
CARRIER: Sen. Prozanski

Fiscal: No Fiscal Impact

Revenue: No Revenue Impact

Action Date: 03/11/15

Action: Do Pass With Amendments. (Printed A-Eng.)

Meeting Dates: 02/11, 03/11

Vote:

Yeas: 5 - Burdick, Gelser, Kruse, Prozanski, Thatcher

Prepared By: Laura Handzel, Administrator

WHAT THE MEASURE DOES:

Amends and clarifies requirements for bringing claim against design professionals. Removes “construction” from term “construction design professional.” Defines “design professional.” Adds exemption to requirements for public bodies. Applies only to actions filed on or after the effective date.

ISSUES DISCUSSED:

- Current certificate of merit statute
- Problems related to design professional witnesses not credentialed in Oregon and unfamiliar with practice areas
- Complexities of design professional litigation, including multiple parties and frivolous claims
- Need for like-credentialed professionals critiquing other like-credentialed professionals
- Appropriate breadth of potential design professional witness class
- Need to allow amending of complaints, cross-claims, counter-claims or third-party complaints
- Specific issues facing architects, including legal standards, duties, responsibilities, and litigation
- Need for accountability of design professionals

EFFECT OF COMMITTEE AMENDMENT:

Removes language “practicing in the same jurisdiction” to clarify meaning and intent. Deletes “original” from page 1, line 12 to provide flexibility in amending claims. Contains non-substantive scrivener’s changes.

BACKGROUND:

ORS 31.300 contains Oregon’s certificate of merit statute, which outlines requirements for bringing a claim against a design professional. Requirements include a certification by the claimant’s attorney that they have consulted a licensed design professional who is qualified, available and willing to testify to admissible facts and opinions sufficient to create a question of fact concerning liability. The intent of the statute is to help determine which claims against design professionals lack basis and which warrant the courts’ attention. This is especially important as these actions are often complex, involve many parties, and may involve frivolous claims.

Senate Bill 383A clarifies the certificate of merit statute by amending claim requirements. It does this by: 1) dropping “construction” from the term “construction design professional” to provide consistency as the term is not used anywhere else besides in ORS 31.300; 2) defining “design professional” as a person registered under ORS chapters 671 and 672; and 3) outlining what standards of professional skill and care a potential expert witness must address. Senate Bill 383A provides an exemption to claim requirements for public bodies. Additionally, the bill only applies to complaints, cross-claims, counterclaims and third-party complaints filed on or after the effective date of the Act.