

A-Engrossed
House Bill 2634

Ordered by the House April 6
Including House Amendments dated April 6

Sponsored by Representative FLORES; Representatives ACKERMAN, ANDERSON, KRIEGER, Senators JOHNSON, WALKER (at the request of Oregon Association of Realtors)

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.

Establishes pleading requirements for actions **asserting professional negligence** against real estate licensees.

A BILL FOR AN ACT

1
2 Relating to real estate licensees.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1. (1) As used in this section, "real estate licensee" has the meaning given that**
5 **term in ORS 696.010.**

6 **(2) A complaint, cross-claim, counterclaim or third-party complaint asserting a claim of**
7 **professional negligence against a real estate licensee for conduct occurring within the course**
8 **and scope of the activities for which the person is licensed may not be filed unless the**
9 **claimant's attorney certifies that the attorney has consulted a real estate licensee who is**
10 **qualified, available and willing to testify to admissible facts and opinions sufficient to create**
11 **a question of fact as to the liability of the real estate licensee. The certification required by**
12 **this section must be filed with or be made part of the original complaint, cross-claim,**
13 **counterclaim or third-party complaint. The certification must contain a statement that a**
14 **real estate licensee who is qualified to testify as to the standard of care applicable to the**
15 **alleged facts, is available and willing to testify that:**

16 **(a) The alleged conduct of the real estate licensee failed to meet the standard of profes-**
17 **sional care applicable to the real estate licensee in the circumstances alleged; and**

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

19 **(3) In lieu of providing the certification described in subsection (2) of this section, the**
20 **claimant's attorney may file with the court at the time of filing a complaint, cross-claim,**
21 **counterclaim or third-party complaint an affidavit that states:**

22 **(a) The applicable statute of limitations is about to expire;**

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

26 **(c) The attorney has made such inquiry as is reasonable under the circumstances and**
27 **has made a good faith attempt to consult with at least one real estate licensee who is qual-**
28 **ified to testify as to the standard of care applicable to the alleged facts, as required by sub-**

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 **section (2) of this section.**

2 **(4) Upon motion of the real estate licensee, the court shall enter judgment dismissing any**
3 **complaint, cross-claim, counterclaim or third-party complaint against any real estate**
4 **licensee who fails to comply with the requirements of this section.**

5 **(5) This section applies only to a complaint, cross-claim, counterclaim or third-party**
6 **complaint against a real estate licensee by any plaintiff who:**

7 **(a) Has contracted with or otherwise employed the real estate licensee; or**

8 **(b) Is a person for whose benefit the real estate licensee performed services.**

9 **SECTION 2. Section 1 of this 2005 Act applies to complaints, cross-claims, counterclaims**
10 **and third-party complaints filed on or after the effective date of this 2005 Act.**

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