

B-Engrossed
Senate Bill 241

Ordered by the House June 4
Including Senate Amendments dated May 7 and House Amendments dated
June 4

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Judiciary for Oregon State Bar Debtor/Creditor Section)

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.

[Requires purchaser seeking possession of property after trustee's sale to provide certain notices to person holding possession of property by reason of interest created voluntarily by grantor of deed of trust. Provides that person in possession need not surrender possession until 30 days after effective date of notice or 10th day after trustee's sale, whichever date is later.]

Applies fees and procedures set forth for actions under residential landlord and tenant laws to actions to recover possession of premises in certain circumstances.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to actions for possession of property; creating new provisions; amending ORS 105.115 and
3 105.130; and declaring an emergency.

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

5 **SECTION 1.** ORS 105.115 is amended to read:

6 105.115. (1) Except as provided by subsections (2) and (3) of this section, the following are causes
7 of unlawful holding by force within the meaning of ORS 105.110, 105.123 and 105.126:

8 (a) When the tenant or person in possession of any premises fails or refuses to pay rent within
9 10 days after the rent is due under the lease or agreement under which the tenant or person in
10 possession holds, or to deliver possession of the premises after being in default on payment of rent
11 for 10 days.

12 (b) When the lease by its terms has expired and has not been renewed, or when the tenant or
13 person in possession is holding from month to month, or year to year, and remains in possession
14 after notice to quit as provided in ORS 105.120, or is holding contrary to any condition or covenant
15 of the lease or is holding possession without any written lease or agreement.

16 (c) When the owner or possessor of a recreational vehicle that was placed or driven onto prop-
17 erty without the prior consent of the property owner, operator or tenant fails to remove the recre-
18 ational vehicle. The property owner or operator is not required to serve a notice to quit the
19 property before commencing an action under ORS 105.126 against a recreational vehicle owner or
20 possessor holding property by force as described in this paragraph.

21 **(d) When the person in possession of a premises remains in possession after the time**
22 **when a purchaser of the premises is entitled to possession in accordance with the provisions**
23 **of ORS 18.946 or 86.755.**

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 (e) When the person in possession of a premises remains in possession after the time
2 when a deed given in lieu of foreclosure entitles the transferee named in the deed to pos-
3 session of the premises.

4 (f) When the person in possession of a premises remains in possession after the time
5 when a seller is entitled to possession in accordance with the provisions of ORS 93.930 (2)(c)
6 or pursuant to a judgment of strict foreclosure of a recorded contract for transfer or
7 conveyance of an interest in real property.

8 (2) In the case of a dwelling unit to which ORS chapter 90 applies:

9 (a) The following are causes of unlawful holding by force within the meaning of ORS 105.110 and
10 105.123:

11 (A) When the tenant or person in possession of any premises fails or refuses to pay rent within
12 72 hours or 144 hours, as the case may be, of the notice required by ORS 90.394.

13 (B) When a rental agreement by its terms has expired and has not been renewed, or when the
14 tenant or person in possession remains in possession after a valid notice terminating the tenancy
15 pursuant to ORS chapter 90, or is holding contrary to any valid condition or covenant of the rental
16 agreement or ORS chapter 90.

17 (b) A landlord may not file an action for the return of possession of a dwelling unit based upon
18 a cause of unlawful holding by force as described in paragraph (a) of this subsection until after the
19 expiration of a rental agreement for a fixed term tenancy or after the expiration of the time period
20 provided in a notice terminating the tenancy.

21 (3) In an action under subsection (2) of this section, ORS chapter 90 shall be applied to deter-
22 mine the rights of the parties, including:

23 (a) Whether and in what amount rent is due;

24 (b) Whether a tenancy or rental agreement has been validly terminated; and

25 (c) Whether the tenant is entitled to remedies for retaliatory conduct by the landlord as pro-
26 vided by ORS 90.385 and 90.765.

27 **SECTION 2.** ORS 105.130 is amended to read:

28 105.130. (1) Except as provided in this section and ORS 105.135, 105.137 and 105.140 to 105.161,
29 an action pursuant to ORS 105.110 shall be conducted in all respects as other actions in courts of
30 this state.

31 (2) Upon filing a complaint in the case of a dwelling unit to which ORS chapter 90 applies, the
32 clerk shall:

33 (a) Collect a filing fee of \$13;

34 (b) Collect any other fee authorized by law or ordinance; and

35 (c) With the assistance of the plaintiff or an agent of the plaintiff, complete the applicable
36 summons and provide to the plaintiff or an agent of the plaintiff sufficient copies of the summons
37 and complaint for service.

38 (3) After a complaint is filed under subsection (2) of this section, if the defendant demands a
39 trial, the plaintiff shall pay an additional filing fee of \$29 and the defendant shall pay a filing fee
40 of \$42.

41 (4) An action pursuant to ORS 105.110 shall be brought in the name of a person entitled to
42 possession as plaintiff. The plaintiff may appear in person or through an attorney. In an action to
43 which ORS chapter 90 applies, the plaintiff may also appear through a nonattorney who is an agent
44 or employee of the plaintiff or an agent or employee of an agent of the plaintiff.

45 (5) Notwithstanding ORS 9.160, 9.320 and ORS chapter 180, a state agency may appear in an

1 action brought pursuant to ORS 105.110 through an officer or employee of the agency if:

2 (a) The Attorney General consents to the representation of the agency by an officer or employee
3 in the particular action or in the class of actions that includes the particular action; and

4 (b) The agency, by rule, authorizes an officer or employee to appear on its behalf in the partic-
5 ular type of action being conducted.

6 (6) In addition to the fees charged under subsection (2) of this section, the clerk shall collect a
7 surcharge from the plaintiff at the time a complaint is filed that is subject to the filing fees estab-
8 lished by subsection (2) of this section and from a defendant at the time a defendant demands a trial
9 in the action. The surcharge shall be deposited by the State Court Administrator into the State
10 Treasury to the credit of the Housing and Community Services Department Low Income Rental
11 Housing Fund established by ORS 458.350. The amount of the surcharge shall be \$10.

12 (7) A document or pleading shall be filed by the clerk only if the fees and surcharges required
13 under this section are paid by the person filing the document or pleading or if an application for a
14 waiver or deferral of fees and court costs is granted by the court under ORS 21.680 to 21.698. Fees
15 and surcharges provided for in this section may not be refunded.

16 **(8) An action brought under ORS 105.110 by a person entitled to possession of premises**
17 **on the basis of circumstances described in ORS 105.115 (1)(d), (e) or (f) is subject to the filing**
18 **fees and other court or sheriff fees applicable to an action concerning a dwelling unit that**
19 **is subject to ORS chapter 90. The procedure under ORS 105.105 to 105.168 that is applicable**
20 **to an action concerning a dwelling unit subject to ORS chapter 90 shall also apply to an**
21 **action brought under ORS 105.115 (1)(d), (e) or (f), except that the complaint must be in the**
22 **form prescribed in ORS 105.126.**

23 **SECTION 3. The amendments to ORS 105.115 and 105.130 by sections 1 and 2 of this 2009**
24 **Act apply to proceedings under ORS 105.105 to 105.168 or actions under ORS 105.110 that be-**
25 **gin on or after the effective date of this 2009 Act.**

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

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