

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))

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 **as introduced**.

Increases civil jurisdiction of small claims departments of circuit and justice courts from \$5,000 to \$7,500.

A BILL FOR AN ACT

1
2 Relating to courts; creating new provisions; and amending ORS 46.405, 46.425, 46.461, 51.080, 55.011,
3 55.095 and 133.055.

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

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

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

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

11 (3) Except as provided in this section and ORS 46.455 (2)(c), an action for the recovery of money,
12 damages, specific personal property, or any penalty or forfeiture may be commenced and prosecuted
13 in the small claims department if the amount or value claimed in the action does not exceed
14 ~~[\$5,000]~~ **\$7,500**.

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

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

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

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

26 46.425. (1) An action in the small claims department shall be commenced by the plaintiff's filing
27 with the clerk of the court a verified claim in the form prescribed by the court, and by paying the
28 fee prescribed by ORS 46.570 (1)(a) for each action filed.

29 (2) The claim shall contain the name and address of the plaintiff and of the defendant, followed
30 by a plain and simple statement of the claim, including the amount and the date the claim allegedly

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 accrued. The claim shall include an affidavit signed by the plaintiff and stating that the plaintiff
 2 made a bona fide effort to collect the claim from the defendant before filing the claim with the clerk.

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

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

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

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

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

15 46.461. (1) The defendant in an action in the small claims department may assert as a counter-
 16 claim any claim that, on the date of issuance of notice pursuant to ORS 46.445, the defendant may
 17 have against the plaintiff and that arises out of the same transaction or occurrence that is the
 18 subject matter of the claim filed by the plaintiff.

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

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

36 (b) Upon filing the motion requesting transfer, the defendant shall pay to the clerk of the court
 37 the transfer fee required by ORS 46.570 (1)(c) and an amount equal to the difference between the fee
 38 paid by the defendant as required by ORS 46.570 (1)(a) and the fee required of a defendant by ORS
 39 21.110. Upon filing a reply to the counterclaim, the plaintiff shall pay to the clerk of the court an
 40 amount equal to the difference between the fee paid by the plaintiff as required by ORS 46.570 (1)(a)
 41 and the fee required of a plaintiff by ORS 21.110.

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

43 51.080. A justice court has jurisdiction, but not exclusive, of the following actions:

44 (1) For the recovery of money or damages only, when the amount claimed does not exceed
 45 [~~\$5,000~~] **\$7,500**.

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

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

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

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

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

11 55.011. (1) Except as provided in subsection (8) of this section, in each justice court created
 12 under any law of this state there shall be a small claims department.

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

16 (3) Except as provided in this section and ORS 46.455 (2)(c), an action for the recovery of money,
 17 damages, specific personal property, or any penalty or forfeiture may be commenced and prosecuted
 18 in the small claims department if the amount or value claimed in the action does not exceed
 19 [~~\$5,000~~] **\$7,500**.

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

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

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

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

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

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

35 55.095. (1) The defendant in an action in the small claims department may assert as a counter-
 36 claim any claim that, on the date of issuance of notice pursuant to ORS 55.045, the defendant may
 37 have against the plaintiff and that arises out of the same transaction or occurrence that is the
 38 subject matter of the claim filed by the plaintiff.

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

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

9 (b) Upon filing the motion requesting transfer, the defendant shall pay to the court of appro-
 10 priate jurisdiction an amount equal to the difference between the fee paid by the defendant as re-
 11 quired by ORS 51.310 (1)(c) and the appearance fee for a defendant in the court of appropriate
 12 jurisdiction.

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

14 133.055. (1) A peace officer may issue a criminal citation to a person if the peace officer has
 15 probable cause to believe that the person has committed a misdemeanor or has committed any felony
 16 that is subject to misdemeanor treatment under ORS 161.705. The peace officer shall deliver a copy
 17 of the criminal citation to the person. The criminal citation shall require the person to appear at
 18 the court of the magistrate before whom the person would be taken pursuant to ORS 133.450 if the
 19 person were arrested for the offense.

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

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

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

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

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

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

34 (D) The potential for future assaults.

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

42
 43
 44 IF YOU ARE THE VICTIM OF DOMESTIC VIOLENCE OR ABUSE, you can ask the district
 45 attorney to file a criminal complaint. You also have the right to go to the circuit court and file a

1 petition requesting any of the following orders for relief: (a) An order restraining your attacker from
2 abusing you; (b) an order directing your attacker to leave your household; (c) an order preventing
3 your attacker from entering your residence, school, business or place of employment; (d) an order
4 awarding you or the other parent custody of or parenting time with a minor child or children; (e)
5 an order restraining your attacker from molesting or interfering with minor children in your cus-
6 tody; (f) an order awarding you other relief the court considers necessary to provide for your or
7 your children's safety, including emergency monetary assistance. Such orders are enforceable in
8 every state.

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

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

15 Similar relief may also be available in tribal courts.

16 For further information you may contact: _____
17 _____
18

19 **SECTION 8. The amendments to ORS 46.405, 46.425, 46.461, 51.080, 55.011, 55.095 and**
20 **133.055 by sections 1 to 7 of this 2007 Act apply to all actions commenced in the small claims**
21 **department of a court on or after the effective date of this 2007 Act, without regard to**
22 **whether the claim for which the action is commenced arose before, on or after the effective**
23 **date of this 2007 Act.**
24 _____