

Senate Bill 383

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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 **as introduced**.

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*] **a person licensed or**
8 **registered under 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 **or registered** may not be filed unless **the**
12 **following items are filed with or made part of the original complaint, cross-claim, counter-**
13 **claim or 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 of**
16 **similar licensure or registration, experience and expertise, practicing in the same jurisdiction**
17 **and under the same or similar circumstances; and**

18 (b) The **certification of the** claimant’s attorney [*certifies*] that the attorney has consulted a
19 **similarly licensed or registered** [*construction*] design professional 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 **similarly licensed or registered**
24 [*construction*] design professional who is qualified to testify as to the standard of **skill and** care ap-
25 plicable 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 of similar licensure or regis-**
29 **tration, experience and expertise, practicing in the same jurisdiction and under the same or**
30 **similar circumstances; and**

31 [(b)] (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)(b) of this section, the
 2 claimant’s attorney may file with the court at the time of filing a complaint, cross-claim, counter-
 3 claim or 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)(b) 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 inquiry as is reasonable under the circumstances and has made
 9 a good faith attempt to consult with at least one licensed **or registered** [*construction*] design pro-
 10 fessional who is qualified to testify as to the standard of **skill and** care applicable to the alleged
 11 facts, as required by subsection (2)(b) 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 not a public body; and**

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

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

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

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

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

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