

A-Engrossed
Senate Bill 306

Ordered by the Senate April 24
Including Senate Amendments dated April 24

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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.

Modifies law allowing award of attorney fees in small tort actions. Allows award when amount pleaded is \$10,000 or less. **Changes requirement that plaintiff notify defendant of demand for fees 10 days before commencement of action to 20 days before commencement of action. Specifies information that plaintiff must include in demand.**

A BILL FOR AN ACT

1
2 Relating to attorney fees; creating new provisions; and amending ORS 20.080 and 20.082.

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

4 **SECTION 1.** ORS 20.080 is amended to read:

5 20.080. (1) In any action for damages for an injury or wrong to the person or property, or both,
6 of another where the amount pleaded is [*\$5,500*] **\$10,000** or less, and the plaintiff prevails in the
7 action, there shall be taxed and allowed to the plaintiff, at trial and on appeal, a reasonable amount
8 to be fixed by the court as attorney fees for the prosecution of the action, if the court finds that
9 written demand for the payment of such claim was made on the defendant not less than [*10*] **20** days
10 before the commencement of the action or the filing of a formal complaint under ORS 46.465, or not
11 more than [*10*] **20** days after the transfer of the action under ORS 46.461. However, no attorney fees
12 shall be allowed to the plaintiff if the court finds that the defendant tendered to the plaintiff, prior
13 to the commencement of the action or the filing of a formal complaint under ORS 46.465, or not more
14 than [*10*] **20** days after the transfer of the action under ORS 46.461, an amount not less than the
15 damages awarded to the plaintiff.

16 (2) If the defendant pleads a counterclaim, not to exceed [*\$5,500*] **\$10,000**, and the defendant
17 prevails in the action, there shall be taxed and allowed to the defendant, at trial and on appeal, a
18 reasonable amount to be fixed by the court as attorney fees for the prosecution of the counterclaim.

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

22 **(a) In an action for an injury or wrong to a person, a copy of medical records and bills**
23 **for medical treatment adequate to reasonably inform the person receiving the written de-**
24 **mand of the nature and scope of the injury claimed; and**

25 **(b) In an action for damage to property, documentation of the repair of the property, a**
26 **written estimate for the repair of the property or a written estimate of the difference in the**

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 value of the property before the damage and the value of the property after the damage.

2 (4) If after making a demand under this section, and before commencing an action, a
3 plaintiff acquires any additional information described in subsection (3) of this section that
4 was not provided to the defendant with the demand, the plaintiff must provide that infor-
5 mation to the defendant as soon as possible after the information becomes available to the
6 plaintiff.

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

9 [(3)] (6) The provisions of this section do not apply to any action based on contract.

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

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

15 **SECTION 3.** ORS 20.082 is amended to read:

16 20.082. (1) As used in this section, "contract" includes:

- 17 (a) Express contracts;
- 18 (b) Implied contracts; and
- 19 (c) Instruments or documents evidencing a debt.

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

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

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

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

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

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

- 37 (a) Contracts for insurance;
- 38 (b) Contracts for which another statute authorizes or requires an award of attorney fees;
- 39 (c) Any action for damages for breach of an express or implied warranty in a sale of consumer
40 goods or services that is subject to ORS 20.098; or
- 41 (d) Any action against the maker of a dishonored check that is subject to ORS 30.701.

42 **SECTION 4.** (1) Except as provided in subsection (2) of this section, the amendments to
43 ORS 20.082 by section 3 of this 2009 Act apply to all contracts, whether entered into before,
44 on or after the effective date of this 2009 Act.

45 (2) The amendments to ORS 20.082 by section 3 of this 2009 Act do not apply to any action

1 **on a contract filed before the effective date of this 2009 Act.**

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