

A-Engrossed
House Bill 2303

Ordered by the House March 13
Including House Amendments dated March 13

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 State Bar)

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.

Allows award of damages and attorney fees to servicemember bringing action to enforce right or remedy under Servicemembers Civil Relief Act.
Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to Servicemembers Civil Relief Act; creating new provisions; amending ORS 36.405; and
3 declaring an emergency.

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

5 **SECTION 1. (1) As used in this section and section 2 of this 2009 Act, "servicemember"**
6 **has the meaning given that term in 50 U.S.C. App. 511 as in effect on the effective date of**
7 **this 2009 Act.**

8 **(2) An action brought by a servicemember to enforce a right or remedy under 50 U.S.C.**
9 **App. 501 et seq. is not subject to court-ordered arbitration under ORS 36.400 to 36.425 unless**
10 **the parties to the action stipulate in writing to arbitration after the action is commenced.**

11 **(3) In addition to the counties specified in ORS 14.080, an action brought by a**
12 **servicemember to enforce a right or remedy under 50 U.S.C. App. 501 et seq. may be brought**
13 **in the Oregon county where the servicemember resides or where the servicemember was a**
14 **resident at the time of bringing the action.**

15 **(4) Any contract term or provision providing for a choice of forum other than Oregon in**
16 **an agreement entered into by a servicemember who resides in Oregon or is a resident of**
17 **Oregon is voidable at the election of the servicemember.**

18 **SECTION 2. (1) In addition to any other remedy payable to a servicemember for the**
19 **enforcement of a right under 50 U.S.C. App. 501 et seq., a court shall award a servicemember**
20 **reasonable attorney fees and the amounts specified in subsection (2) of this section if the**
21 **court finds that written demand as described in subsection (3) of this section was mailed to**
22 **the opposing party demanding relief under 50 U.S.C. App. 501 et seq., and the opposing party**
23 **failed to remedy the violation of 50 U.S.C. App. 501 et seq. within 30 days after the mailing**
24 **of the demand.**

25 **(2) If a court finds that notice was mailed as required by this section, and the opposing**
26 **party failed to remedy the violation of 50 U.S.C. App. 501 et seq. within the time allowed, the**
27 **court shall award the servicemember:**

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 (a) The greater of \$1,000 or actual damages, including damages for emotional distress;

2 or

3 (b) If the court finds that the opposing party's conduct was willful, as described in ORS
4 646.605, the court shall award the servicemember the greater of \$5,000, or three times the
5 amount of actual damages, including damages for emotional distress.

6 (3) A written demand under subsection (1) of this section must be sent by certified mail,
7 return receipt requested. The demand must include the servicemember's name and address,
8 the date on which the servicemember went on active duty and a description of the alleged
9 violation of 50 U.S.C. App. 501 et seq.

10 **SECTION 3.** ORS 36.405 is amended to read:

11 36.405. (1) **Except as provided in section 1 of this 2009 Act**, in a civil action in a circuit court
12 where all parties have appeared, the court shall refer the action to arbitration under ORS 36.400 to
13 36.425 if either of the following applies:

14 (a) The only relief claimed is recovery of money or damages, and no party asserts a claim for
15 money or general and special damages in an amount exceeding \$50,000, exclusive of attorney fees,
16 costs and disbursements and interest on judgment.

17 (b) The action is a domestic relations suit, as defined in ORS 107.510, in which the only con-
18 tested issue is the division or other disposition of property between the parties.

19 (2) The presiding judge for a judicial district may do either of the following:

20 (a) Exempt from arbitration under ORS 36.400 to 36.425 a civil action that otherwise would be
21 referred to arbitration under this section.

22 (b) Remove from further arbitration proceedings a civil action that has been referred to arbi-
23 tration under this section, when, in the opinion of the judge, good cause exists for that exemption
24 or removal.

25 (3) If a court has established a mediation program that is available for a civil action that would
26 otherwise be subject to arbitration under ORS 36.400 to 36.425, the court shall not assign the pro-
27 ceeding to arbitration if the proceeding is assigned to mediation pursuant to the agreement of the
28 parties. Notwithstanding any other provision of ORS 36.400 to 36.425, a party who completes a
29 mediation program offered by a court shall not be required to participate in arbitration under ORS
30 36.400 to 36.425.

31 **SECTION 4. Sections 1 and 2 of this 2009 Act apply only to conduct that violates 50 U.S.C.**
32 **App. 501 et seq. that occurs on or after the effective date of this 2009 Act.**

33 **SECTION 5. This 2009 Act being necessary for the immediate preservation of the public**
34 **peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect**
35 **on its passage.**

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