

## SENATE AMENDMENTS TO SENATE BILL 383

By COMMITTEE ON JUDICIARY

March 16

1 On page 1 of the printed bill, delete lines 5 through 31.

2 On page 2, delete lines 1 through 26 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.**

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

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

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

24 “[*a*] (A) The alleged conduct of the [*construction*] design professional failed to meet the stand-  
25 ard of professional [*care applicable to the construction design professional in the circumstances*  
26 *alleged*] **skill and care ordinarily provided by other design professionals with similar creden-**  
27 **tials, experience and expertise and practicing under the same or similar circumstances; and**

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

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

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

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

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

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

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

10 “(a) **Is not a public body; and**

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

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

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

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

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

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