
A BILL FOR AN ACT

RELATING TO DESIGN PROFESSIONALS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding a new chapter to be appropriately designated and to read
3 as follows:

4 **"CHAPTER**

5 **ACTIONS AGAINST DESIGN PROFESSIONALS**

6 § -1 **Design professional defined.** As used in this
7 chapter, "design professional" means a professional engineer,
8 architect, surveyor, or landscape architect licensed under
9 chapter 464.

10 § -2 **Certificate of consultation.** (a) Any claim filed
11 against a design professional shall be accompanied by a
12 certificate which declares one of the following:

13 (1) That the claimant or the claimant's attorney has
14 consulted with at least one design professional who is
15 licensed to practice in this State or any other state,
16 and who is knowledgeable or experienced in the same
17 design profession as the design professional against
18 whom the claim is made, and that the claimant or



1 claimant's attorney has concluded on the basis of this
2 consultation that there is a reasonable and
3 meritorious cause for filing the claim. If the
4 claimant or the claimant's attorney is not able to
5 consult with a design professional in the same design
6 profession as the design professional against whom the
7 claim is made, the claimant or claimant's attorney may
8 consult with a design professional who is licensed in
9 this State or in any other state who is knowledgeable
10 and experienced in a design profession that is as
11 closely related as practicable to the design
12 professional against whom the claim is made.
13 Consultation with a single design professional shall
14 be sufficient where there are claims against multiple
15 design professionals, if the design professional
16 consulted is sufficiently knowledgeable and
17 experienced to comment on the merit of claims against
18 multiple design professionals. Design professionals
19 consulted by the claimant or the claimant's attorney
20 may not be a party to the case nor be compelled to
21 testified;

1 (2) That the claimant or the claimant's attorney was
2 unable to obtain the consultation required by
3 paragraph (1) because a statute of limitations would
4 impair the action and that the certificate required by
5 paragraph (1) could not be obtained before the
6 impairment of the action. If a certificate is
7 executed pursuant to this paragraph, the certificate
8 required by paragraph (1) shall be filed by the
9 claimant or the claimant's attorney within ninety days
10 after the filing of the claim; or

11 (3) That the claimant or the claimant's attorney was
12 unable to obtain the consultation required by
13 paragraph (1) after the claimant or the claimant's
14 attorney had made a good faith attempt to obtain the
15 consultation and the design professional contacted
16 would not agree to the consultation. For purposes of
17 this paragraph, "good faith attempt" refers to the
18 responsibility of a claimant or claimant's attorney to
19 make reasonable efforts to contact a design
20 professional for the purpose of reviewing the
21 circumstances upon which a claim is based. The
22 claimant or claimant's attorney may contact design

1 professionals by letter, telephone, facsimile, or
2 other electronic means of communication. If the
3 design professional does not respond within a
4 reasonable time, the claimant or claimant's attorney
5 may submit a certificate declaring such nonresponse to
6 claimant's good faith attempt. A "good faith attempt"
7 shall ultimately be evaluated in light of the goal of
8 having a qualified design professional assist the
9 claimant or claimant's attorney in understanding the
10 basis of the claim, and this determination shall
11 depend upon the circumstances of each individual case.

12 (b) For the purposes of this section, the claimant or the
13 claimant's attorney shall not be required to disclose the names
14 of any design professional consulted to fulfill the requirements
15 of subsection (a) to any of the other parties to the claim. The
16 court may require the claimant or the claimant's attorney to
17 disclose the name of any design professional consulted to
18 fulfill the requirements of subsection (a). No disclosure of
19 the name of any design professional consulted to fulfill the
20 requirements of subsection (a) shall be made to any of the other
21 parties to the claim; provided that the court may contact the



1 design professional to determine if the requirements of
2 subsection (a) were met."

3 SECTION 2. This Act shall not apply to any complaint filed
4 before its effective date.

5 SECTION 3. This Act shall take effect on July 1, 2006.

Report Title:

Design Professional; Certificate of Consultation

Description:

Requires the filing of a certificate of consultation with any complaint filed against a design professional for failure to meet the standard of care. (SD1)

