

Senate Bill 77

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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 **as introduced**.

Provides that inmate may not bring action against public body unless inmate has exhausted administrative remedies.

Limits inmate action against public body in small claims department to claim for loss or destruction of property. Requires inmate to serve notice and claim on public body, and, if public body is state agency, on Attorney General and official of correctional facility where inmate is incarcerated. Allows defendant 30 days to admit or deny inmate's claim. Limits damages to value of property lost or destroyed. Prohibits default judgment in favor of inmate unless inmate files notice of intent to apply for order of default at least 10 days before entry of order and submits to court proof of service by affidavit of notice and claim and notice of intent to apply for order of default.

Prohibits inmate action in small claims department against other inmate.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to civil actions by inmates; creating new provisions; amending ORS 30.642, 46.405 and
3 51.090; and declaring an emergency.

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

5 **SECTION 1. Sections 2 and 3 of this 2011 Act are added to and made a part of ORS 30.642**
6 **to 30.650.**

7 **SECTION 2. (1) An inmate may not bring an action against a public body unless the in-**
8 **mate has exhausted all administrative remedies that the Department of Corrections pro-**
9 **vides.**

10 **(2) An inmate who brings an action against a public body must attach to the inmate's**
11 **complaint or claim an affidavit signed by the inmate stating that the inmate has complied**
12 **with subsection (1) of this section. The court shall dismiss the action, without prejudice, if**
13 **the affidavit is not attached to the inmate's complaint or claim.**

14 **SECTION 3. (1) Notwithstanding ORS 46.405, an inmate may bring an action against a**
15 **public body in a small claims department only for the loss or destruction of property of the**
16 **inmate.**

17 **(2)(a) An inmate who brings an action against a public body in a small claims department**
18 **must serve the notice and claim and all subsequent filings on the public body. If the public**
19 **body is the Department of Corrections or another state agency, the inmate must also serve**
20 **the notice and claim and all subsequent filings on the Attorney General and the superinten-**
21 **dent or other officer of the correctional facility in which the inmate is incarcerated.**

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

25 **(3) The public body or Attorney General served under subsection (2) of this section must**

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 take action as required under ORS 46.455 except that the public body or Attorney General
2 must admit or deny the claim within 30 days after the date of service.

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

8 (5) If a court finds a public body liable for the loss or destruction of an inmate's property
9 in an action brought under this section, damages may not be awarded in an amount exceed-
10 ing the value of the property lost or destroyed.

11 (6)(a) Notwithstanding ORS 46.475, in an action against a public body brought under this
12 section, notice of intent to apply for an order of default, in the form prescribed by Uniform
13 Trial Court Rule 2.010, must be filed and served on the public body against which an order
14 of default is sought at least 10 days before a court may enter an order of default. If the
15 public body is the Department of Corrections or another state agency, or an officer, em-
16 ployee or agent of the Department of Corrections or the state agency, notice must also be
17 served on the Attorney General and the superintendent or other officer of the correctional
18 facility in which the inmate is incarcerated.

19 (b) The court may not enter a default judgment in favor of the inmate unless the inmate
20 submits to the court proof of service by affidavit of the notice and claim required under
21 subsection (2) of this section and the notice of intent to apply for an order of default required
22 under paragraph (a) of this subsection.

23 **SECTION 4.** ORS 30.642 is amended to read:

24 30.642. As used in ORS 30.642 to 30.650:

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

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

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

36 **SECTION 5.** ORS 46.405 is amended to read:

37 46.405. (1) Except as provided in subsection (6) of this section, each circuit court shall have a
38 small claims department.

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

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

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

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

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

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

12 **SECTION 6.** ORS 51.090 is amended to read:

13 51.090. The jurisdiction conferred by ORS 51.080 does not extend to:

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

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

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

17 **SECTION 7. This 2011 Act being necessary for the immediate preservation of the public**
18 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
19 **on its passage.**

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