

B-Engrossed
Senate Bill 383

Ordered by the House June 8
Including Senate Amendments dated March 16 and House Amendments
dated June 8

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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 or licensed to practice as an architect, landscape architect, profes-**
9 **sional engineer or professional land surveyor in another state.**

10 (2) A complaint, cross-claim, counterclaim or third-party complaint asserting a claim against a
11 [*construction*] design professional that arises out of the provision of services within the course and
12 scope of the activities for which the person is **registered or** licensed may not be filed unless the
13 claimant’s attorney certifies that the attorney has consulted a [*licensed construction*] design profes-
14 sional **with similar credentials** who is qualified, available and willing to testify to admissible facts
15 and opinions sufficient to create a question of fact as to the liability of the [*construction*] design
16 professional. [*The certification required by this section must be filed with or be made part of the ori-*
17 *ginal complaint, cross-claim, counterclaim or third-party complaint.*] The certification must contain a
18 statement that a [*licensed construction*] design professional **with similar credentials** who is qualified
19 to testify as to the standard of **professional skill and** care applicable to the alleged facts, is avail-
20 able and willing to testify that:

21 (a) The alleged conduct of the [*construction*] design professional failed to meet the standard of
22 professional [*care applicable to the construction design professional in the circumstances alleged*] **skill**
23 **and care ordinarily provided by other design professionals with similar credentials, experi-**
24 **ence and expertise and practicing under the same or similar circumstances; and**

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

26 (3) In lieu of providing the certification described in subsection (2) of this section, the claimant’s
27 attorney may file with the court at the time of filing a complaint, cross-claim, counterclaim or

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 third-party complaint an affidavit that states:

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

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

6 (c) The attorney has made such inquiry as is reasonable under the circumstances and has made
7 a good faith attempt to consult with at least one [*licensed construction*] **registered or licensed** de-
8 sign professional who is qualified to testify as to the standard of **professional skill and** care ap-
9 plicable to the alleged facts, as required by subsection (2) of this section.

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

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

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

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

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

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

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

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

26