

**Enrolled**  
**Senate Bill 77**

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 Governor John A. Kitzhaber for Department of Corrections)

CHAPTER .....

AN ACT

Relating to civil actions by inmates; creating new provisions; amending ORS 30.642, 46.405 and 51.090; and declaring an emergency.

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

**SECTION 1.** Section 2 of this 2011 Act is added to and made a part of ORS 30.642 to 30.650.

**SECTION 2.** (1)(a) An inmate who brings an action against a public body in a small claims department must serve the notice and claim and all subsequent filings on the public body. If the public body is the Department of Corrections or another state agency, the inmate must also serve the notice and claim and all subsequent filings on the Attorney General.

(b) Notice and claim served under paragraph (a) of this subsection must be served in the manner provided in ORS 46.445 except that the statement required under ORS 46.445 (4) must read "30 DAYS" instead of "14 DAYS."

(2) The public body or Attorney General served under subsection (1) of this section must take action as required under ORS 46.455 except that the public body or Attorney General must admit or deny the claim within 30 days after the date of service.

(3) Notwithstanding ORS 46.405, in an action against a public body brought under this section, the court shall transfer the action to the regular department of the circuit court upon request of the public body or, if the public body is the Department of Corrections or another state agency, or an officer, employee or agent of the Department of Corrections or the state agency, upon request of the public body or the Attorney General.

(4) Notwithstanding ORS 46.415, in an action against a public body brought under this section, if the public body is the Department of Corrections or another state agency, or an officer, employee or agent of the Department of Corrections or the state agency, an attorney or paralegal employed by the Department of Justice may appear and represent the public body.

(5)(a) Notwithstanding ORS 46.475, in an action against a public body brought under this section, notice of intent to apply for an order of default, in the form prescribed by Uniform Trial Court Rule 2.010, must be filed and served on the public body against which an order of default is sought at least 10 days before a court may enter an order of default. If the public body is the Department of Corrections or another state agency, or an officer, employee or agent of the Department of Corrections or the state agency, notice must also be served on the Attorney General.

**(b) The court may not enter a default judgment in favor of the inmate unless the inmate submits to the court proof of service by affidavit of the notice and claim required under subsection (1) of this section and the notice of intent to apply for an order of default required under paragraph (a) of this subsection.**

**SECTION 3.** ORS 30.642 is amended to read:

30.642. As used in ORS 30.642 to 30.650:

(1) "Action against a public body" means a civil action, **including an action brought in a small claims department, an appeal or a petition for review**, that names as a defendant a public body[,] as defined in ORS 30.260[, *or names as a defendant any*] **or an officer, employee or agent of a public body[, as defined in ORS 30.260]**. "Action against a public body" does not [*include*] **mean** petitions for writs of habeas corpus, petitions for writs of mandamus and petitions for post-conviction relief under ORS 138.510 to 138.680.

(2) "Correctional facility" means a Department of Corrections institution or a jail.

(3) "Inmate" means [*any*] **a person incarcerated or detained in [*any*] a correctional facility who is accused of, convicted of or sentenced for a violation of criminal law or for the violation of the terms and conditions of pretrial release, probation, parole, post-prison supervision or a diversion program.**

**SECTION 4.** ORS 46.405 is amended to read:

46.405. (1) Except as provided in subsection (6) of this section, each circuit court shall have a small claims department.

(2) Except as provided in this section, all actions for the recovery of money, damages, specific personal property, or any penalty or forfeiture must be commenced and prosecuted in the small claims department if the amount or value claimed in the action does not exceed \$750.

(3) Except as provided in this section and ORS 46.455 (2)(c), an action for the recovery of money, damages, specific personal property, or any penalty or forfeiture may be commenced and prosecuted in the small claims department if the amount or value claimed in the action does not exceed \$7,500.

(4)(a) Class actions may not be commenced and prosecuted in the small claims department.

**(b) An action by an inmate, as defined in ORS 30.642, against another inmate may not be commenced and prosecuted in the small claims department.**

(5) Actions providing for statutory attorney fees in which the amount or value claimed does not exceed \$750 may be commenced and prosecuted in the small claims department or may be commenced and prosecuted in the regular department of the circuit court. This subsection does not apply to an action based on contract for which attorney fees are authorized under ORS 20.082.

(6) If a circuit court is located in the same city as a justice court, the circuit court need not have a small claims department if the circuit court and the justice court enter into an intergovernmental agreement that provides that only the justice court will operate a small claims department. If an intergovernmental agreement is entered into under this subsection, the agreement must establish appropriate procedures for referring small claims cases to the justice court.

**SECTION 5.** ORS 51.090 is amended to read:

51.090. The jurisdiction conferred by ORS 51.080 does not extend to:

(1) An action in which the title to real property shall come in question.

(2) An action for false imprisonment, libel, slander or malicious prosecution.

**(3) An action brought by an inmate as defined in ORS 30.642.**

**SECTION 6. This 2011 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect on its passage.**

**Passed by Senate April 6, 2011**

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Robert Taylor, Secretary of Senate

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Peter Courtney, President of Senate

**Passed by House May 25, 2011**

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

**Received by Governor:**

.....M,....., 2011

**Approved:**

.....M,....., 2011

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John Kitzhaber, Governor

**Filed in Office of Secretary of State:**

.....M,....., 2011

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Kate Brown, Secretary of State