

Enrolled
Senate Bill 306

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CHAPTER

AN ACT

Relating to attorney fees; creating new provisions; and amending ORS 20.080 and 20.082.

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

SECTION 1. ORS 20.080 is amended to read:

20.080. (1) In any action for damages for an injury or wrong to the person or property, or both, of another where the amount pleaded is [~~\$5,500~~] **\$7,500** or less, and the plaintiff prevails in the action, there shall be taxed and allowed to the plaintiff, at trial and on appeal, a reasonable amount to be fixed by the court as attorney fees for the prosecution of the action, if the court finds that written demand for the payment of such claim was made on the defendant, **and on the defendant's insurer, if known to the plaintiff**, not less than [10] **30** days before the commencement of the action or the filing of a formal complaint under ORS 46.465, or not more than [10] **30** days after the transfer of the action under ORS 46.461. However, no attorney fees shall be allowed to the plaintiff if the court finds that the defendant tendered to the plaintiff, prior to the commencement of the action or the filing of a formal complaint under ORS 46.465, or not more than [10] **30** days after the transfer of the action under ORS 46.461, an amount not less than the damages awarded to the plaintiff.

(2) If the defendant pleads a counterclaim, not to exceed [~~\$5,500~~] **\$7,500**, and the defendant prevails in the action, there shall be taxed and allowed to the defendant, at trial and on appeal, a reasonable amount to be fixed by the court as attorney fees for the prosecution of the counterclaim.

(3) A written demand for the payment of damages under this section must include the following information, if the information is in the plaintiff's possession or reasonably available to the plaintiff at the time the demand is made:

(a) In an action for an injury or wrong to a person, a copy of medical records and bills for medical treatment adequate to reasonably inform the person receiving the written demand of the nature and scope of the injury claimed; or

(b) In an action for damage to property, documentation of the repair of the property, a written estimate for the repair of the property or a written estimate of the difference in the value of the property before the damage and the value of the property after the damage.

(4) If after making a demand under this section, and before commencing an action, a plaintiff acquires any additional information described in subsection (3) of this section that was not provided with the demand, the plaintiff must provide that information to the defendant, and to the defendant's insurer, if known to the plaintiff, as soon as possible after the information becomes available to the plaintiff.

(5) A plaintiff may not recover attorney fees under this section if the plaintiff does not comply with the requirements of subsections (3) and (4) of this section.

[3] (6) The provisions of this section do not apply to any action based on contract.

SECTION 2. (1) Except as provided in subsection (2) of this section, the amendments to ORS 20.080 by section 1 of this 2009 Act apply to all causes of action, whether arising before, on or after the effective date of this 2009 Act.

(2) The amendments to ORS 20.080 by section 1 of this 2009 Act do not apply to an action that was filed before the effective date of this 2009 Act.

SECTION 3. ORS 20.080, as amended by section 1 of this 2009 Act, is amended to read:

20.080. (1) In any action for damages for an injury or wrong to the person or property, or both, of another where the amount pleaded is [~~\$7,500~~] **\$10,000** or less, and the plaintiff prevails in the action, there shall be taxed and allowed to the plaintiff, at trial and on appeal, a reasonable amount to be fixed by the court as attorney fees for the prosecution of the action, if the court finds that written demand for the payment of such claim was made on the defendant, and on the defendant's insurer, if known to the plaintiff, not less than 30 days before the commencement of the action or the filing of a formal complaint under ORS 46.465, or not more than 30 days after the transfer of the action under ORS 46.461. However, no attorney fees shall be allowed to the plaintiff if the court finds that the defendant tendered to the plaintiff, prior to the commencement of the action or the filing of a formal complaint under ORS 46.465, or not more than 30 days after the transfer of the action under ORS 46.461, an amount not less than the damages awarded to the plaintiff.

(2) If the defendant pleads a counterclaim, not to exceed [~~\$7,500~~] **\$10,000**, and the defendant prevails in the action, there shall be taxed and allowed to the defendant, at trial and on appeal, a reasonable amount to be fixed by the court as attorney fees for the prosecution of the counterclaim.

(3) A written demand for the payment of damages under this section must include the following information, if the information is in the plaintiff's possession or reasonably available to the plaintiff at the time the demand is made:

(a) In an action for an injury or wrong to a person, a copy of medical records and bills for medical treatment adequate to reasonably inform the person receiving the written demand of the nature and scope of the injury claimed; or

(b) In an action for damage to property, documentation of the repair of the property, a written estimate for the repair of the property or a written estimate of the difference in the value of the property before the damage and the value of the property after the damage.

(4) If after making a demand under this section, and before commencing an action, a plaintiff acquires any additional information described in subsection (3) of this section that was not provided with the demand, the plaintiff must provide that information to the defendant, and to the defendant's insurer, if known to the plaintiff, as soon as possible after the information becomes available to the plaintiff.

(5) A plaintiff may not recover attorney fees under this section if the plaintiff does not comply with the requirements of subsections (3) and (4) of this section.

(6) The provisions of this section do not apply to any action based on contract.

SECTION 4. (1) The amendments to ORS 20.080 by section 3 of this 2009 Act become operative on January 1, 2012.

(2) Except as provided in subsection (3) of this section, the amendments to ORS 20.080 by section 3 of this 2009 Act apply to all causes of action, whether arising before, on or after January 1, 2012.

(3) The amendments to ORS 20.080 by section 3 of this 2009 Act do not apply to an action that was filed before January 1, 2012.

SECTION 5. ORS 20.082 is amended to read:

20.082. (1) As used in this section, "contract" includes:

(a) Express contracts;

(b) Implied contracts; and

(c) Instruments or documents evidencing a debt.

(2) Except as provided in this section, a court shall allow reasonable attorney fees to the prevailing party on any claim based on contract if:

(a) The amount of the principal together with interest due on the contract at the time the claim is filed is [~~\$5,500~~] **\$10,000** or less; and

(b) The contract does not contain a clause that authorizes or requires the award of attorney fees.

(3) Attorney fees may not be awarded to a plaintiff under the provisions of this section unless written demand for payment of the claim was made on the defendant not less than [10] **20** days before the commencement of the action or the filing of a formal complaint under ORS 46.465, or not more than [10] **20** days after the transfer of the action under ORS 46.461. The failure of a plaintiff to give notice under the provisions of this subsection does not affect the ability of a defendant to claim attorney fees under the provisions of this section.

(4) Attorney fees may not be awarded to a plaintiff under the provisions of this section if the court finds that the defendant tendered to the plaintiff, prior to the commencement of the action or the filing of a formal complaint under ORS 46.465, or not more than [10] **20** days after the transfer of the action under ORS 46.461, an amount not less than the amount awarded to the plaintiff.

(5) The provisions of this section do not apply to:

(a) Contracts for insurance;

(b) Contracts for which another statute authorizes or requires an award of attorney fees;

(c) Any action for damages for breach of an express or implied warranty in a sale of consumer goods or services that is subject to ORS 20.098; or

(d) Any action against the maker of a dishonored check that is subject to ORS 30.701.

SECTION 6. (1) Except as provided in subsection (2) of this section, the amendments to ORS 20.082 by section 5 of this 2009 Act apply to all contracts, whether entered into before, on or after the effective date of this 2009 Act.

(2) The amendments to ORS 20.082 by section 5 of this 2009 Act do not apply to any action on a contract filed before the effective date of this 2009 Act.

Passed by Senate April 28, 2009

Received by Governor:

Repassed by Senate June 12, 2009

.....M.,....., 2009

Approved:

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Secretary of Senate

.....M.,....., 2009

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President of Senate

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Governor

Passed by House June 10, 2009

Filed in Office of Secretary of State:

.....M.,....., 2009

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Speaker of House

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Secretary of State