

**PROPOSED AMENDMENTS TO
A-ENGROSSED SENATE BILL 383**

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’
5 means an architect, [*registered*] landscape architect, professional engineer or
6 professional land surveyor **registered under ORS chapter 671 or 672 or**
7 **licensed to practice as an architect, landscape architect, professional**
8 **engineer or professional land surveyor in another state.**

9 “(2) A complaint, cross-claim, counterclaim or third-party complaint as-
10 serting a claim against a [*construction*] design professional that arises out
11 of the provision of services within the course and scope of the activities for
12 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 con-*
14 *struction*] design professional **with similar credentials** who is qualified,
15 available and willing to testify to admissible facts and opinions sufficient to
16 create a question of fact as to the liability of the [*construction*] design pro-
17 fessional. [*The certification required by this section must be filed with or be*
18 *made part of the original complaint, cross-claim, counterclaim or third-party*
19 *complaint.*] The certification must contain a statement that a [*licensed con-*
20 *struction*] design professional **with similar credentials** who is qualified to
21 testify as to the standard of **professional skill and** care applicable to the
22 alleged facts, is available and willing to testify that:

1 “(a) The alleged conduct of the [*construction*] design professional failed
2 to meet the standard of professional [*care applicable to the construction de-*
3 *sign professional in the circumstances alleged*] **skill and care ordinarily**
4 **provided by other design professionals with similar credentials, expe-**
5 **rience and expertise and practicing under the same or similar cir-**
6 **cumstances; and**

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

9 “(3) In lieu of providing the certification described in subsection (2) of
10 this section, the claimant’s attorney may file with the court at the time of
11 filing a complaint, cross-claim, counterclaim or third-party complaint an af-
12 fidavit that states:

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

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

18 “(c) The attorney has made such inquiry as is reasonable under the cir-
19 cumstances and has made a good faith attempt to consult with at least one
20 [*licensed construction*] **registered or licensed** design professional who is
21 qualified to testify as to the standard of **professional skill and** care appli-
22 cable to the alleged facts, as required by subsection (2) of this section.

23 “(4) Upon motion of the [*construction*] design professional, the court shall
24 enter judgment dismissing any complaint, cross-claim, counterclaim or
25 third-party complaint against any [*construction*] design professional that fails
26 to comply with the requirements of this section.

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

30 “(a) Is a [*construction*] design professional, contractor, subcontractor or

1 other person providing labor, materials or services for the real property im-
2 provement that is the subject of the claim;

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

5 “(c) Is involved in the operation or management of the real property im-
6 provement that is the subject of the claim;

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

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

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