

**PROPOSED AMENDMENTS TO
SENATE BILL 383**

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’
5 means an architect, *registered* landscape architect, professional engineer or
6 professional land surveyor **registered under ORS chapter 671 or 672.**

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

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

18 **“(b) The certification of the claimant’s attorney** *certifies* **that the at-**
19 **torney has consulted a** *licensed construction* **design professional with sim-**
20 **ilar credentials** who is qualified, available and willing to testify to
21 admissible facts and opinions sufficient to create a question of fact as to the
22 liability of the *construction* design professional. *[The certification required*

1 *by this section must be filed with or be made part of the original complaint,*
2 *cross-claim, counterclaim or third-party complaint.]* The certification must
3 contain a statement that a [*licensed construction*] design professional **with**
4 **similar credentials** who is qualified to testify as to the standard of **pro-**
5 **fessional skill and** care applicable to the alleged facts, is available and
6 willing to testify that:

7 “[*(a)*] **(A)** The alleged conduct of the [*construction*] design professional
8 failed to meet the standard of professional [*care applicable to the construction*
9 *design professional in the circumstances alleged*] **skill and care ordinarily**
10 **provided by other design professionals with similar credentials, expe-**
11 **rience and expertise and practicing under the same or similar cir-**
12 **cumstances; and**

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

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

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

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

24 “(c) The attorney has made such inquiry as is reasonable under the cir-
25 cumstances and has made a good faith attempt to consult with at least one
26 [*licensed construction*] design professional who is qualified to testify as to the
27 standard of **professional skill and** care applicable to the alleged facts, as
28 required by subsection (2)(**b**) of this section.

29 “(4)(**a**) [*Upon motion of the construction design professional, the court shall*
30 *enter judgment dismissing*] **A design professional may move to dismiss**

1 any complaint, cross-claim, counterclaim or third-party complaint against
2 any [*construction*] design professional that fails to comply with the require-
3 ments of this section. **If the court determines that the complaint,**
4 **cross-claim, counterclaim or third-party complaint fails to comply**
5 **with the requirements of this section, the court shall allow the**
6 **plaintiff 90 days to remedy the noncompliance before dismissing the**
7 **complaint, cross-claim, counterclaim or third-party complaint without**
8 **prejudice.**

9 “(b) A plaintiff whose claim is dismissed under this subsection may
10 commence a new action for the same claim no later than one year
11 after the date of the order dismissing the original claim.

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

15 “(a) Is not a public body; and

16 “[*a*] (b)(A) Is a [*construction*] design professional, contractor, subcon-
17 tractor or other person providing labor, materials or services for the real
18 property improvement that is the subject of the claim;

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

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

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

25 “[*e*] (E) Is a person for whose benefit the [*construction*] design profes-
26 sional performed services.”.

27
