

# Enrolled House Bill 2316

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of House Interim Committee on Judiciary for Oregon Collectors Association and NACM (National Association of Credit Managers))

CHAPTER .....

AN ACT

Relating to courts; creating new provisions; and amending ORS 46.405, 46.425, 46.461, 51.080, 55.011, 55.095 and 133.055.

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

**SECTION 1.** ORS 46.405 is amended to read:

46.405. (1) Except as provided in subsection (6) of this section, each circuit court shall have a small claims department.

(2) Except as provided in this section, all actions for the recovery of money, damages, specific personal property, or any penalty or forfeiture must be commenced and prosecuted in the small claims department if the amount or value claimed in the action does not exceed \$750.

(3) Except as provided in this section and ORS 46.455 (2)(c), an action for the recovery of money, damages, specific personal property, or any penalty or forfeiture may be commenced and prosecuted in the small claims department if the amount or value claimed in the action does not exceed [~~\$5,000~~] **\$7,500**.

(4) Class actions may not be commenced and prosecuted in the small claims department.

(5) Actions providing for statutory attorney fees in which the amount or value claimed does not exceed \$750 may be commenced and prosecuted in the small claims department or may be commenced and prosecuted in the regular department of the circuit court. This subsection does not apply to an action based on contract for which attorney fees are authorized under ORS 20.082.

(6) If a circuit court is located in the same city as a justice court, the circuit court need not have a small claims department if the circuit court and the justice court enter into an intergovernmental agreement that provides that only the justice court will operate a small claims department. If an intergovernmental agreement is entered into under this subsection, the agreement must establish appropriate procedures for referring small claims cases to the justice court.

**SECTION 2.** ORS 46.425 is amended to read:

46.425. (1) An action in the small claims department shall be commenced by the plaintiff's filing with the clerk of the court a verified claim in the form prescribed by the court, and by paying the fee prescribed by ORS 46.570 (1)(a) for each action filed.

(2) The claim shall contain the name and address of the plaintiff and of the defendant, followed by a plain and simple statement of the claim, including the amount and the date the claim allegedly accrued. The claim shall include an affidavit signed by the plaintiff and stating that the plaintiff made a bona fide effort to collect the claim from the defendant before filing the claim with the clerk.

(3) Except in actions arising under ORS chapter 90, the plaintiff must include in a claim all amounts claimed from the defendant arising out of a single transaction or occurrence. Any plaintiff alleging damages on a transaction requiring installment payments need only claim the installment payments due and owing as of the date of filing of the claim, and need not accelerate the remaining payments. The plaintiff may include in a claim all amounts claimed from a defendant on more than one transaction or occurrence if the total amount of the claim does not exceed [~~\$5,000~~] **\$7,500**.

(4) Notwithstanding subsection (3) of this section, a plaintiff bringing an action on assigned claims:

(a) Need bring an action only on those claims that have been assigned as of the date the action is filed; and

(b) May bring separate actions for each person assigning claims to the plaintiff.

**SECTION 3.** ORS 46.461 is amended to read:

46.461. (1) The defendant in an action in the small claims department may assert as a counterclaim any claim that, on the date of issuance of notice pursuant to ORS 46.445, the defendant may have against the plaintiff and that arises out of the same transaction or occurrence that is the subject matter of the claim filed by the plaintiff.

(2) If the amount or value of the counterclaim exceeds [~~\$5,000~~] **\$7,500**, the court shall strike the counterclaim and proceed to hear and dispose of the case as though the counterclaim had not been asserted unless the defendant files with the counterclaim a motion requesting that the case be transferred from the small claims department to the circuit court. After the transfer the plaintiff's claim will not be limited to the amount stated in the claim filed with the small claims department, though it must involve the same controversy.

(3)(a) If the amount or value of the counterclaim exceeds that specified in subsection (2) of this section, and the defendant files a motion requesting transfer as provided in subsection (2) of this section, the case shall be transferred to the circuit court. The clerk of the court shall notify the plaintiff and defendant, by mail, of the transfer. The notice to the plaintiff shall contain a copy of the counterclaim and shall instruct the plaintiff to file with the court and serve by mail on the defendant, within 20 days following the mailing of the notice, a reply to the counterclaim and, if the plaintiff proposes to increase the amount of the claim originally filed with the small claims department, an amended claim for the increased amount. Proof of service on the defendant of the plaintiff's reply and amended claim may be made by certificate of the plaintiff or plaintiff's attorney attached to the reply and amended claim filed with the court. The defendant is not required to answer an amended claim of the plaintiff.

(b) Upon filing the motion requesting transfer, the defendant shall pay to the clerk of the court the transfer fee required by ORS 46.570 (1)(c) and an amount equal to the difference between the fee paid by the defendant as required by ORS 46.570 (1)(a) and the fee required of a defendant by ORS 21.110. Upon filing a reply to the counterclaim, the plaintiff shall pay to the clerk of the court an amount equal to the difference between the fee paid by the plaintiff as required by ORS 46.570 (1)(a) and the fee required of a plaintiff by ORS 21.110.

**SECTION 4.** ORS 51.080 is amended to read:

51.080. A justice court has jurisdiction, but not exclusive, of the following actions:

(1) For the recovery of money or damages only, when the amount claimed does not exceed [~~\$5,000~~] **\$7,500**.

(2) For the recovery of specific personal property, when the value of the property claimed and the damages for the detention do not exceed [~~\$5,000~~] **\$7,500**.

(3) For the recovery of any penalty or forfeiture, whether given by statute or arising out of contract, not exceeding [~~\$5,000~~] **\$7,500**.

(4) Also, to give judgment without action, upon the confession of the defendant for any of the causes specified in this section, except for a penalty or forfeiture imposed by statute.

(5) For purposes of this section, the amount claimed, value of property, damages or any amount in controversy does not include any amount claimed as costs and disbursements or attorney fees as defined by ORCP 68 A.

**SECTION 5.** ORS 55.011 is amended to read:

55.011. (1) Except as provided in subsection (8) of this section, in each justice court created under any law of this state there shall be a small claims department.

(2) Except as provided in this section, all actions for the recovery of money, damages, specific personal property, or any penalty or forfeiture must be commenced and prosecuted in the small claims department if the amount or value claimed in the action does not exceed \$750.

(3) Except as provided in this section and ORS 46.455 (2)(c), an action for the recovery of money, damages, specific personal property, or any penalty or forfeiture may be commenced and prosecuted in the small claims department if the amount or value claimed in the action does not exceed [~~\$5,000~~] **\$7,500**.

(4) Class actions may not be commenced and prosecuted in the small claims department.

(5) Actions providing for statutory attorney fees in which the amount or value claimed does not exceed \$750 may be commenced and prosecuted in the small claims department or may be commenced and prosecuted in the regular department of the justice court. This subsection does not apply to an action based on contract for which attorney fees are authorized under ORS 20.082.

(6) Jurisdiction of the person of the defendant in an action commenced in the small claims department shall be deemed acquired as of the time of service of the notice and claim.

(7) Except as provided in ORS 55.065 (2)(c), the provisions of ORS 55.020 to 55.140 shall apply with regard to proceedings in the small claims department of any justice court.

(8) If a justice court is located in the same city as a circuit court, the justice court need not have a small claims department if the justice court and the circuit court enter into an intergovernmental agreement that provides that only the circuit court will operate a small claims department. If an intergovernmental agreement is entered into under this subsection, the agreement must establish appropriate procedures for referring small claims cases to the circuit court.

**SECTION 6.** ORS 55.095 is amended to read:

55.095. (1) The defendant in an action in the small claims department may assert as a counterclaim any claim that, on the date of issuance of notice pursuant to ORS 55.045, the defendant may have against the plaintiff and that arises out of the same transaction or occurrence that is the subject matter of the claim filed by the plaintiff.

(2) If the amount of the counterclaim asserted by the defendant exceeds [~~\$5,000~~] **\$7,500**, the justice of the peace shall strike the counterclaim and proceed to hear and dispose of the case as though the counterclaim had not been asserted unless the defendant files with the counterclaim a motion requesting that the case be transferred from the small claims department to a court of appropriate jurisdiction and an amount to pay the costs of the transfer. After the transfer the plaintiff's claim will not be limited to the amount stated in the claim filed with the justice of the peace, though it must involve the same controversy.

(3)(a) If the amount or value of the counterclaim exceeds the jurisdictional limit of the justice court for a counterclaim and the defendant files a motion requesting transfer and an amount to pay the costs of transfer as provided in subsection (2) of this section, the case shall be transferred to the circuit court for the county in which the justice court is located and be governed as provided in ORS 52.320 for transfers to the circuit court. The justice court shall notify the plaintiff and defendant, by mail within 10 days following the order of transfer, of the transfer. The notice to the plaintiff shall contain a copy of the counterclaim and shall inform the plaintiff as to further pleading by the plaintiff in the court of appropriate jurisdiction.

(b) Upon filing the motion requesting transfer, the defendant shall pay to the court of appropriate jurisdiction an amount equal to the difference between the fee paid by the defendant as required by ORS 51.310 (1)(c) and the appearance fee for a defendant in the court of appropriate jurisdiction.

**SECTION 7.** ORS 133.055 is amended to read:

133.055. (1) A peace officer may issue a criminal citation to a person if the peace officer has probable cause to believe that the person has committed a misdemeanor or has committed any felony that is subject to misdemeanor treatment under ORS 161.705. The peace officer shall deliver a copy

of the criminal citation to the person. The criminal citation shall require the person to appear at the court of the magistrate before whom the person would be taken pursuant to ORS 133.450 if the person were arrested for the offense.

(2)(a) Notwithstanding the provisions of subsection (1) of this section, when a peace officer responds to an incident of domestic disturbance and has probable cause to believe that an assault has occurred between family or household members, as defined in ORS 107.705, or to believe that one such person has placed the other in fear of imminent serious physical injury, the officer shall arrest and take into custody the alleged assailant or potential assailant.

(b) When the peace officer makes an arrest under paragraph (a) of this subsection, the peace officer is not required to arrest both persons.

(c) When a peace officer makes an arrest under paragraph (a) of this subsection, the peace officer shall make every effort to determine who is the assailant or potential assailant by considering, among other factors:

(A) The comparative extent of the injuries inflicted or the seriousness of threats creating a fear of physical injury;

(B) If reasonably ascertainable, the history of domestic violence between the persons involved;

(C) Whether any alleged crime was committed in self-defense; and

(D) The potential for future assaults.

(3) Whenever any peace officer has reason to believe that a family or household member, as defined in ORS 107.705, has been abused as defined in ORS 107.705 or that an elderly person or a person with disabilities has been abused as defined in ORS 124.005, that officer shall use all reasonable means to prevent further abuse, including advising each person of the availability of a shelter or other services in the community and giving each person immediate notice of the legal rights and remedies available. The notice shall consist of handing each person a copy of the following statement:

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IF YOU ARE THE VICTIM OF DOMESTIC VIOLENCE OR ABUSE, you can ask the district attorney to file a criminal complaint. You also have the right to go to the circuit court and file a petition requesting any of the following orders for relief: (a) An order restraining your attacker from abusing you; (b) an order directing your attacker to leave your household; (c) an order preventing your attacker from entering your residence, school, business or place of employment; (d) an order awarding you or the other parent custody of or parenting time with a minor child or children; (e) an order restraining your attacker from molesting or interfering with minor children in your custody; (f) an order awarding you other relief the court considers necessary to provide for your or your children's safety, including emergency monetary assistance. Such orders are enforceable in every state.

You may also request an order awarding support for minor children in your care or for your support if the other party has a legal obligation to support you or your children.

You also have the right to sue for losses suffered as a result of the abuse, including medical and moving expenses, loss of earnings or support, and other out-of-pocket expenses for injuries sustained and damage to your property. This can be done without an attorney in **the small claims department of a court** if the total amount claimed is under ~~[\$3,500]~~ **\$7,500**.

Similar relief may also be available in tribal courts.

For further information you may contact: \_\_\_\_\_.

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**SECTION 8. The amendments to ORS 46.405, 46.425, 46.461, 51.080, 55.011, 55.095 and 133.055 by sections 1 to 7 of this 2007 Act apply to all actions commenced in the small claims department of a court on or after the effective date of this 2007 Act, without regard to whether the claim for which the action is commenced arose before, on or after the effective date of this 2007 Act.**

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**Passed by House February 15, 2007**

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Chief Clerk of House

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Speaker of House

**Passed by Senate March 29, 2007**

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President of Senate

**Received by Governor:**

.....M,....., 2007

**Approved:**

.....M,....., 2007

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Governor

**Filed in Office of Secretary of State:**

.....M,....., 2007

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Secretary of State