

Senate Bill 745

Sponsored by Senator BONAMICI (at the request of Justin and Michael Baxter)

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**.

Authorizes award of attorney fees to prevailing party in civil action relating to express or implied contract if award of attorney fees is provided for by terms of contract or by statute and party prevails by reason of claim or defense asserting that prevailing party was not party to contract.

Provides that if contract specifically provides that attorney fees and costs incurred to enforce contract shall be awarded to one party, party prevailing on claim based on contract is entitled to reasonable attorney fees without regard to whether prevailing party is party to contract.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to attorney fees; creating new provisions; amending ORS 20.083 and 20.096; and declaring
3 an emergency.

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

5 **SECTION 1.** ORS 20.083 is amended to read:

6 20.083. A prevailing party in a civil action relating to an express or implied contract is entitled
7 to an award of attorney fees that is authorized by the terms of the contract or by statute, even
8 though the party prevails by reason of a claim or defense asserting that the contract is in whole
9 or part void [*or*], **a claim or defense asserting that the contract is unenforceable or a claim or**
10 **defense asserting that the prevailing party was not a party to the contract.**

11 **SECTION 2.** ORS 20.096 is amended to read:

12 20.096. (1) In any action or suit in which a claim is made based on a contract[, *where such*
13 *contract*] **that** specifically provides that attorney fees and costs incurred to enforce the provisions
14 of the contract shall be awarded to one of the parties, the party that prevails on the claim[, *whether*
15 *that party is the party specified in the contract or not,*] shall be entitled to reasonable attorney fees
16 in addition to costs and disbursements, **without regard to whether the prevailing party is the**
17 **party specified in the contract and without regard to whether the prevailing party is a party**
18 **to the contract.**

19 (2) Attorney fees provided for in a contract described in subsection (1) of this section shall not
20 be subject to waiver by the parties to any such contract that is entered into after September 9, 1971.
21 Any provision in such a contract that provides for a waiver of attorney fees is void.

22 (3) As used in this section and ORS 20.097, "contract" includes any instrument or document
23 evidencing a debt.

24 **SECTION 3.** (1) **The amendments to ORS 20.083 and 20.096 by sections 1 and 2 of this 2009**
25 **Act apply to all contracts, whether entered into before, on or after the effective date of this**
26 **2009 Act.**

27 (2) **The amendments to ORS 20.083 and 20.096 by sections 1 and 2 of this 2009 Act do not**
28 **apply to an action on a contract in which a judgment was entered before the effective date**

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 of this 2009 Act.

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

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