

HOUSE AMENDMENTS TO A-ENGROSSED SENATE BILL 383

By COMMITTEE ON CONSUMER PROTECTION AND GOVERNMENT EFFECTIVENESS

June 8

1 On page 1 of the printed A-engrossed bill, delete lines 5 through 28.

2 On page 2, delete lines 1 through 28 and insert:

3 “**SECTION 1.** ORS 31.300 is amended to read:

4 “31.300. (1) As used in this section, ‘*construction*’ design professional’ means an architect, [*reg-*
5 *istered*] landscape architect, professional engineer or professional land surveyor **registered under**
6 **ORS chapter 671 or 672 or licensed to practice as an architect, landscape architect, profes-**
7 **sional engineer or professional land surveyor in another state.**

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

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

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

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

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

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

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

35 “(4) Upon motion of the [*construction*] design professional, the court shall enter judgment dis-

1 missing any complaint, cross-claim, counterclaim or third-party complaint against any [*construction*]
2 design professional that fails to comply with the requirements of this section.

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

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

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

9 “(c) Is involved in the operation or management of the real property improvement that is the
10 subject of the claim;

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

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

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