

D R A F T

SUMMARY

Provides procedure by which party can present offer of judgment in arbitration proceeding.

A BILL FOR AN ACT

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2 Relating to offers of judgment; creating new provisions; and amending ORS
3 36.425.

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

5 **SECTION 1.** ORS 36.425 is amended to read:

6 36.425. (1) At the conclusion of arbitration under ORS 36.400 to 36.425 of
7 a civil action, the arbitrator shall file the decision and award with the clerk
8 of the court that referred the action to arbitration, together with proof of
9 service of a copy of the decision and award upon each party. If the decision
10 and award require the payment of money, including payment of costs or at-
11 torney fees, the decision and award must be substantially in the form pre-
12 scribed by ORS 18.042.

13 (2)(a) Within 20 days after the filing of a decision and award with the
14 clerk of the court under subsection (1) of this section, a party against whom
15 relief is granted by the decision and award or a party whose claim for relief
16 was greater than the relief granted to the party by the decision and award,
17 but no other party, may file with the clerk a written notice of appeal and
18 request for a trial de novo of the action in the court on all issues of law and
19 fact. A copy of the notice of appeal and request for a trial de novo must be
20 served on all other parties to the proceeding. After the filing of the written

1 notice a trial de novo of the action shall be held. If the action is triable by
2 right to a jury and a jury is demanded by a party having the right of trial
3 by jury, the trial de novo shall include a jury.

4 (b) If a party files a written notice under paragraph (a) of this subsection,
5 a trial fee or jury trial fee, as applicable, shall be collected as provided in
6 ORS 21.225.

7 (c) A party filing a written notice under paragraph (a) of this subsection
8 shall deposit with the clerk of the court the sum of \$159. If the position
9 under the arbitration decision and award of the party filing the written no-
10 tice is not improved as a result of a judgment in the action on the trial de
11 novo, the clerk shall dispose of the sum deposited in the same manner as a
12 fee collected by the clerk. If the position of the party is improved as a result
13 of a judgment, the clerk shall return the sum deposited to the party. If the
14 court finds that the party filing the written notice is then unable to pay all
15 or any part of the sum to be deposited, the court may waive in whole or in
16 part, defer in whole or in part, or both, the sum. If the sum or any part
17 thereof is so deferred and the position of the party is not improved as a re-
18 sult of a judgment, the deferred amount shall be paid by the party according
19 to the terms of the deferral.

20 (3) If a written notice is not filed under subsection (2)(a) of this section
21 within the 20 days prescribed, the court shall cause to be prepared and en-
22 tered a judgment based on the arbitration decision and award. A judgment
23 entered under this subsection may not be appealed.

24 (4) Notwithstanding any other provision of law or the Oregon Rules of
25 Civil Procedure:

26 (a) If a party requests a trial de novo under the provisions of this section,
27 the action is subject to arbitration under the provisions of ORS 36.405 (1)(a),
28 the party is entitled to attorney fees by law or contract, and the position of
29 the party is not improved after judgment on the trial de novo, the party shall
30 not be entitled to an award of attorney fees or costs and disbursements in-
31 curred by the party before the filing of the decision and award of the

1 arbitrator, and shall be taxed the reasonable attorney fees and costs and
2 disbursements incurred by the other parties to the action on the trial de
3 novo after the filing of the decision and award of the arbitrator.

4 (b) If a party requests a trial de novo under the provisions of this section,
5 the action is subject to arbitration under ORS 36.405 (1)(a), the party is not
6 entitled to attorney fees by law or contract, and the position of the party is
7 not improved after judgment on the trial de novo, pursuant to subsection (5)
8 of this section the party shall be taxed the reasonable attorney fees and costs
9 and disbursements of the other parties to the action on the trial de novo
10 incurred by the other parties after the filing of the decision and award of the
11 arbitrator.

12 (c) If a party requests a trial de novo under the provisions of this section,
13 the action is subject to arbitration under ORS 36.405 (1)(b), and the position
14 of the party is not improved after judgment on the trial de novo, the party
15 shall not be entitled to an award of attorney fees or costs and disbursements
16 and shall be taxed the costs and disbursements incurred by the other parties
17 after the filing of the decision and award of the arbitrator.

18 (5) If a party is entitled to an award of attorney fees under subsection (4)
19 of this section, but is also entitled to an award of attorney fees under con-
20 tract or another provision of law, the court shall award reasonable attorney
21 fees pursuant to the contract or other provision of law. If a party is entitled
22 to an award of attorney fees solely by reason of subsection (4) of this section,
23 the court shall award reasonable attorney fees not to exceed the following
24 amounts:

25 (a) Twenty percent of the judgment, if the defendant requests the trial
26 de novo but the position of the defendant is not improved after the trial de
27 novo; or

28 (b) Ten percent of the amount claimed in the complaint, if the plaintiff
29 requests the trial de novo but the position of the plaintiff is not improved
30 after the trial de novo.

31 (6) Within seven days after the filing of a decision and award under sub-

1 section (1) of this section, a party may file with the court and serve on the
2 other parties to the arbitration written exceptions directed solely to the
3 award or denial of attorney fees or costs. Exceptions under this subsection
4 may be directed to the legal grounds for an award or denial of attorney fees
5 or costs, or to the amount of the award. **Any claim or defense pursuant**
6 **to ORCP 54 E must be filed as an exception under this subsection.** Any
7 party opposing the exceptions must file a written response with the court
8 and serve a copy of the response on the party filing the exceptions. Filing
9 and service of the response must be made within seven days after the service
10 of the exceptions on the responding party. A judge of the court shall decide
11 the issue and enter a decision on the award of attorney fees and costs. *[If*
12 *the judge fails to enter a decision on the award within 20 days after the filing*
13 *of the exceptions, the award of attorney fees and costs shall be considered af-*
14 *firmed.]* The filing of exceptions under this subsection does not constitute
15 an appeal under subsection (2) of this section and does not affect the finality
16 of the award in any way other than as specifically provided in this sub-
17 section.

18 (7) For the purpose of determining whether the position of a party has
19 improved after a trial de novo under the provisions of this section, the court
20 shall not consider any money award or other relief granted on claims as-
21 serted by amendments to the pleadings made after the filing of the decision
22 and award of the arbitrator.

23 **SECTION 2. The amendments to ORS 36.425 by section 1 of this 2023**
24 **Act apply to arbitrations commenced on or after the effective date of**
25 **this 2023 Act.**

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