

House Bill 2303

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 **as introduced**.

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 sections 2 and 3 of this 2009 Act,**
6 **“servicemember” has the meaning given that term in 50 U.S.C. App. 511 as in effect on the**
7 **effective date of 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**
16 **or application of law other than Oregon law to a servicemember who resides in Oregon or**
17 **is a resident of Oregon is voidable at the election of the servicemember.**

18 **SECTION 2.** (1) **In addition to any other award to a servicemember in an action brought**
19 **to enforce a right or remedy of a servicemember under 50 U.S.C. App. 501 et seq., the**
20 **servicemember shall be awarded the greater of \$1,000 or actual damages, including damages**
21 **for emotional distress, if the court finds that written demand was made on the opposing**
22 **party for relief under 50 U.S.C. App. 501 et seq.:**

23 (a) **At least 10 days before commencement of the action or the filing of a formal com-**
24 **plaint under ORS 46.465; or**

25 (b) **Not more than 10 days after the transfer of the action under ORS 46.461 or the filing**
26 **of a counterclaim.**

27 (2) **If the court finds that the opposing party's conduct that gave rise to the**
28 **servicemember's claim to enforce a right or remedy under 50 U.S.C. App. 501 et seq. was**
29 **willful, as described in ORS 646.605, the court shall award the servicemember, in addition to**
30 **costs and attorney fees, an amount not to exceed \$5,000 or three times the amount of actual**

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 **damages, whichever is greater.**

2 **SECTION 3. (1) A servicemember who brings an action to enforce a right or remedy un-**
 3 **der 50 U.S.C. App. 501 et seq. shall be awarded reasonable attorney fees for the prosecution**
 4 **of the action if the court finds that the servicemember made written demand for relief on**
 5 **the opposing party:**

6 (a) **At least 10 days before commencement of the action or the filing of a complaint under**
 7 **ORS 46.465; or**

8 (b) **Not more than 10 days after the transfer of the action under ORS 46.461 or the filing**
 9 **of a counterclaim.**

10 (2)(a) **Attorney fees may not be awarded to the servicemember if the court finds that the**
 11 **opposing party tendered to the servicemember an amount not less than the actual damages**
 12 **awarded to the servicemember.**

13 (b) **Tender must be made:**

14 (A) **Before commencement of the action or the filing of a complaint under ORS 46.465;**
 15 **or**

16 (B) **Not more than 10 days after the transfer of the action under ORS 46.461 or the filing**
 17 **of a counterclaim.**

18 **SECTION 4.** ORS 36.405 is amended to read:

19 36.405. (1) **Except as provided in section 1 of this 2009 Act,** in a civil action in a circuit court
 20 where all parties have appeared, the court shall refer the action to arbitration under ORS 36.400 to
 21 36.425 if either of the following applies:

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

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

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

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

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

33 (3) If a court has established a mediation program that is available for a civil action that would
 34 otherwise be subject to arbitration under ORS 36.400 to 36.425, the court shall not assign the pro-
 35 ceeding to arbitration if the proceeding is assigned to mediation pursuant to the agreement of the
 36 parties. Notwithstanding any other provision of ORS 36.400 to 36.425, a party who completes a
 37 mediation program offered by a court shall not be required to participate in arbitration under ORS
 38 36.400 to 36.425.

39 **SECTION 5. (1) Sections 2 and 3 of this 2009 Act apply to conduct that violates 50 U.S.C.**
 40 **App. 501 et seq. occurring before, on or after the effective date of this 2009 Act.**

41 (2) **In order to assert a claim under section 2 or 3 of this 2009 Act in an action pending**
 42 **on the effective date of this 2009 Act, a servicemember must provide written notice to the**
 43 **opposing party of the servicemember's intent to amend the pleadings to assert claims for**
 44 **damages, attorney fees or both under section 2 or 3 of this 2009 Act.**

45 (3) **Sections 1 to 3 of this 2009 Act do not apply to cases in which judgment has been**

1 entered before the effective date of this 2009 Act.

2 **SECTION 6.** Sections 1 to 3 of this 2009 Act apply only to actions commenced on or after
3 the effective date of this 2009 Act.

4 **SECTION 7.** This 2009 Act being necessary for the immediate preservation of the public
5 peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect
6 on its passage.

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