

## Testimony on HB 2612 by Bennett Johnson

Chair Barker, Co Vice Chair Olson and Co Vice Chair Williamson, and Representatives Barton, Greenlick, Krieger, Lininger, Post and Sprenger. Thank you for hearing my testimony today.

My name is Bennett Johnson and my husband, Ken Johnson, and I own Fearless Brewing Company in Estacada.

- This bill is about fairness. Through this bill I am trying to level the legal playing field in disputes between large government agencies with large legal resources and small business and private citizens
- When small business or private citizens file a lawsuit of \$5000 or less against a government agency in small claims court, my bill requires the government agency to utilize small claims court to resolve the dispute and restricts the agency from opting for a jury trial.
- In 2013 I had a dispute with Tri Met after a Tri Met bus collided with our company truck
- I filed a claim with Tri Met and they denied it. They are self-insured and they alone make the determination to accept or deny claims. Tri Met has a reputation of denying claims and waiting to see what comes back in litigation
- If two private insurance companies have a dispute they generally settle it in front of the inner company arbitration board, quickly and inexpensively. But since Tri Met is self-insured they are not members of that organization
- I asked the Tri Met claims adjuster why my claim was denied and was told that Tri Met would not disclose that information.
- So I filed a small claims suit. In small claims court, if a claim is for more than \$750, the defendant can request a jury trial, which throws the case out of small claims and into circuit court.
- Now if private companies or individuals opt for trial then we all have to lawyer up and spend money. But agencies like Tri Met have their own legal department. I did ask an attorney about this case and was told that what would probably happen is that Tri Met would ask for depositions and continuances until I spent a lot of money and cried uncle and gave up.
- I have been asked why I didn't just refer this matter to my insurance company. Again, this had to do with fairness. I was convinced that we were in the right and that Tri Met should pay. I was advised that my claim was too small for my insurance company to argue and that my insurance company would simply pay my claim and then raise my rates.
- I have also been asked why I did not try and find an attorney to represent me on contingency. If I had been able to talk an attorney into taking this small case on contingency, which is unlikely, then I would have had to pay one third of the award to the attorney
- I have also heard argued that ORS 20.080 reduces risks of legal fees in smaller claims. My understanding is that Statute simply allows the winner to request legal fees be paid by the loser, which means I could end up paying both my legal fees and the fees of the defendant, in the event that the defendant counter sued for legal fees.
- Finally, I would like to address the estimated economic impact of this bill, which you may or may not have seen. Right now private citizens and businesses have a year to make a claim but in the case of government a claim must be filed within 6 months. The estimated economic impact of extending this limitation to 12 months for government was \$600,000. If changes were to occur in my bill I suppose it could be argued that government agencies are more likely targets for fraudulent lawsuits and therefore deserve a stricter time limitation. I disagree with that assumption, but can understand the argument
- However the other estimated economic impact of \$125,000 is based on more claims won by plaintiffs as a result of going to small claims court instead of jury trial. I think what that really means is that government has managed to out maneuver the private sector, more specifically the little guy, to the tune of \$125,000 and it is an economic impact that I believe they should probably bare.

- I think it is important to point out that my opportunity for restitution has come and gone. This is no longer about my claim, but rather I am here as a result of it. I am here to try and level the playing field for the little guy in the future.
- After many letters to the Tri Met board of directors Tri Met legal counsel offered me half of what they thought my claim should be, not half of my actual claim. I refused to settle and decided to try and change the law to the benefit of those who will find themselves in my shoes in the future.
- Government should not be able to use resources paid for by tax payers against tax payers. Small claims court is an unbiased and competent forum to settle small disputes quickly and without the great expense of a jury trial. That approach is fair and levels the playing field.
- I'd like to thank Representative Kennemer for providing me this opportunity and thank you for listening to my testimony.