

**A-Engrossed**  
**Senate Bill 383**

Ordered by the Senate March 16  
Including Senate Amendments dated March 16

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**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.

Modifies pleading requirements for claims against design professionals.

**A BILL FOR AN ACT**

1  
2 Relating to pleading requirements for actions against design professionals; creating new provisions;  
3 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, “[*construction*] design professional” means an architect, [*reg-*  
7 *istered*] landscape architect, professional engineer or professional land surveyor **registered under**  
8 **ORS chapter 671 or 672.**

9 (2) A complaint, cross-claim, counterclaim or third-party complaint asserting a claim against a  
10 [*construction*] design professional that arises out of the provision of services within the course and  
11 scope of the activities for which the person is [*licensed*] **registered** may not be filed unless **the**  
12 **following items are filed with or made part of the complaint, cross-claim, counterclaim or**  
13 **third-party complaint:**

14 (a) **A summary of the alleged conduct of the design professional that failed to meet the**  
15 **standard of professional skill and care ordinarily provided by other design professionals with**  
16 **similar credentials, experience and expertise and practicing under the same or similar cir-**  
17 **cumstances; and**

18 (b) The **certification of the** claimant’s attorney [*certifies*] that the attorney has consulted a  
19 [*licensed construction*] design professional **with similar credentials** who is qualified, available and  
20 willing to testify to admissible facts and opinions sufficient to create a question of fact as to the  
21 liability of the [*construction*] design professional. [*The certification required by this section must be*  
22 *filed with or be made part of the original complaint, cross-claim, counterclaim or third-party*  
23 *complaint.*] The certification must contain a statement that a [*licensed construction*] design profes-  
24 sional **with similar credentials** who is qualified to testify as to the standard of **professional skill**  
25 **and** care applicable to the alleged facts, is available and willing to testify that:

26 [(a)] (A) The alleged conduct of the [*construction*] design professional failed to meet the standard  
27 of professional [*care applicable to the construction design professional in the circumstances alleged*]  
28 **skill and care ordinarily provided by other design professionals with similar credentials, ex-**

**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 **perience and expertise and practicing under the same or similar circumstances; and**

2 [(b)] **(B)** The alleged conduct was a cause of the claimed damages, losses or other harm.

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

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

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

10 (c) The attorney has made such inquiry as is reasonable under the circumstances and has made  
11 a good faith attempt to consult with at least one [*licensed construction*] **registered** design profes-  
12 sional who is qualified to testify as to the standard of **professional skill and** care applicable to the  
13 alleged facts, as required by subsection (2)(b) of this section.

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

17 (5) This section applies only to a complaint, cross-claim, counterclaim or third-party complaint  
18 against a [*construction*] design professional by any plaintiff who:

19 **(a) Is not a public body; and**

20 [(a)] **(b)(A)** Is a [*construction*] design professional, contractor, subcontractor or other person  
21 providing labor, materials or services for the real property improvement that is the subject of the  
22 claim;

23 [(b)] **(B)** Is the owner, lessor, lessee, renter or occupier of the real property improvement that  
24 is the subject of the claim;

25 [(c)] **(C)** Is involved in the operation or management of the real property improvement that is  
26 the subject of the claim;

27 [(d)] **(D)** Has contracted with or otherwise employed the [*construction*] design professional; or

28 [(e)] **(E)** Is a person for whose benefit the [*construction*] design professional performed services.

29 **SECTION 2. The amendments to ORS 31.300 by section 1 of this 2015 Act apply only to**  
30 **complaints, cross-claims, counterclaims and third-party complaints filed on or after the ef-**  
31 **fective date of this 2015 Act.**

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