

Senate Bill 307

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

A BILL FOR AN ACT

1
2 Relating to offers of judgment; creating new provisions; and amending ORS 36.425.

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

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

5 36.425. (1) At the conclusion of arbitration under ORS 36.400 to 36.425 of a civil action, the
6 arbitrator shall file the decision and award with the clerk of the court that referred the action to
7 arbitration, together with proof of service of a copy of the decision and award upon each party. If
8 the decision and award require the payment of money, including payment of costs or attorney fees,
9 the decision and award must be substantially in the form prescribed by ORS 18.042.

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

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

21 (c) A party filing a written notice under paragraph (a) of this subsection shall deposit with the
22 clerk of the court the sum of \$159. If the position under the arbitration decision and award of the
23 party filing the written notice is not improved as a result of a judgment in the action on the trial
24 de novo, the clerk shall dispose of the sum deposited in the same manner as a fee collected by the
25 clerk. If the position of the party is improved as a result of a judgment, the clerk shall return the
26 sum deposited to the party. If the court finds that the party filing the written notice is then unable
27 to pay all or any part of the sum to be deposited, the court may waive in whole or in part, defer in
28 whole or in part, or both, the sum. If the sum or any part thereof is so deferred and the position
29 of the party is not improved as a result of a judgment, the deferred amount shall be paid by the
30 party according to the terms of the deferral.

31 (3) If a written notice is not filed under subsection (2)(a) of this section within the 20 days pre-

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 scribed, the court shall cause to be prepared and entered a judgment based on the arbitration de-
 2 cision and award. A judgment entered under this subsection may not be appealed.

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

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

11 (b) If a party requests a trial de novo under the provisions of this section, the action is subject
 12 to arbitration under ORS 36.405 (1)(a), the party is not entitled to attorney fees by law or contract,
 13 and the position of the party is not improved after judgment on the trial de novo, pursuant to sub-
 14 section (5) of this section the party shall be taxed the reasonable attorney fees and costs and dis-
 15 bursements of the other parties to the action on the trial de novo incurred by the other parties after
 16 the filing of the decision and award of the arbitrator.

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

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

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

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

31 (6) Within seven days after the filing of a decision and award under subsection (1) of this sec-
 32 tion, a party may file with the court and serve on the other parties to the arbitration written ex-
 33 ceptions directed solely to the award or denial of attorney fees or costs. Exceptions under this
 34 subsection may be directed to the legal grounds for an award or denial of attorney fees or costs,
 35 or to the amount of the award. **Any claim or defense pursuant to ORCP 54 E must be filed as**
 36 **an exception under this subsection.** Any party opposing the exceptions must file a written re-
 37 sponse with the court and serve a copy of the response on the party filing the exceptions. Filing and
 38 service of the response must be made within seven days after the service of the exceptions on the
 39 responding party. A judge of the court shall decide the issue and enter a decision on the award of
 40 attorney fees and costs. *[If the judge fails to enter a decision on the award within 20 days after the*
 41 *filing of the exceptions, the award of attorney fees and costs shall be considered affirmed.]* The filing
 42 of exceptions under this subsection does not constitute an appeal under subsection (2) of this section
 43 and does not affect the finality of the award in any way other than as specifically provided in this
 44 subsection.

45 (7) For the purpose of determining whether the position of a party has improved after a trial

1 de novo under the provisions of this section, the court shall not consider any money award or other
2 relief granted on claims asserted by amendments to the pleadings made after the filing of the deci-
3 sion and award of the arbitrator.

4 **SECTION 2. The amendments to ORS 36.425 by section 1 of this 2023 Act apply to arbi-**
5 **trations commenced on or after the effective date of this 2023 Act.**

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