

B-Engrossed
Senate Bill 306

Ordered by the House June 1
Including Senate Amendments dated April 24 and House Amendments
dated June 1

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)

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*] **\$7,500** or less. **Changes amount to \$10,000 or less on January 1, 2012.** Changes requirement that plaintiff notify defendant of demand for fees 10 days before commencement of action to [20] **30** 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*] **\$7,500** 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, **and on the defendant's**
10 **insurer, if known to the plaintiff**, not less than [10] **30** days before the commencement of the
11 action or the filing of a formal complaint under ORS 46.465, or not more than [10] **30** days after the
12 transfer of the action under ORS 46.461. However, no attorney fees shall be allowed to the plaintiff
13 if the court finds that the defendant tendered to the plaintiff, prior to the commencement of the
14 action or the filing of a formal complaint under ORS 46.465, or not more than [10] **30** days after the
15 transfer of the action under ORS 46.461, an amount not less than the damages awarded to the
16 plaintiff.

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

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

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

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

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

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

11 [(3)] **(6) The provisions of this section do not apply to any action based on contract.**

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

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

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

18 20.080. (1) In any action for damages for an injury or wrong to the person or property, or both,
19 of another where the amount pleaded is [~~\$7,500~~] **\$10,000** or less, and the plaintiff prevails in the
20 action, there shall be taxed and allowed to the plaintiff, at trial and on appeal, a reasonable amount
21 to be fixed by the court as attorney fees for the prosecution of the action, if the court finds that
22 written demand for the payment of such claim was made on the defendant, and on the defendant's
23 insurer, if known to the plaintiff, not less than 30 days before the commencement of the action or
24 the filing of a formal complaint under ORS 46.465, or not more than 30 days after the transfer of the
25 action under ORS 46.461. However, no attorney fees shall be allowed to the plaintiff if the court
26 finds that the defendant tendered to the plaintiff, prior to the commencement of the action or the
27 filing of a formal complaint under ORS 46.465, or not more than 30 days after the transfer of the
28 action under ORS 46.461, an amount not less than the damages awarded to the plaintiff.

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

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

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

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

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

1 (5) A plaintiff may not recover attorney fees under this section if the plaintiff does not comply
2 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.

4 **SECTION 4. (1) The amendments to ORS 20.080 by section 3 of this 2009 Act become op-**
5 **erative on January 1, 2012.**

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

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

11 **SECTION 5.** ORS 20.082 is amended to read:

12 20.082. (1) As used in this section, "contract" includes:

- 13 (a) Express contracts;
- 14 (b) Implied contracts; and
- 15 (c) Instruments or documents evidencing a debt.

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

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

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

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

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

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

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

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

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

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